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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 800 and 810

[Doc. No. AMS–AMS–22–0083]

United States Standards for Soybeans

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is revising the United States Standards for Soybeans by removing soybeans of other colors (SBOC) as an official factor. In addition, AMS is revising the table of Grade Limits and Breakpoints for Soybeans to reflect this change.

DATES: This rule is effective September 1, 2023.

FOR FURTHER INFORMATION CONTACT: Barry Gomoll, USDA AMS; Telephone: (202) 720–8286; Email: *Barry.L.Gomoll@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 551 *et seq.,* amends regulations, at 7 CFR part 800 and part 810, issued under the United States Grain Standards Act (7 U.S.C. 71–87k), as amended (USGSA). Section 4 of the USGSA (7 U.S.C. 76(a)) grants the Secretary of Agriculture the authority to establish standards for grain regarding kind, class, quality, and condition.

Background

In response to requests from grain industry representatives, AMS published a proposed rule in the **Federal Register** on March 31, 2023 (88 FR 19229), inviting interested parties to comment on the proposed removal of SBOC as an official factor for soybeans.

AMS regularly reviews grain standards to ensure their effectiveness in meeting the quality requirements of grain moving in the value chain. An increase in the amount of SBOC in officially graded soybean lots over the past two years has led to a decrease in the marketability of U.S. soybeans versus those from other exporting countries. In the proposed rule, AMS invited stakeholders to comment on the effect of removing SBOC as an official grade-determining factor.

Additionally, the proposed rule addressed making the standards effective on an expediated timeline. According to the USGSA, ''No standards established or amendments or revocations of standards under this chapter shall become effective less than one calendar year after promulgation thereof, unless in the judgment of the Secretary, the public health, interest, or safety require that they become effective sooner'' (7 U.S.C. 76(b)(1)). In the proposed rule, AMS argued that effecting the standards change in a shorter timeframe is in the public's interest and invited comments to determine if this is the case.

Comment Review

AMS received 14 comments in response to the proposed rule. All 14 comments were in favor of the proposed changes. The comments received were submitted by individuals, small businesses, trade organizations, and producer advocacy groups. Two commenters were national and state organizations representing soybean growers. Another comment was submitted by a large grain trade organization and was cosigned by 43 organizations that represent grain handling, storage, export, processing, as well as seed and feed sectors. The remainder of comments were from individuals representing small producers and trade businesses.

Many comments expressed favor toward the proposed rule, noting that there is no significant difference in end-use quality between soybeans with differing levels of SBOC. Nine of the comments included this information, in some form or another. Of these, four specifically cited the study that AMS conducted, based on the recommendation of the Grain Inspection Advisory Committee.[1]

Five of the comments noted that the inclusion of SBOC, as a grade factor, causes U.S. soybeans to be less competitive in the world export market. Two of these comments also noted that other major soybean producing countries do not use a factor like SBOC to determine soybean quality.

Some comments referenced the negative impact that higher levels of SBOC had on growers and handlers of soybeans. Five commenters mentioned that SBOC, as a grade determining factor, has led to reduced income for growers who failed to meet the standard for U.S. No. 2 Yellow Soybeans on SBOC alone. Two comments noted that higher SBOC levels has led to increased operational cost, such as having to pay for extra inspections or trucking soybeans longer distances to find buyers.

Commenters also asserted that keeping SBOC, as a grading criterion, would be contrary to the stated objectives of the USGSA, which states that the grading standards shall ''offer users of such standards the best possible information from which to determine end-product yield and quality of grain'' and ''reflect the economic value-based characteristics in the end uses of grain'' (7 U.S.C. 74(b)(3)).

AMS agrees with the commentors. The comment process is designed to give interested parties an opportunity to present data, views, and arguments. The needs of the trade in soybeans requires this change for U.S. soybeans to be competitive in the export market, and the available data shows that SBOC does not affect soybean quality. Therefore, AMS is amending the standards for soybeans.

Implementation Period

AMS invited interested parties to comment on whether the proposed changes should go into effect by September 1, 2023. The Agency sought such comments because the USGSA requires that changes to the grain standards may not be made effective within one calendar year of their promulgation ''unless in the judgment of the Secretary, the public health, interest, or safety require that they become effective sooner'' (7 U.S.C. 76(b)(1)). This provision was put into place to allow industry participants adequate time to adjust and transition to new standards. However, in this case, the soybeans that are more likely to exhibit discolored seedcoats and trigger higher determinations of SBOC in soybean samples are already present in the supply chain. Additionally, based on AMS research showing that the color

[1] *https://www.ams.usda.gov/sites/default/files/media/FGISSBOCStudy.pdf.*

variation does not materially affect the end use of the soybeans, the Agency did not foresee any deleterious effects to farmers or merchandisers by making the rule effective sooner.

As a result of the request for comments regarding the implementation period, AMS received a comment from a national producer organization that strongly urged the Agency to implement the rule in advance of the 2023–2024 soybean marketing year, which begins on September 1, 2023. All other comments were in support of implementing the proposed rule, as published.

In light of the comment urging AMS to adopt the new standard quickly, the standard ''shall become effective less than one calendar year after promulgation thereof'' because ''the public health, interest, or safety require that [this standard] become effective sooner [than one year.]'' (7 U.S.C. 76(b)(1)). The current standard is unnecessarily increasing costs to the public and farmers, and unnecessarily foreclosing markets for otherwise commercially indistinguishable soybeans. Therefore, AMS will maintain September 1, 2023, as the effective date for implementing the changes contained in this final rule.

AMS Action

AMS is revising 7 CFR part 810, Subpart J, United States Standards for Soybeans to eliminate SBOC as an official factor but retain it in the standards as part of the definition of the class Yellow soybeans. AMS is also revising 7 CFR 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots, paragraph (c)(2), by removing SBOC from Table 17.

List of Subjects

7 CFR Part 800

Administrative practice and procedure, Conflict of interests, Exports, Freedom of information, Grains, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

7 CFR Part 810

Exports, Grain.

For reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR parts 800 and 810 as follows:

PART 800—GENERAL REGULATIONS

■ 1. The authority citation for part 800 continues to read as follows:

Authority: 7 U.S.C. 71–87k.

■ 2. Amend § 800.86 by revising Table 17 to paragraph (c)(2) to read as follows:

§ 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.

* * * * *

(c) * * *

(2) * * *

TABLE 17 TO PARAGRAPH (c)(2)

Grade	Maximum limits of—							
	Damaged kernels							
	Heat-damaged (percent)		Total (percent)		Foreign Material (percent)		Splits (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	0.2	0.2	2.0	0.8	1.0	0.2	10.0	1.6
U.S. No. 2	0.5	0.3	3.0	0.9	2.0	0.3	20.0	2.2
U.S. No. 3[1]	1.0	0.5	5.0	1.2	3.0	0.4	30.0	2.5
U.S. No. 4[2]	3.0	0.9	8.0	1.5	5.0	0.5	40.0	2.7

[1] Soybeans which are purple mottled or stained shall be graded not higher than U.S. No. 3.
[2] Soybeans which are materially weathered shall be graded not higher than U.S. No. 4.

* * * * *

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

■ 3. The authority citation for part 810 continues to read as follows:

Authority: 7 U.S.C. 71–87k.

■ 4. Amend § 810.1602 by revising paragraph (a)(1), removing paragraph (g), and redesignating paragraph (h) as paragraph (g).

The revisions read as follows:

§ 810.1602 Definition of other terms.

(a) * * *

(1) *Yellow soybeans.* Soybeans that have yellow or green seed coats and which, in cross section, are yellow or have a yellow tinge, and may include not more than 10.0 percent of soybeans of other colors. Soybeans of other colors are soybeans that have black or bicolored seedcoats, as well as soybeans that have green seedcoats and are green in cross section. Bicolored soybeans will have seed coats of two colors, one of which is brown or black, and the brown or black color covers 50 percent of the seed coats. The hilum of a soybean is not considered a part of the seed coat for this determination.

* * * * *

■ 5. Revise § 810.1603 to read as follows:

§ 810.1603 Basis of determination.

Each determination of class, heat-damaged kernels, damaged kernels, and splits is made on the basis of the grain when free from foreign material. Other determinations not specifically provided for under the general provisions are made on the basis of the grain as a whole.

■ 6. Revise § 810.1604 to read as follows:

§ 810.1604 Grades and grade requirements for soybeans.

Grading factors	Grades U. S. Nos.			
	1	2	3	4
Maximum percent limits of:				
Damaged kernels:				
Heat (part of total)	0.2	0.5	1.0	3.0

Grading factors	Grades U. S. Nos.			
	1	2	3	4
Total	2.0	3.0	5.0	8.0
Foreign material	1.0	2.0	3.0	5.0
Splits	10.0	20.0	30.0	40.0
Maximum count limits of:				
Other materials:				
Animal filth	9	9	9	9
Castor beans	1	1	1	1
Crotalaria seeds	2	2	2	2
Glass	0	0	0	0
Stones [1]	3	3	3	3
Unknown foreign substance	3	3	3	3
Total [2]	10	10	10	10

U.S. Sample grade are soybeans that:
(a) Do not meet the requirements for U.S. Nos. 1, 2, 3, or 4; or
(b) Have a musty, sour, or commercially objectionable foreign odor (except garlic odor); or
(c) Are heating or otherwise of distinctly low quality.
[1] In addition to the maximum count limit, stones must exceed 0.1 percent of the sample weight.
[2] Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, and unknown foreign substances. The weight of stones is not applicable for total other material.

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–14856 Filed 7–13–23; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Docket No. R–1810]

RIN 7100–AG61

Regulation D: Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendments.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') is amending two sections of Regulation D to conform the provisions to prior regulatory amendments.

DATES: *Effective date:* This rule (amendments to part 204 (Regulation D)) is effective July 14, 2023.

FOR FURTHER INFORMATION CONTACT: Sophia H. Allison, Senior Special Counsel (202–452–3565), Legal Division; for users of telephone systems via text telephone (TTY) or any TTY-based Telecommunications Relay Services, please call 711 from any telephone, anywhere in the United States; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

For monetary policy purposes, section 19 of the Federal Reserve Act (''Act'') requires the Board to impose reserve requirements on certain types of deposits and other liabilities of depository institutions within ratios specified by the Act.[1] The Board's Regulation D implements section 19 of the Act.[2]

II. Amendments to Regulation D

Three of the definitions in Regulation D—footnote 3 to the definition of ''time deposit,'' footnote 6 to the definition of ''nonpersonal time deposit,'' and footnote 11 to the definition of ''international banking facility time deposit or IBF time deposit''—refer to liabilities maintained by depository institutions for ''[a]ny other foreign, international, or supranational entity specifically designated by the Board.'' [3] The foreign, international, or supranational entities specifically designated by the Board for these purposes are set forth at 12 CFR 204.125 of Regulation D as an interpretation of the regulation.[4] This interpretation was originally promulgated as § 217.126 of former Regulation Q (Prohibition Against Payment of Interest on Demand Deposits).[5] The interpretation was deleted from Regulation Q and redesignated as § 204.125 of Regulation D in 1987.[6] However, while the references to the interpretation in footnotes 3 and 11 of Regulation D were updated to refer to § 204.125 instead of § 217.126, the reference in footnote 6 (formerly footnote 8) of Regulation D was not and continues to refer to § 217.126 instead of referring to § 204.125.[7] Accordingly, footnote 6 of Regulation D is amended to refer to § 204.125 instead of § 217.126 in order to conform the provision to Regulation D amendments finalized in 1987.

In addition, the heading and the introductory text of the interpretation set forth at 12 CFR 204.125 require two amendments to conform the interpretation to prior regulatory amendments. In 12 CFR 204.125, the

[1] 12 U.S.C. 461(b).

[2] Regulation D (12 CFR part 204). In March 2020, the Board set all reserve requirement ratios to zero percent. *See* Interim final rule (Regulation D), 85 FR 16525 (Mar. 24, 2020); Final rule (Regulation D), 86 FR 8853 (Feb. 10, 2021).

[3] 12 CFR 204.2(c)(1)(iii)(E) n. 3 (definition of ''time deposit''); 12 CFR 204.2(f)(1)(iv)(E) n.6 (definition of ''nonpersonal time deposit''); 12 CFR 204.8(a)(2)(i)(B)(*5*) n.11 (definition of ''international banking facility time deposit or IBF time deposit'').

[4] ''Foreign, international, and supranational entities referred to in §§ 204.2(c)(1)(iv)(E) and 204.8(a)(2)(i)(B)(5),'' 12 CFR 204.125.

[5] Entities Exempt From Interest Rate Limitations (Regulation Q), 35 FR 1156 (Jan. 29, 1970). In 2010, Regulation Q was repealed as a result of the repeal of former section 19(i) of the Act. Final rule (Regulations D, Q, and DD), 76 FR 42015 (July 18, 2011).

[6] Recission and revision of interpretations; technical amendments of regulation (Regulations D and Q), 52 FR 47689, 47695 (Dec. 16, 1987) (redesignating 12 CFR 217.126 of former Regulation Q as 12 CFR 204.125 of Regulation D).

[7] Current footnote 3 (formerly footnote 4) of Regulation D was amended to refer to § 204.125 in 1987. Recission and revision of interpretations; technical amendments of regulation (Regulations D and Q), 52 FR 47689, 47695 (Dec. 16, 1987). Current footnote 11 (formerly footnote 14) was amended to refer to § 204.125 in 1991. Final rule (Regulation D), 56 FR 15493, 15495 (Apr. 17, 1991). Footnote 4 was redesignated to its current position as footnote 3, footnote 8 was redesignated to its current position as footnote 6, and footnote 14 was redesignated to its current position as footnote 11 in 1996. Final rule (Regulation D), 61 FR 69020, 69025 (Dec. 31, 1996).

heading currently reads ''§ 204.125 Foreign, international, and supranational entities referred to in §§ 204.2(c)(1)(iv)(E) and 204.8(a)(2)(i)(B)(5)'' and the introductory text reads ''The entities referred to in §§ 204.2(c)(1)(iv)(E) and 204.8(a)(2)(i)(B)(5) are:''.

First, the references to § 204.2(c)(1)(iv)(E) in the heading and the introductory text are amended to refer to § 204.2(c)(1)(iii)(E) in order to conform the heading and the introductory text to Regulation D amendments finalized in 2020.[8] Second, the heading and the introductory text are amended to add a reference to the definition of ''nonpersonal time deposit,'' 12 CFR 204.2(f)(1)(iv)(E), to conform the heading and the introductory text to Regulation D amendments finalized in 1991.[9]

III. Administrative Procedure Act

In general, the Administrative Procedure Act (''APA'') [10] imposes three principal requirements when an agency promulgates legislative rules (rules made pursuant to congressionally-delegated authority): (1) publication with adequate notice of a proposed rule; (2) followed by a meaningful opportunity for the public to comment on the rule's content; and (3) publication of the final rule not less than 30 days before its effective date. The APA provides that notice and comment procedures do not apply if the agency for good cause finds them to be ''unnecessary, impracticable, or contrary to the public interest.'' [11] Section 553(d) of the APA also provides that publication at least 30 days prior to a rule's effective date is not required for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) a rule for which the agency finds good cause for shortened notice and publishes its reasoning with the rule.[12]

The Board has determined that good cause exists for finding that the notice, public comment, and delayed effective date provisions of the APA are unnecessary, impracticable, or contrary to the public interest with respect to these final amendments to Regulation D. The amendments are technical in nature and do not change any of the substantive provisions of the rule. Notice, public comment, and a delayed effective date under these circumstances would not serve any useful purpose. Accordingly, the Board has determined that good cause exists to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to these final amendments to Regulation D.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[13] As noted previously, the Board has determined that it is unnecessary and contrary to the public interest to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (''PRA'') of 1995,[14] the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no requirements subject to the PRA.

List of Subjects in 12 CFR Part 204

Banking, Banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 461, 601, 611, and 3105.

■ 2. Section 204.2 is amended by revising paragraph (f)(1)(iv)(E) to read as follows:

§ 204.2 Definitions.

* * * * *

(f) * * *

(iv) * * *

(E) Any other foreign, international, or supranational entity specifically designated by the Board.[6]

* * * * *

[6] The designated entities are specified in 12 CFR 204.125.

* * * * *

■ 3. Section 204.125 is amended by revising the section heading and introductory text to read as follows:

§ 204.125 Foreign, international, and supranational entities referred to in §§ 204.2(c)(1)(iii)(E) and (f)(1)(iv)(E) and 204.8(a)(2)(i)(B)(*5*).

The entities referred to in §§ 204.2(c)(1)(iii)(E) and (f)(1)(iv)(E) and 204.8(a)(2)(i)(B)(*5*) are:

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Ann Misback,

Secretary of the Board.

[FR Doc. 2023–14637 Filed 7–13–23; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0721; Airspace Docket No. 22–ASW–16]

RIN 2120–AA66

Revocation of Jet Route J–184 and Establishment of United States Area Navigation Route Q–180; Southwest United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes Jet Route J–184 and establishes United States Area Navigation (RNAV) route Q–180 in the southwest United States. The existing Jet Route has service limitations associated with signal coverage related issues. The new RNAV route replaces the Jet Route, as well as provides additional RNAV routing within the National Airspace System (NAS) in support of transitioning it from a ground-based to satellite-based navigation system.

DATES: Effective date 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the

[8] Interim final rule (Regulation D), 85 FR 23445, 23447 (Apr. 28, 2020) (deleting § 204.2(c)(1)(ii) and redesignating § 204.2(c)(1)(iv) as § 204.2(c)(1)(iii)).

[9] Final rule (Regulation D), 56 FR 15493, 15495 (Apr. 17, 1991) (amending heading and introductory text of § 204.125 to refer to §§ 204.2(c)(1)(iv)(E) and 204.8(a)(2)(i)(B)(*5*)).

[10] 5 U.S.C. 551 *et seq.*

[11] 5 U.S.C. 553(b)(3)(B).

[12] 5 U.S.C. 553(d).

[13] 5 U.S.C. 603, 604.

[14] 44 U.S.C. 3506; *see* 5 CFR part 1320, appendix A.1.

FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the ATS route structure as necessary to preserve the safe and efficient flow of air traffic within the NAS.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2023–0721 in the **Federal Register** (88 FR 17437; March 23, 2023), proposing to revoke Jet Route J–184 and establish RNAV route Q–180 due to service limitations associated with signal coverage issues of the Deming, NM, Very High Frequency (VHF) Omni-Directional Range/Tactical Air Navigation (VORTAC) navigational aid (NAVAID). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Incorporation by Reference

Jet Routes are published in paragraph 2004 and United States Area Navigation Routes (Q-routes) are published in paragraph 2006 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by revoking Jet Route J–184 and establishing RNAV route Q–180 due to service limitations associated with signal coverage issues on J–184. The Air Traffic Service (ATS) route actions are described below.

J–184: J–184 is removed in its entirety.

Q–180: Q–180 is established and extends between the Buckeye, AZ, VORTAC and the Newman, TX, VORTAC NAVAIDs. This new Q-route provides RNAV routing along the same route of flight J–184 provided prior to its removal and retains flight safety and NAS efficiency for aircraft transiting between the Phoenix, AZ, and El Paso, TX, areas.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of revoking Jet Route J–184 and establishing RNAV route Q–180, due to service limitations associated with signal coverage issues of the Deming, NM, VORTAC NAVAID, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5i, which categorically excludes from further environmental impact review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J–184 [Removed]

* * * * *

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–180 BUCKEYE, AZ (BXK) TO NEWMAN, TX (EWM) [NEW]

Buckeye, AZ (BXK)	VORTAC	(Lat. 33°27′12.45″ N, long. 112°49′28.54″ W)
WOBUG, NM	FIX	(Lat. 32°35′24.04″ N, long. 108°53′44.19″ W)
Deming, NM (DMN)	VORTAC	(Lat. 32°16′31.99″ N, long. 107°36′19.80″ W)
Newman, TX (EWM)	VORTAC	(Lat. 31°57′06.43″ N, long. 106°16′20.85″ W)

* * * * *

Issued in Washington, DC, on July 11, 2023.

Karen L. Chiodini,

Acting Manager, Rules and Regulations.

[FR Doc. 2023–14948 Filed 7–13–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31497; Amdt. No. 4070]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 14, 2023. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 14, 2023.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg 26, Room 217, Oklahoma City, OK 73099. Telephone: (405) 954–1139.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been

previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on July 7, 2023.

Thomas J. Nichols,

Manager, Aviation Safety, Flight Standards Service Standards Section, Flight Procedures & Airspace Group Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, CFR part 97, (is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport name	FDC No.	FDC date	Procedure name
10–Aug–23 ...	TX	Palacios	Palacios Muni	3/0360	6/14/23	VOR RWY 13, Amdt 10G.
10–Aug–23 ...	WA	Spokane	Spokane Intl	3/1404	6/22/23	RNAV (GPS) Y RWY 8, Amdt 2E.
10–Aug–23 ...	CO	Delta	Blake Fld	3/3492	6/22/23	Takeoff Minimums and Obstacle DP, Orig–A.
10–Aug–23 ...	AR	Texarkana	Texarkana Rgnl-Webb Fld	3/6537	6/26/23	VOR RWY 13, Amdt 16B.
10–Aug–23 ...	NC	Williamston	Martin County	3/9090	6/21/23	Takeoff Minimums and Obstacle DP, Orig.

[FR Doc. 2023–14931 Filed 7–13–23; 8:45 a.m.]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31496; Amdt. No. 4069]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPS) and associated Takeoff Minimums and Obstacle Departure procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 14, 2023. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 14, 2023.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division,

Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg 26, Room 217, Oklahoma City, OK 73099. Telephone (405) 954–1139.

SUPPLEMENTARY INFORMATION:

This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the typed of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore-(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on July 7, 2023.

Thomas J. Nichols,

Manager, Aviation Safety, Flight Standards Service Standards Section, Flight Procedures & Airspace Group Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 10 August 2023

Gambell, AK, PAGM, RNAV (GPS) RWY 16, Amdt 1
Gambell, AK, PAGM, RNAV (GPS) RWY 34, Amdt 1
Denison, IA, KDNS, Takeoff Minimums and Obstacle DP, Amdt 1
Manhattan, KS, KMHK, ILS OR LOC RWY 3, Amdt 8
Manhattan, KS, KMHK, RNAV (GPS) RWY 3, Amdt 2
Manhattan, KS, KMHK, RNAV (GPS) RWY 21, Amdt 2
Manhattan, KS, KMHK, VOR RWY 3, Amdt 19
Manhattan, KS, KMHK, VOR–F, Amdt 2
Kansas City, MO, KMCI, ILS OR LOC RWY 1L, Amdt 19
Kansas City, MO, KMCI, ILS OR LOC RWY 1R, ILS RWY 1R (SA CAT I), ILS RWY 1R (CAT II), ILS RWY 1R (CAT III), Amdt 7
Kansas City, MO, KMCI, ILS OR LOC RWY 9, Amdt 17
Kansas City, MO, KMCI, ILS OR LOC RWY 19L, Amdt 5
Kansas City, MO, KMCI, ILS OR LOC RWY 19R, ILS RWY 19R (SA CAT I), ILS RWY 19R (CAT II), ILS RWY 19R (CAT III), Amdt 15
Kansas City, MO, KMCI, ILS OR LOC RWY 27, Amdt 7
Sullivan, MO, KUUV, Takeoff Minimums and Obstacle DP, Amdt 1
Goldsboro, NC, KGWW, RNAV (GPS)–A, Orig
Goldsboro, NC, KGWW, VOR–A, Amdt 6A, CANCELED
Roxboro, NC, KTDF, ILS OR LOC RWY 6, Amdt 2
Roxboro, NC, KTDF, RNAV (GPS) RWY 6, Amdt 1
Roxboro, NC, KTDF, Takeoff Minimums and Obstacle DP, Amdt 1
Williamston, NC, KMCZ, RNAV (GPS) RWY 3, Amdt 1C
Williamston, NC, KMCZ, RNAV (GPS) RWY 21, Amdt 1C
Teterboro, NJ, KTEB, COPTER ILS Y OR LOC Y RWY 6, Amdt 2
Teterboro, NJ, KTEB, ILS Z OR LOC Z RWY 6, Amdt 30
Teterboro, NJ, KTEB, RNAV (GPS) X RWY 6, Amdt 3
Teterboro, NJ, KTEB, RNAV (GPS) Y RWY 6, Amdt 3
Teterboro, NJ, KTEB, RNAV (RNP) Z RWY 6, Amdt 1
Bend, OR, KBDN, RNAV (GPS) RWY 34, Amdt 1
Bend, OR, KBDN, RNAV (GPS) Y RWY 16, Amdt 3
Bend, OR, KBDN, RNAV (GPS) Z RWY 16, Amdt 1

Bend, OR, KBDN, VOR RWY 16, Amdt 11
Florence, SC, KFLO, ILS OR LOC RWY 9, Amdt 13
Florence, SC, KFLO, RNAV (GPS) RWY 1, Amdt 1
Florence, SC, KFLO, RNAV (GPS) RWY 9, Amdt 1
Florence, SC, KFLO, RNAV (GPS) RWY 19, Amdt 1
Florence, SC, KFLO, RNAV (GPS) RWY 27, Amdt 1
Sumter, SC, KSMS, ILS OR LOC RWY 23, Amdt 2
Sumter, SC, KSMS, Takeoff Minimums and Obstacle DP, Amdt 1A
Seattle, WA, KBFI, RNAV (GPS) Y RWY 14R, Orig
Seattle, WA, KBFI, RNAV (GPS) Y RWY 14R, Amdt 1A, CANCELED
Seattle, WA, KBFI, RNAV (GPS) Y RWY 32L, Orig
Seattle, WA, KBFI, RNAV (RNP) Z RWY 14R, Orig
Seattle, WA, KBFI, RNAV (RNP) Z RWY 14R, Amdt 1A, CANCELED
Seattle, WA, KBFI, RNAV (RNP) Z RWY 32L, Orig

Rescinded: On June 21, 2023 (88 FR 40081), the FAA published an Amendment in Docket No. 31490, Amdt No. 4063, to part 97 of the Federal Aviation Regulations under §§ 97.23, 97.29, and 97.33. The following entries for Northway, AK, San Francisco, CA, and Cross Keys, NJ, effective August 10, 2023, are hereby rescinded in their entirety:

Northway, AK, PAOR, RNAV (GPS) RWY 6, Amdt 1
Northway, AK, PAOR, RNAV (GPS) RWY 24, Amdt 2
San Francisco, CA, KSFO, GLS RWY 19L, Amdt 1
San Francisco, CA, KSFO, GLS RWY 19R, Amdt 1
Cross Keys, NJ, 17N, VOR OR GPS RWY 9, Amdt 6B, CANCELED

[FR Doc. 2023–14932 Filed 7–13–23; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Parts 0, 1, 2, 3 and 4

Rules of Practice

In rule document 2023–12630 beginning on page 42872 in the issue of Wednesday, July 5, 2023, make the following corrections:

On page 42872, in the third column, under **DATES**, in the first and fourth lines ''June 5, 2023'' should read ''July 5, 2023''.

[FR Doc. C1–2023–12630 Filed 7–13–23; 8:45 am]

BILLING CODE 0099–10–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. FDA–2023–N–0963]

Nomenclature Change for Dockets Management; Technical Amendment

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to reflect a change in the name of Division of Dockets Management to Dockets Management Staff and information regarding copies. This action is editorial in nature and is intended to improve the accuracy of the Agency's regulations.

DATES: This rule is effective July 14, 2023.

FOR FURTHER INFORMATION CONTACT: Karen Malvin, Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

SUPPLEMENTARY INFORMATION: FDA is amending 21 CFR chapter I to update Dockets Management Staff's name change and information regarding copies.

Publication of this document constitutes final action on the changes under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment to the regulations provides only a technical change to update the organizational information for Dockets Management Staff.

List of Subjects

21 CFR Part 3

Administrative practice and procedure, Biologics, Drugs, Medical devices.

21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

21 CFR Part 7

Administrative practice and procedure, Consumer protection, Reporting and recordkeeping requirements.

21 CFR Part 10

Administrative practice and procedure, News media.

21 CFR Parts 12, 13, and 15

Administrative practice and procedure.

21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

21 CFR Part 17

Administrative practice and procedure, Penalties.

21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

21 CFR Part 25

Environmental impact statements, Foreign relations, Reporting and recordkeeping requirements.

21 CFR Part 60

Administrative practice and procedure, Drugs, Food additives, Inventions and patents, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 100

Administrative practice and procedure, Food labeling, Food packaging, Foods, Intergovernmental relations.

21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

21 CFR Part 109

Food packaging, Foods, Polychlorinated biphenyls (PCBs).

21 CFR Part 165

Beverages, Bottled water, Food grades and standards.

21 CFR Part 170

Administrative practice and procedure, Food additives, Reporting and recordkeeping requirements.

21 CFR Part 184

Food additives.

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business

information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 328

Alcohol and alcoholic beverages, Labeling, Over-the-counter drugs.

21 CFR Part 330

Over-the-counter drugs.

21 CFR Parts 341, 350, and 355

Labeling, Over-the-counter drugs.

21 CFR Part 369

Labeling, Medical devices, Over-the-counter drugs.

21 CFR Part 500

Animal drugs, Animal feeds, Cancer, Labeling, Packaging and containers, Polychlorinated biphenyls (PCBs).

21 CFR Part 509

Animal foods, Packaging and containers, Polychlorinated biphenyls (PCBs).

21 CFR Parts 514 and 516

Administrative practice and procedure, Animal drugs, Confidential business information; Reporting and recordkeeping requirements.

21 CFR Part 570

Animal feeds, Animal foods, Food additives.

21 CFR Part 573

Animal feeds, Food additives.

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

21 CFR Part 740

Cosmetics, Labeling.

21 CFR Part 808

Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 830

Administrative practice and procedure, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 860

Administrative practice and procedure, Medical devices.

21 CFR Part 861

Administrative practice and procedure, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 895

Administrative practice and procedure, Labeling, Medical devices.

21 CFR Part 900

Electronic products, Health facilities, Medical devices, Radiation protection, Reporting and recordkeeping requirements, X-rays.

21 CFR Part 1010

Administrative practice and procedure, Electronic products, Exports, Radiation protection.

21 CFR Part 1240

Communicable diseases, Public health, Travel restrictions, Water supplies.

21 CFR Part 1250

Air carriers, Foods, Maritime carriers, Motor carriers, Public health, Railroads, Water supplies.

21 CFR Part 1271

Biologics, Communicable diseases, Drugs, HIV/AIDS, Human cells and tissue-based products, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR chapter I is amended as follows:

PART 3—PRODUCT JURISDICTION

■ 1. The authority citation for part 3 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 353, 355, 360, 360c–360f, 360h–360j, 360gg–360ss, 360bbb–2, 371(a), 379e, 381, 394; 42 U.S.C. 216, 262, 264.

§ 3.5 [Amended]

■ 2. In § 3.5, amend paragraph (a)(1) by removing ''Division of Dockets Management'' and adding in its place ''Dockets Management Staff''.

PART 5—ORGANIZATION

■ 3. The authority citation for part 5 continues to read as follows:

Authority: 5 U.S.C. 552; 21 U.S.C. 301–397.

§ 5.1110 [Amended]

■ 4. In § 5.1110, amend paragraph (a) by removing ''Division of Dockets Management'' wherever it appears and adding in its place ''Dockets Management Staff''.

PART 7—ENFORCEMENT POLICY

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

Authority: 21 U.S.C. 321–393; 42 U.S.C. 241, 262, 263b–263n, 264.

§ 7.42 [Amended]

■ 6. In § 7.42, amend paragraph (b)(3) introductory text by removing ''Division of Dockets Management'' and adding in its place ''Dockets Management Staff''.

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURE

■ 7. The authority citation for part 10 continues to read as follows:

Authority: 5 U.S.C. 551–558, 701–706; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–397, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

■ 8. In part 10, revise all references to ''Division of Dockets Management'' to read ''Dockets Management Staff''.

■ 9. In § 10.30, revise paragraph (b)(2) to read as follows:

§ 10.30 Citizen petition.

* * * * *

(b) * * *

(2) *Mail, delivery services, or other non-electronic submissions.* A petition (including any attachments), that is not electronically submitted under paragraph (b)(1) of this section, must be submitted in accordance with paragraph (b)(3) of this section and § 10.20 and delivered to this address: Dockets Management Staff, Department of Health and Human Services, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit two copies (original and redacted version) for confidential petitions. Otherwise, only one copy is necessary.

* * * * *

PART 12—FORMAL EVIDENTIARY PUBLIC HEARING

■ 10. The authority citation for part 12 continues to read as follows:

Authority: 21 U.S.C. 141–149, 321–393, 467f, 679, 821, 1034; 42 U.S.C. 201, 262, 263b-263n, 264; 15 U.S.C. 1451–1461; 5 U.S.C. 551–558, 701–721; 28 U.S.C. 2112.

■ 11. In part 12, revise all references to ''Division of Dockets Management'' to read ''Dockets Management Staff''.

■ 12. In § 12.80, revise paragraph (a) to read as follows:

§ 12.80 Filing and service of submissions.

(a) Submissions, including pleadings in a hearing, are to be filed with Dockets Management Staff under § 10.20 of this chapter except that two copies need be submitted (original and redacted version) for confidential petitions. Otherwise, only one copy is necessary. To determine compliance with filing deadlines in a hearing, a submission is considered submitted on the date it is actually received by Dockets Management Staff. When this part allows a response to a submission and prescribes a period of time for the filing of the response, an additional 3 days are allowed for the filing of the response if the submission is served by mail.

* * * * *

PART 13—PUBLIC HEARING BEFORE A PUBLIC BOARD OF INQUIRY

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

Authority: 5 U.S.C. 551–558, 701–721; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–393, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b-263n, 264.

■ 14. In part 13, revise all references to ''Division of Dockets Management'' to read ''Dockets Management Staff''.

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

■ 15. The authority citation for part 14 continues to read as follows:

Authority: 5 U.S.C. App. 2; 15 U.S.C. 1451–1461, 21 U.S.C. 41–50, 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264; Pub. L. 107–109; Pub. L. 108–155; Pub. L. 113–54.

■ 16. In part 14, revise all references to ''Division of Dockets Management'' to read ''Dockets Management Staff''.

PART 15—PUBLIC HEARING BEFORE THE COMMISSIONER

■ 17. The authority citation for part 15 continues to read as follows:

Authority: 5 U.S.C. 553; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–393, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b-263n, 264.

■ 18. In part 15, revise all references to ''Division of Dockets Management'' to read ''Dockets Management Staff''.

17—CIVIL MONEY PENALTIES HEARINGS

■ 19. The authority citation for part 17 is revised to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

■ 20. In part 17, revise all references to ''Division of Dockets Management'' to read ''Dockets Management Staff''.

■ 21. In § 17.31, revise paragraph (a)(1) to read as follows:

§ 17.31 Form, filing, and service of papers.

(a) * * *

(1) Documents filed with Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, shall include two copies (original and redacted version) for confidential petitions. Otherwise, only one copy is necessary.

* * * * *

PART 20—PUBLIC INFORMATION

■ 22. The authority citation for part 20 continues to read as follows:

Authority: 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 321–393, 1401–1403; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u—300u–5, 300aa–1.

§ 20.120 [Amended]

■ 23. In § 20.120, amend paragraphs (c) introductory text and (c)(3) by removing ''Division of Dockets Management's'' and adding in its place ''Dockets Management Staff's''.

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

■ 24. The authority citation for part 25 continues to read as follows:

Authority: 21 U.S.C. 321–393; 42 U.S.C. 262, 263b-264; 42 U.S.C. 4321, 4332; 40 CFR parts 1500–1508; E.O. 11514, 35 FR 4247, 3 CFR, 1971 Comp., p. 531–533 as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1978 Comp., p. 123–124 and E.O. 12114, 44 FR 1957, 3 CFR, 1980 Comp., p. 356–360.

■ 25. In part 25, revise all references to ''Division of Dockets Management'' to read ''Dockets Management Staff''.

PART 60—PATENT TERM RESTORATION

■ 26. The authority citation for part 60 continues to read as follows:

Authority: 21 U.S.C. 348, 355, 360e, 360j, 371, 379e; 35 U.S.C. 156; 42 U.S.C. 262.

■ 27. In part 60, revise all references to ''Division of Dockets Management'' to read ''Dockets Management Staff''.

PART 100—GENERAL

■ 28. The authority citation for part 100 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 337, 342, 343, 348, 371.

§ 100.1 [Amended]

■ 29. In § 100.1, amend paragraphs (d)(3) and (f)(3) and (4) by removing ''Division of Dockets Management'' wherever it appears and adding in its place ''Dockets Management Staff''.

PART 109—UNAVOIDABLE CONTAMINANTS IN FOOD FOR HUMAN CONSUMPTION AND FOOD–PACKAGING MATERIAL

■ 30. The authority citation for part 109 continues to read as follows:

Authority: 21 U.S.C. 321, 336, 342, 346, 346a, 348, 371.

■ 31. In part 109, revise all references to ''Division of Dockets Management'' to read ''Dockets Management Staff''.

PART 165—BEVERAGES

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

Authority: 21 U.S.C. 321, 341, 343, 343–1, 348, 349, 371, 379e.

§ 165.110 [Amended]

■ 33. In § 165.110, amend paragraph (b)(4)(iii)(F) introductory text by removing ''Division of Dockets Management'' and adding in its place ''Dockets Management Staff''.

PART 201—LABELING

■ 34. The authority citation for part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 343, 351, 352, 353, 355, 358, 360, 360b, 360ccc, 360ccc–1, 360ee, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

§ 201.63 [Amended]

■ 35. In § 201.63, amend paragraph (d) by removing ''Division of Dockets Management'' and adding in its place ''Dockets Management Staff''.

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

■ 36. The authority citation for part 312 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360bbb, 371; 42 U.S.C. 262.

■ 37. In part 312, revise all references to ''Division of Dockets Management'' to read ''Dockets Management Staff''.

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

■ 38. The authority citation for part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 355a, 355f, 356, 356a, 356b, 356c, 356e, 360cc, 371, 374, 379e, 379k–1.

■ 39. In part 314, revise all references to ''Division of Dockets Management'' to read ''Dockets Management Staff''.

PART 328—OVER–THE–COUNTER DRUG PRODUCTS INTENDED FOR ORAL INGESTION THAT CONTAIN ALCOHOL

■ 40. The authority citation for part 328 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371.

§ 328.10 [Amended]

■ 41. In § 328.10, amend paragraph (e) by removing ''Division of Dockets Management'' and adding in its place ''Dockets Management Staff''.

PART 330—OVER–THE–COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED

■ 42. The authority citation for part 330 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360fff-6, 371.

■ 43. In part 330, revise all references to ''Division of Dockets Management'' to read ''Dockets Management Staff''.

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

■ 44. The authority citation for part 341 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

§ 341.85 [Amended]

■ 45. In § 341.85, amend paragraph (c)(4) by removing ''Division of Dockets Management'' and adding in its place ''Dockets Management Staff''.

PART 350—ANTIPERSPIRANT DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

■ 46. The authority citation for part 350 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

§ 350.60 [Amended]

■ 47. In § 350.60, remove ''Dockets Management Branch'' and add in its place ''Dockets Management Staff''.

PART 355—ANTICARIES DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

■ 48. The authority citation for part 355 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

§ 355.70 [Amended]

■ 49. In § 355.70, amend paragraph (a) by removing ''Division of Dockets Management'' and adding in its place ''Dockets Management Staff''.

PART 369—INTERPRETIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER–THE–COUNTER SALE

■ 50. The authority citation for part 369 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

§ 369.21 [Amended]

■ 51. In § 369.21, remove ''Division of Dockets Management'' and add in its place ''Dockets Management Staff''.

PART 500—GENERAL

■ 52. The authority citation for part 500 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371, 379e.

§ 500.80 [Amended]

■ 53. In § 500.80, amend paragraph (a) by removing ''Division of Dockets Management'' and adding in its place ''Dockets Management Staff''.

PART 509—UNAVOIDABLE CONTAMINANTS IN ANIMAL FOOD AND FOOD–PACKAGING MATERIAL

■ 54. The authority citation for part 509 continues to read as follows:

Authority: 21 U.S.C. 336, 342, 346, 346a, 348, 371.

■ 55. In part 509, revise all references to ''Division of Dockets Management'' to read ''Dockets Management Staff''.

PART 514—NEW ANIMAL DRUG APPLICATIONS

■ 56. The authority citation for part 514 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 354, 356a, 360b, 360ccc, 371, 379e, 381.

§ 514.200 [Amended]

■ 57. In § 514.200, amend paragraph (c)(1) by removing ''Division of Dockets Management'' and adding in its place ''Dockets Management Staff''.

PART 516—NEW ANIMAL DRUGS FOR MINOR USE AND MINOR SPECIES

■ 58. The authority citation for part 516 continues to read as follows:

Authority: 21 U.S.C. 360ccc–1, 360ccc–2, 371.

§ 516.28 [Amended]

■ 59. In § 516.28, amend the introductory text by removing ''Division of Dockets Management'' and adding ''Dockets Management Staff'' in its place.

PART 570—FOOD ADDITIVES

■ 60. The authority citation for part 570 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 346a, 348, 371.

■ 61. In part 570, revise all references to ''Division of Dockets Management'' to read ''Dockets Management Staff''.

§ 570.35 [Amended]

■ 62. In § 570.35, amend paragraph (b)(2) by removing ''Division of Dockets Management's'' and adding in its place ''Dockets Management Staff's''.

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

■ 63. The authority citation for part 573 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

§ 573.460 [Amended]

■ 64. In § 573.460, amend paragraphs (a)(1)(i) and (a)(2)(i) by removing ''Division of Dockets Management'' and adding in its place ''Dockets Management Staff''.

PART 601—LICENSING

■ 65. The authority citation for part 601 continues to read as follows:

Authority: 15 U.S.C. 1451–1561; 21 U.S.C. 321, 351, 352, 353, 355, 356b, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263, 264; sec 122, Pub. L. 105–115, 111 Stat. 2322 (21 U.S.C. 355 note).

§ 601.51 [Amended]

■ 66. In § 601.51, amend paragraph (d)(2) by removing ''Division of Dockets Management'' and adding in its place ''Dockets Management Staff''.

PART 740—COSMETIC PRODUCT WARNING STATEMENTS

■ 67. The authority citation for part 740 is revised to read as follows:

Authority: 15 U.S.C. 1451–1561; 21 U.S.C. 321, 351, 352, 353, 355, 356b, 360, 360c–

360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263, 264; sec. 122, Pub. L. 105–115, 111 Stat. 2322 (21 U.S.C. 355 note).

§ 740.2 [Amended]

■ 68. In § 740.2, amend paragraph (b) by removing ''Division of Dockets Management'' and adding in its place ''Dockets Management Staff''.

PART 808—EXEMPTIONS FROM FEDERAL PREEMPTION OF STATE AND LOCAL MEDICAL DEVICE REQUIREMENTS

■ 69. The authority citation for part 808 continues to read as follows:

Authority: 21 U.S.C. 360j, 360k, 371. Section 808.1 also issued under Sec. 709, Public Law 115–52, 131 Stat. 1065–67.

■ 70. In part 808, revise all references to ''Division of Dockets Management'' to read ''Dockets Management Staff''.

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

■ 71. The authority citation for part 814 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360, 360c–360j, 360bbb–8b, 371, 372, 373, 374, 375, 379, 379e, 379k–1, 381.

§ 814.9 [Amended]

■ 72. In § 814.9, amend paragraph (d)(2) by removing ''Division of Dockets Management'' and adding in its place ''Dockets Management Staff''.

PART 830—UNIQUE DEVICE IDENTIFICATION

■ 73. The authority citation for part 830 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 352, 353, 360, 360d, 360i, 360j, 371.

§ 830.10 [Amended]

■ 74. In § 830.10, amend paragraph (a) by removing ''Division of Dockets Management'' and adding in its place ''Dockets Management Staff''.

PART 860—MEDICAL DEVICE CLASSIFICATION PROCEDURES

■ 75. The authority citation for part 860 continues to read as follows:

Authority: 21 U.S.C. 321(h), 353(g), 360c, 360d, 360e, 360i, 360j, 371, 374.

§ 860.5 [Amended]

■ 76. In § 860.5, amend paragraphs (c)(2) and (d)(2) by removing ''Division of Dockets Management'' and adding in its place ''Dockets Management Staff''.

PART 861—PROCEDURES FOR PERFORMANCE STANDARDS DEVELOPMENT

■ 77. The authority citation for part 861 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360c, 360d, 360gg–360ss, 371, 374; 42 U.S.C. 262, 264.

§ 861.38 [Amended]

■ 78. In § 861.38, amend paragraph (c) by removing ''Division of Dockets Management'' and adding in its place ''Dockets Management Staff''.

PART 895—BANNED DEVICES

■ 79. The authority citation for part 895 continues to read as follows:

Authority: 21 U.S.C. 352, 360f, 360h, 360i, 371.

§ 895.21 [Amended]

■ 80. In § 895.21, amend paragraph (d)(8) by removing ''Division of Dockets Management'' and adding in its place ''Dockets Management Staff''.

PART 900—MAMMOGRAPHY

■ 81. The authority citation for part 900 continues to read as follows:

Authority: 21 U.S.C. 360i, 360nn, 374(e); 42 U.S.C. 263b.

§ 900.18 [Amended]

■ 82. In § 900.18, amend paragraphs (d)(2) and (4) by removing ''Division of Dockets Management'' and adding in its place ''Dockets Management Staff''.

PART 1010—PERFORMANCE STANDARDS FOR ELECTRONIC PRODUCTS: GENERAL

■ 83. The authority citation for part 1010 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360e-360j, 360hh-360ss, 371, 381.

§ 1010.4 [Amended]

■ 84. In § 1010.4, amend paragraph (c)(3) by removing ''Division of Dockets Management'' and adding in its place ''Dockets Management Staff''.

■ 85. In § 1010.5, revise paragraph (c) introductory text to read as follows:

§ 1010.5 Exemptions for products intended for United States Government use.

* * * * *

(c) *Application for exemption.* If you are submitting an application for exemption, or for amendment or extension thereof, you must submit two copies (original and redacted version) for confidential petitions to Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Otherwise, only one copy is necessary. For an exemption under the criteria prescribed in paragraph (a)(1) of this section, the application shall include the information prescribed in paragraphs (c)(1) through (13) of this section. For an exemption under the criteria prescribed in paragraph (a)(2) of this section, the application shall include the information prescribed in paragraphs (c)(3) through (13) of this section. An application for exemption, or for amendment or extension thereof, and correspondence relating to such application shall be made available for public disclosure in Dockets Management Staff, except for confidential or proprietary information submitted in accordance with part 20 of this chapter. Information classified for reasons of national security shall not be included in the application. Except as indicated in this paragraph (c), the application for exemption shall include the following:

* * * * *

PART 1240—CONTROL OF COMMUNICABLE DISEASES

■ 86. The authority citation for part 1240 continues to read as follows:

Authority: 42 U.S.C. 216, 243, 264, 271.

§ 1240.62 [Amended]

■ 87. In § 1240.62, amend paragraph (d) by removing ''Division of Dockets Management'' and adding in its place ''Dockets Management Staff''.

PART 1250—INTERSTATE CONVEYANCE SANITATION

■ 88. The authority citation for part 1250 continues to read as follows:

Authority: 42 U.S.C. 216, 243, 264, 271.

§ 1250.51 [Amended]

■ 89. In § 1250.51, amend paragraph (f)(4)(ii) by removing ''Division of Dockets Management'' and adding in its place ''Dockets Management Staff''.

PART 1271—HUMAN CELLS, TISSUES, AND CELLULAR AND TISSUE–BASED PRODUCTS

■ 90. The authority citation for part 1271 continues to read as follows:

Authority: 42 U.S.C. 216, 243, 263a, 264, 271.

§ 1271.37 [Amended]

■ 91. In § 1271.37, amend paragraph (a) introductory text by removing ''Division of Dockets Management'' and adding in its place ''Dockets Management Staff''.

Dated: July 6, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–14716 Filed 7–13–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF STATE

22 CFR Parts 41 and 42

[Public Notice: 12080]

RIN 1400–AF53

Visas: Nonimmigrant Visas; Immigrant Visas

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State (Department) amends its regulations governing nonimmigrant and immigrant visas to update classification symbols and descriptions for certain immigrant and nonimmigrant visas.

DATES: This final rule is effective on September 12, 2023.

FOR FURTHER INFORMATION CONTACT: Andrea Lage, Acting Senior Regulatory Coordinator, Visa Services, Bureau of Consular Affairs, 600 19th St. NW, Washington, DC 20522, (202) 485–7586, *VisaRegs@state.gov.*

SUPPLEMENTARY INFORMATION:

I. What changes to 22 CFR 41.12, 41.84, and 42.11 does this Final Rule make?

The Department is amending 22 CFR 41.12 to include classification symbols and related descriptions for the CW–1, CW–2, E–2C, and T–6 visa classifications. The Department is also amending 22 CFR 42.11 to include classification symbols and related descriptions for surviving spouses and children, as described in Section 403(a) of the Emergency Security Supplemental Appropriations Act, 2021 (''ESSAA''), Public Law 117–31, 135 Stat. 309, as well as classification symbols and related descriptions for EB–5 immigrant visas initiated by the EB–5 Reform and Integrity Act of 2022, Division BB of the Consolidated Appropriations Act, 2022, Public Law 117–103 (''EB–5 Reform and Integrity Act''). The changes in the classification descriptions under this Final Rule will have no impact on who may qualify for such a visa; as such, this Final Rule will not practically impact any current applicant for any visa. This rule also makes technical corrections to the classification symbols for visa classifications to ensure the accurate inclusion of all active immigrant visa classifications.

II Why is the Department promulgating this Final Rule?

A. T Visas, Victims of Trafficking in Persons

The Trafficking Victims Protection Reauthorization Act of 2008, Public Law 106–386 amended Section 101(a)(15)(T)(ii)(III) of the INA to include parents and unmarried siblings under the age of 18 whose eligibility for T derivative classification is not tied to the age of the principal applicant, but rather to their present danger of retaliation as a result of the principal's escape from trafficking or cooperation with law enforcement, as determined by U.S. Citizenship and Immigration Services. These derivatives receive T–4 and T–5 visa classifications. Additionally, Section 1221 of the Violence Against Women Reauthorization Act of 2013, Public Law 113–4, amended Section 101(a)(15)(T)(ii)(III) of the INA by adding the T–6 derivative classification, which is available to an eligible adult or minor child of a T–1 principal applicant's derivative family member, if such derivative's adult or minor child themself faces a present danger of retaliation as a result of the principal's escape from trafficking or cooperation with law enforcement.

Classification symbols in existing regulations at 22 CFR 41.12 do not reflect the 2013 expansion of eligibility for the adult or minor child of a derivative beneficiary, and to address this, this rule amends 22 CFR 41.12 to add the T–6 classification symbol and description. This rule also adds details to existing descriptions of the T–4 and T–5 visa classification to better reflect the statutory criteria. The rule further amends 22 CFR 41.84 to reflect the current language more closely in INA section 101(a)(15)(T)(ii) which describes the family members who may qualify for T nonimmigrant status as certain accompanying or following-to-join derivative family members of a principal T–1 nonimmigrant. These classification codes are consistent with those used by the Department of Homeland Security.

B. CW Visas—Commonwealth of Northern Mariana Islands (CNMI) Transitional Workers

Section 6 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Public Law 94–241, as amended by Section 702(a) of the Consolidated Natural Resources Act of 2008, Public Law 110–229, provides for nonimmigrant visas for certain CNMI transitional workers, investors, and their spouses and children. The Department classifies CNMI transitional workers as CW–1, spouses, or children of a CW–1 as a CW–2, and CNMI investors and their spouses or children as E–2C. This rule adds these nonimmigrant visa classifications to 22 CFR 41.12. These classification codes are consistent with those used by the Department of Homeland Security.

C. SS1 Classification—Surviving Spouses and Children of United States Government Employees Abroad

Section 403(a) of the ESSAA amended INA Section 101(a)(27)(D), 8 U.S.C. 1101(a)(27)(D), to change the definition of a special immigrant to include ''the surviving spouse or child of an employee of the United States Government abroad: *Provided,* [t]hat the employee performed faithful service for a total of not less than 15 years or was killed in the line of duty.'' The Department classifies each surviving spouse and child of an employee of the United States Government abroad as an SS1. While this Final Rule does not address the parameters under which a noncitizen may qualify for issuance of an SS1 immigrant visa, this rule adds these special immigrant visa classifications to 22 CFR 42.11.

D. EB–5 Program Changes

The EB–5 Reform and Integrity Act made substantial changes to Section 203(b)(5) of the INA, 8 U.S.C. 1153(b)(5). The EB–5 Reform and Integrity Act sets forth an allocation of visas to qualified immigrant investors who invest in new commercial enterprises and satisfy applicable job creation requirements. Certain percentages of these visas are reserved for investors in rural areas, investors in areas designated by the Department of Homeland Security (DHS) as high unemployment areas, and investors in infrastructure projects.

The EB–5 Reform and Integrity Act repealed the former Regional Center Program under section 610 of Public Law 102–395 and authorized a new Regional Center Program. As a result of the new legislation, the Visa Office is adding new EB–5 classification symbols. An investor in a non-regional center for an unreserved visa is classified as NU–1 and the spouse and children of an NU–1 applicant are classified as an NU–2 and NU–3, respectively. An investor in a regional center for an unreserved visa is classified as an RU–1 applicant, and the spouse and children of an RU–1 applicant are classified as an RU–2 and RU–3, respectively. An applicant for a reserved visa who is an investor in a

non-regional center in a rural area is classified as an NR–1, and the spouse and children of an NR–1 applicant are classified as an NR–2 and NR–3, respectively. An applicant for a reserved visa who is an investor in a non-regional center in an area with high unemployment is classified as an NH–1, and the spouse and children of an NH–1 applicant are classified as an NH–2 and NH–3, respectively. An applicant for a reserved visa who is an investor in a regional center in a rural area is classified as an RR–1, and the spouse and children of an RR–1 applicant are classified as an RR–2 and RR–3, respectively. An applicant for a reserved visa who is an investor in a regional center in an area of high unemployment is classified as an RH–1, and the spouse and children of an RH–1 applicant are classified as an RH–2 and RH–3, respectively. An applicant for a reserved visa who is an investor in an infrastructure project is classified as an RI–1, and the spouse and children of an RI–1 applicant are classified as an RI–2 and RI–3, respectively. The previously used visa classifications for employment fifth preference immigrant visas (C51, C52, C53, T51, T52, T53, R51, R52, R53, I51, I52, and I53) will continue to be used for EB–5 immigrant visa applicants who had petitions pending with DHS at the time of the passage of the EB–5 Reform and Integrity Act. These classification symbols and descriptions are currently in use, and merely reflect the availability of these classifications for qualified applicants. The publication of these symbols will not impact processing of visas in other categories for any current or future applicant. These classification symbols are consistent with those used by the Department of Homeland Security.

E. Technical Changes

Additionally, this rule makes a technical change to remove a reference to H2R, which is a classification symbol no longer in use. The H2R nonimmigrant visa classification was introduced by Section 402 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Public Law 109–13, as amended by Section 565 of the Consolidated Appropriations Act, 2016, Public Law 114–113. The H2R nonimmigrant visa classification was only authorized through the end of the 2016 fiscal year and has not been reauthorized.

F. Terminology

President Biden's Executive Order 14012, Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans (Feb. 2, 2021), affirms that the ''Federal Government should develop welcoming strategies that promote integration [and] inclusion.'' That Executive Order and Executive Order 14010, Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border (Feb. 2, 2021), do not use the terms ''alien'' or ''illegal alien'' to describe migrants.

Some opinions of the Supreme Court now use the term ''noncitizen'' in place of ''alien.'' *See, e.g., United States* v. *Palomar-Santiago,* 141 S. Ct. 1615, 1619 (2021); *Barton* v. *Barr,* 140 S. Ct. 1442, 1446 n.2 (2020) (''This opinion uses the term 'noncitizen' as equivalent to the statutory term 'alien.' '') (citing 8 U.S.C. 1101(a)(3)).[1] Other agencies have begun to use noncitizen in place of alien in regulations and guidance and the Department has been using noncitizen and applicant in place of alien in guidance to consular officers since mid-2021. The Department intends to gradually replace or remove references to alien as it makes other amendments to its regulations in 22 CFR parts 41, and 42, and has done so in several descriptions of its nonimmigrant and immigrant visa classifications in this rule.

Regulatory Findings

A. Administrative Procedure Act

The publication of this rule as a final rule is based upon the ''good cause'' exception found at 5 U.S.C. 553(b)(3)(B) and (d)(3). A rule benefits from the good cause exception when the ''agency for good cause finds . . . that notice and public procedure thereon are impractical, unnecessary, or contrary to the public interest.'' [1] The Department finds that notice and comment for this rule are unnecessary as this rule proposes no new policy or procedure. This rule merely updates the list of classification symbols found in 22 CFR 41.12 and 42.11 to more closely reflect the classifications authorized under the Immigration and Nationality Act and other federal statutes; and provides clarifying descriptions in the associated classification-specific subsections.

For this reason, this rule is excepted from the notice and comment requirements of 5 U.S.C. 553(a)(1).

[1] 5 U.S.C. 553(b)(3)(B).

B. Regulatory Flexibility Act/Executive Order 13272: Small Business

As this final rule is excepted from notice and comment rulemaking under 5 U.S.C. 553(b) and 553(a), it is exempt from the regulatory flexibility analysis requirements set forth by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or Tribal governments, or by the private sector. This rule does not require the Department of State to prepare a statement because it will not result in any such expenditure, nor will it significantly or uniquely affect small governments. This rule involves visas, which involve foreign individuals, and does not directly or substantially affect state, local, or tribal governments, or businesses.

D. Congressional Review Act of 1996

This rule is not a major rule as defined in 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

E. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Executive Orders 12866 and 13563 direct agencies to assess 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, distributed impacts, and equity). These Executive Orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department of State has examined this rule considering Executive Order 13563 and has determined that the rulemaking is consistent with the guidance therein. The Department of State has reviewed this rulemaking to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866. The Office of

Information and Regulatory Affairs has designated this rule ''significant'' in accordance with E.O. 12866. There are no anticipated direct costs to the public associated with this rule.

F. Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effect on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders 12372 and 13132.

G. Executive Order 12988: Civil Justice Reform

The Department of State has reviewed the rule considering sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

H. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of State has determined that this rulemaking will not have Tribal implications, will not impose substantial direct compliance costs on Indian Tribal governments, and will not pre-empt Tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

I. Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects

22 CFR Part 41

Aliens, Foreign officials, Passports and visas, Students.

22 CFR Part 42

Administrative practice and procedure, Aliens, Fees, Foreign officials, Immigration passports and visas.

Accordingly, for the reasons stated in the preamble, and under the authority 8 U.S.C. 1104 and 22 U.S.C. 2651(a), 22 CFR parts 41 and 42 are amended as follows:

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

■ 1. The authority citation for part 41 continues to read as follows:

Authority: 8 U.S.C. 1101; 1102; 1104; 1182; 1184; 1185 note (section 7209 of Pub. L. 108–458, as amended by section 546 of Pub. L. 109–295); 1323; 1361; 2651a.

■ 2. Revise § 41.12 to read as follows:

§ 41.12 Classification symbols.

A nonimmigrant visa issued to an applicant within one of the classes described in this section shall bear an appropriate visa symbol to show its classification. The symbol shall be inserted in the space provided on the visa. The following visa symbols shall be used:

TABLE 1 TO § 41.12

Symbol	Class	Section of law
A1	Ambassador, Public Minister, Career Diplomat or Consular Officer, or Immediate Family.	INA 101(a)(15)(A)(i).
A2	Other Foreign Government Official or Employee, or Immediate Family	INA 101(a)(15)(A)(ii).
A3	Attendant, Servant, or Personal Employee of A1 or A2, or Immediate Family	INA 101(a)(15)(A)(iii).
B1	Temporary Visitor for Business	INA 101(a)(15)(B).
B2	Temporary Visitor for Pleasure	INA 101(a)(15)(B).
B1/B2	Temporary Visitor for Business & Pleasure	INA 101(a)(15)(B).
C1	Noncitizen in Transit	INA 101(a)(15)(C).
C1/D	Combined Transit and Crewmember Visa	INA 101(a)(15)(C) and (D).
C2	Noncitizen in Transit to United Nations Headquarters District Under Sec. 11.(3), (4), or (5) of the Headquarters Agreement.	INA 101(a)(15)(C).
C3	Foreign Government Official, Immediate Family, Attendant, Servant, or Personal Employee, in Transit.	INA 212(d)(8).
CW1	Commonwealth of the Northern Mariana Islands—Only Transitional Worker	Section 6(d) of Public Law 94–241, as added by Section 702(a) of Public Law 110–229; 48 U.S.C. 1806(d).
CW2	Spouse or Child of CW1	Section 6(d) of Public Law 94–241, as added by Section 702(a) of Public Law 110–229; 48 U.S.C. 1806(d).
D	Crewmember (Sea or Air)	INA 101(a)(15)(D).
E1	Treaty Trader, Spouse or Child	INA 101(a)(15)(E)(i).
E2	Treaty Investor, Spouse or Child	INA 101(a)(15)(E)(ii).
E2C	Commonwealth of the Northern Mariana Islands Investor, Spouse or Child	Section 6(c) of Public Law 94–241, as added by Section 702(a) of Public Law 110–229; 48 U.S.C. 1806(d).
E3	Australian National Coming to the United States Solely to Perform Services in a Specialty Occupation.	INA 101(a)(15)(E)(iii).
E3D	Spouse or Child of E3	INA 101(a)(15)(E)(iii).
E3R	Returning E3	INA 101(a)(15)(E)(iii).
F1	Student in an Academic or Language Training Program	INA 101(a)(15)(F)(i).
F2	Spouse or Child of F1	INA 101(a)(15)(F)(ii).
F3	Canadian or Mexican National Commuter Student in an Academic or Language Training Program.	INA 101(a)(15)(F)(iii).
G1	Principal Resident Representative of Recognized Foreign Government to International Organization, Staff, or Immediate Family.	INA 101(a)(15)(G)(i).
G2	Other Representative of Recognized Foreign Member Government to International Organization, or Immediate Family.	INA 101(a)(15)(G)(ii).

TABLE 1 TO § 41.12—Continued

Symbol	Class	Section of law
G3	Representative of Non-recognized or Nonmember Foreign Government to International Organization, or Immediate Family.	INA 101(a)(15)(G)(iii).
G4	International Organization Officer or Employee, or Immediate Family	INA 101(a)(15)(G)(iv).
G5	Attendant, Servant, or Personal Employee of G1 through G4, or Immediate Family.	INA 101(a)(15)(G)(v).
H1B	Temporary Worker in a Specialty Occupation	INA 101(a)(15)(H)(i)(b).
H1B1	Chilean or Singaporean Temporary Worker in a Specialty Occupation	INA 101(a)(15)(H)(i)(b1).
H1C	Registered Nurse in Health Professional Shortage Area	INA 101(a)(15)(H)(i)(c).
H2A	Temporary Worker Performing Agricultural Services	INA 101(a)(15)(H)(ii)(a).
H2B	Temporary Non-Agricultural Worker	INA 101(a)(15)(H)(ii)(b).
H3	Trainee or Special Education Exchange Visitor	INA 101(a)(15)(H)(iii).
H4	Spouse or Child of H1B, H1B1, H1C, H2A, H2B, or H3	INA 101(a)(15)(H)(iv).
I	Representative of Foreign Information Media, Spouse and Child	INA 101(a)(15)(I).
J1	Exchange Visitor	INA 101(a)(15)(J).
J2	Spouse or Child of J1	INA 101(a)(15)(J).
K1	Fiancé(e) of United States Citizen	INA 101(a)(15)(K)(i).
K2	Child of Fiancé(e) of U.S. Citizen	INA 101(a)(15)(K)(iii).
K3	Spouse of U.S. citizen awaiting availability of immigrant visa	INA 101(a)(15)(K)(ii).
K4	Child of K3	INA 101(a)(15)(K)(iii).
L1	Intracompany Transferee (Executive, Managerial, and Specialized Knowledge Personnel Continuing Employment).	INA 101(a)(15)(L).
L2	Spouse or Child of L1	INA 101(a)(15)(L).
M1	Vocational Student or Other Nonacademic Student	INA 101(a)(15)(M)(i).
M2	Spouse or Child of M1	INA 101(a)(15)(M)(ii).
M3	Canadian or Mexican National Commuter Student (Vocational Student or Other Nonacademic Student).	INA 101(a)(15)(M)(iii).
N8	Parent of an Individual Classified by DHS as SK3 or SN3	INA 101(a)(15)(N)(i).
N9	Child of N8 or of Individual Classified by DHS as SK1, SK2, SK4, SN1, SN2 or SN4.	INA 101(a)(15)(N)(ii).
NATO1	Principal Permanent Representative of Member State to NATO (including any of its Subsidiary Bodies) Resident in the U.S. and Resident Members of Official Staff; Secretary General, Assistant Secretaries General, and Executive Secretary of NATO; Other Permanent NATO Officials of Similar Rank, or Immediate Family.	Art. 12, 5 UST 1094; Art. 20, 5 UST 1098.
NATO2	Other Representative of Member State to NATO (including any of its Subsidiary Bodies) including Representatives, Advisers, and Technical Experts of Delegations, or Immediate Family; Dependents of Member of a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement or in Accordance with the provisions of the ''Protocol on the Status of International Military Headquarters''; Members of Such a Force if Issued Visas.	Art. 13, 5 UST 1094; Art. 1, 4 UST 1794; Art. 3, 4 UST 1796.
NATO3	Official Clerical Staff Accompanying Representative of Member State to NATO (including any of its Subsidiary Bodies), or Immediate Family.	Art. 14, 5 UST 1096.
NATO4	Official of NATO (Other Than Those Classifiable as NATO1), or Immediate Family.	Art. 18, 5 UST 1098.
NATO5	Experts, Other Than NATO Officials Classifiable Under NATO4, Employed in Missions on Behalf of NATO, and their Dependents.	Art. 21, 5 UST 1100.
NATO6	Member of a Civilian Component Accompanying a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement; Member of a Civilian Component Attached to or Employed by an Allied Headquarters Under the ''Protocol on the Status of International Military Headquarters'' Set Up Pursuant to the North Atlantic Treaty; and their Dependents.	Art. 1, 4 UST 1794; Art. 3, 5 UST 877.
NATO7	Attendant, Servant, or Personal Employee of NATO1, NATO2, NATO 3, NATO4, NATO5, and NATO6 Classes, or Immediate Family.	Arts. 12–20, 5 UST 1094–1098.
O1	Worker with Extraordinary Ability or Achievement in Sciences, Arts, Education, Business, or Athletics.	INA 101(a)(15)(O)(i).
O2	Person Accompanying and Assisting in the Artistic or Athletic Performance by O1	INA 101(a)(15)(O)(ii).
O3	Spouse or Child of O1 or O2	INA 101(a)(15)(O)(iii).
P1	Internationally Recognized Athlete or Member of Internationally Recognized Entertainment Group.	INA 101(a)(15)(P)(i).
P2	Artist or Entertainer in a Reciprocal Exchange Program	INA 101(a)(15)(P)(ii).
P3	Artist or Entertainer in a Culturally Unique Program	INA 101(a)(15)(P)(iii).
P4	Spouse or Child of P1, P2, or P3	INA 101(a)(15)(P)(iv).
Q1	Participant in an International Cultural Exchange Program	INA 101(a)(15)(Q)(i).
R1	Member of a Religious Denomination Performing Religious Work	INA 101(a)(15)(R).
R2	Spouse or Child of R1	INA 101(a)(15)(R).
S5	Person Supplying Critical Information Relating to a Criminal Organization or Enterprise.	INA 101(a)(15)(S)(i).
S6	Person Supplying Critical Information Relating to Terrorism	INA 101(a)(15)(S)(ii).
S7	Qualified Family Member of S5 or S6	INA 101(a)(15)(S).
T1	Victim of a Severe Form of Trafficking in Persons	INA 101(a)(15)(T)(i).
T2	Spouse of T1	INA 101(a)(15)(T)(ii).
T3	Child of T1	INA 101(a)(15)(T)(ii).

TABLE 1 TO § 41.12—Continued

Symbol	Class	Section of law
T4	Parent of a T1 under 21 years of age; or Parent of a T1 (Any Age) Who Faces Present Danger of Retaliation.	INA 101(a)(15)(T)(ii).
T5	Unmarried Sibling under 18 years of age of a T1 Under 21 Years of Age; or Unmarried Sibling Under 18 Years of Age of a T1 (Any Age), Who Faces Present Danger of Retaliation.	INA 101(a)(15)(T)(ii).
T6	Adult or Minor Child of a Derivative Beneficiary of a T1 (Any Age) Who Faces Present Danger of Retaliation.	INA 101(a)(15)(T)(ii).
TN	USMCA Professional	INA 214(e)(1).
TD	Spouse or Child of TN	INA 214(e)(1).
U1	Victim of Criminal Activity	INA 101(a)(15)(U)(i).
U2	Spouse of U1	INA 101(a)(15)(U)(ii).
U3	Child of U1	INA 101(a)(15)(U)(ii).
U4	Parent of U1 Under 21 Years of Age	INA 101(a)(15)(U)(ii).
U5	Unmarried Sibling Under Age 18 of U1 Under 21 Years of Age	INA 101(a)(15)(U)(ii).
V1	Spouse of a Lawful Permanent Resident Awaiting Availability of Immigrant Visa	INA 101(a)(15)(V)(i) or INA 101(a)(15)(V)(ii).
V2	Child of a Lawful Permanent Resident Awaiting Availability of Immigrant Visa	INA 101(a)(15)(V)(i) or INA 101(a)(15)(V)(ii).
V3	Child of a V1 or V2	INA 101(a)(15)(V)(i) or INA 101 (a)(15)(V)(ii) & INA 203(d).

■ 3. Revise § 41.84 to read as follows:

§ 41.84 Victims of trafficking in persons.

(a) *Eligibility.* Under INA 101(a)(15)(T)(ii), an applicant accompanying, or following to join, may acquire derivative status as a parent, spouse, sibling or child (derivative family member) based on a relationship to an individual (the principal) who has applied for or who has been granted T–1 nonimmigrant status under INA 101(a)(15)(T)(i) or may acquire derivative status as an adult or minor child of the principal's derivative family member if the adult or minor child faces a present danger of retaliation as a result of the principal's escape from trafficking or cooperation with law enforcement. Such applicant will be eligible for a visa if:

(1) The consular officer is satisfied that the applicant has the required relationship to an individual who has been granted status by the Secretary for Homeland Security under INA 101(a)(15)(T)(i); or the consular officer is satisfied that the applicant has the required relationship with a derivative family member;

(2) The consular officer is satisfied that the applicant is otherwise admissible under the immigration laws of the United States; and

(3) The consular officer has received a DHS-approved I–914, Supplement A, evidencing that the applicant has been granted derivative status.

(b) *Visa validity.* A qualifying derivative family member may apply for a nonimmigrant visa under INA 101(a)(15)(T)(ii) only during the period in which the principal is in status under INA 101(a)(15)(T)(i). Any visa issued pursuant to such application shall be valid only for a period of three years or until the expiration of the principal's status as an individual classified under INA 101(a)(15)(T)(i), whichever is shorter.

PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

■ 4. The authority citation for part 42 is amended to read:

Authority: 8 U.S.C. 1104 and 1182; Pub. L. 105–277, 112 Stat. 2681; Pub. L. 108–449, 118 Stat. 3469; The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105–51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); 42 U.S.C. 14901–14954 (Pub. L. 106–279, 114 Stat. 825); 8 U.S.C. 1101 (Pub L. 117–31, 135 Stat. 309); 8 U.S.C. 1154 (Pub. L. 109–162, 119 Stat. 2960); 8 U.S.C. 1201 (Pub. L. 114–70, 129 Stat. 561).

■ 5. Revise 42.11 to read as follows:

§ 42.11 Classification symbols.

An immigrant visa issued to an applicant who applies to one of the classes described below shall bear an appropriate visa symbol to show its classification.

TABLE 1 TO § 42.11

Symbol	Class	Section of law
	Immediate Relatives	
IR1	Spouse of U.S. Citizen	INA 201(b).
IR2	Child of U.S. Citizen	INA 201(b).
IR3	Orphan Adopted Abroad by U.S. Citizen	INA 201(b) & INA 101(b)(1)(F).
IH3	Child from Hague Convention Country Adopted Abroad by U.S. Citizen.	INA 201(b) & INA 101(b)(1)(G).
IR4	Orphan to be Adopted in U.S. by U.S. Citizen	INA 201(b) & INA 101(b)(1)(F).
IH4	Child from Hague Convention Country to be Adopted in U.S. by U.S. Citizen.	INA 201(b) & INA 101(b)(1)(G).
IR5	Parent of U.S. Citizen at Least 21 Years of Age	INA 201(b).
CR1	Spouse of U.S. Citizen (Conditional Status)	INA 201(b) & INA 216.
CR2	Child of U.S. Citizen (Conditional Status)	INA 201(b) & INA 216.
IW1	Certain Spouses of Deceased U.S. Citizens	INA 201(b).
IW2	Child of IW1	INA 201(b).

TABLE 1 TO § 42.11—Continued

Symbol	Class	Section of law
IBI	Self-petition Spouse of U.S. Citizen	INA 204(a)(1)(A)(iii).
IB2	Self-petition Child of U.S. Citizen	INA 204(a)(1)(A)(iv).
IB3	Child of IB1	INA 204(a)(1)(A)(iii).
IB5	Self-petition Parent of U.S. Citizen	INA 204(a)(1)(A)(vii).
VI5	Parent of U.S. Citizen Who Acquired Permanent Resident Status under the Virgin Islands Nonimmigrant Alien Adjustment Act.	INA 201(b) & Section 2 of the Virgin Islands Nonimmigrant Alien Adjustment Act (Pub. L. 97–271).
	Vietnam Amerasian Immigrants	
AM1	Vietnam Amerasian Principal	Section 584(b)(1)(A) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Pub. L. 100–102) as amended.
AM2	Spouse or Child of AM1	Section 584(b)(1)(A) and 584(b)(1)(B) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Pub. L. 100–102) as amended.
AM3	Natural Mother of AM1 (and Spouse or Child of Such Mother) or Person Who has Acted in Effect as the Mother, Father, or Next-of-Kin of AM1 (and Spouse or Child of Such Person).	Section 584(b)(1)(A) and 584(b)(1)(C) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Pub. L. 100–102) as amended.
	Special Immigrants	
SB1	Returning Resident	INA 101(a)(27)(A).
SC1	Person Who Lost U.S. Citizenship by Marriage	INA 101(a)(27)(B) & INA 324(a).
SC2	Person Who Lost U.S. Citizenship by Serving in Foreign Armed Forces.	INA 101(a)(27)(B) & INA 327.
SI1	Certain Persons Employed by the U.S. Government in Iraq or Afghanistan as Translators or Interpreters.	Section 1059 of Public Law 109–163, as amended.
SI2	Spouse of SI1	Section 1059 of Public Law 109–163, as amended.
SI3	Child of SI1	Section 1059 of Public Law 109–163, as amended.
SM1	Person Recruited Outside the United States Who Has Served or is Enlisted to Serve in the U.S. Armed Forces for 12 Years.	INA 101(a)(27)(K).
SM2	Spouse of SM1	INA 101(a)(27)(K).
SM3	Child of SM1	INA 101(a)(27)(K).
SQ1	Certain Iraqis or Afghans Employed by or on Behalf of the U.S. Government.	Section 602(b), Division F, Title VI, Omnibus Appropriations Act of 2009, Public Law 111–8, as amended and Section 1244 of Public Law 110–181, as amended.
SQ2	Spouse of SQ1	Section 602(b), Division F, Title VI, Omnibus Appropriations Act of 2009, Public Law 111–8, as amended and Section 1244 of Public Law 110–181, as amended.
SQ3	Child of SQ1	Section 602(b), Division F, Title VI, Omnibus Appropriations Act of 2009, Public Law 111–8, as amended and Section 1244 of Public Law 110–181, as amended.
SU2	Spouse of U1	INA 245(m)(3) & INA 101(a)(15)(U)(ii).
SU3	Child of U1	INA 245(m)(3) & INA 101(a)(15)(U)(ii).
SU5	Parent of U1	INA 245(m)(3) & INA 101(a)(15)(U)(ii).
	Family-Sponsored Preferences	
	Family 1st Preference	
F11	Unmarried Son or Daughter of U.S. Citizen	INA 203(a)(1).
F12	Child of F11	INA 203(b) & INA 203(a)(1).
B11	Self-petition Unmarried Son or Daughter of U.S. Citizen	INA 204(a)(1)(A)(iv) & INA 203(a)(1).
B12	Child of B11	INA 203(d), INA 204(a)(1)(A)(iv), & INA 203(a)(i).
	Family 2nd Preference (Subject to Per-Country Limitations)	
F21	Spouse of Lawful Permanent Resident	INA 203(a)(2)(A).
F22	Child of Lawful Permanent Resident	INA 203(a)(2)(A).
F23	Child of F21 or F22	INA 203(d) & INA 203(a)(2)(A).
F24	Unmarried Son or Daughter of Lawful Permanent Resident	INA 203(a)(2)(B).
F25	Child of F24	INA 203(d) & INA 203(a)(2)(B).
C21	Spouse of Lawful Permanent Resident (Conditional)	INA 203(a)(2)(A) & INA 216.
C22	Child of Lawful Permanent Resident (Conditional)	INA 203(a)(2)(A) & INA 216.
C23	Child of C21 or C22 (Conditional)	INA 203(a)(2)(A), INA 203(d) & INA 216.
C24	Unmarried Son or Daughter of Lawful Permanent Resident (Conditional).	INA 203(a)(2)(B) & INA 216.

TABLE 1 TO § 42.11—Continued

Symbol	Class	Section of law
C25	Child of C24 (Conditional)	INA 203(a)(2)(B), INA 203(d), & INA 216.
B21	Self-petition Spouse of Lawful Permanent Resident	INA 204(a)(1)(B)(ii).
B22	Self-petition Child of Lawful Permanent Resident	INA 204(a)(1)(B)(iii).
B23	Child of B21 or B22	INA 203(d) & INA 204(a)(1)(B)(ii).
B24	Self-petition Unmarried Son or Daughter of Lawful Permanent Resident.	INA 204(a)(1)(B)(iii).
B25	Child of B24	INA 203(d) & INA 204(a)(1)(B)(iii).
	Family 2nd Preference (Exempt from Per-Country Limitations)	
FX1	Spouse of Lawful Permanent Resident	INA 202(a)(4)(A) & INA 203(a)(2)(A).
FX2	Child of Lawful Permanent Resident	INA 202(a)(4)(A) & INA 203(a)(2)(A).
FX3	Child of FX1 or FX2	INA 202(a)(4)(A), INA 203(a)(2)(A), & INA 203(d).
CX1	Spouse of Lawful Permanent Resident (Conditional)	INA 202(a)(4)(A), INA 203(a)(2)(A), & INA 216.
CX2	Child of Lawful Permanent Resident (Conditional)	INA 202(a)(4), INA 203(a)(2)(A), & INA 216.
CX3	Child of CX1 or CX2 (Conditional)	INA 202(a)(4)(A), INA 203(a)(2)(A), INA 203(d), & INA 216.
BX1	Self-petition Spouse of Lawful Permanent Resident	INA 204(a)(1)(B)(ii).
BX2	Self-petition Child of Lawful Permanent Resident	INA 204(a)(1)(B)(iii).
BX3	Child of BX1 or BX2	INA 203(d) & INA 204(a)(1)(B)(ii).
	Family 3rd Preference	
F31	Married Son or Daughter of U.S. Citizen	INA 203(a)(3).
F32	Spouse of F31	INA 203(d) & INA 203(a)(3).
F33	Child of F31	INA 203(d) & INA 203(a)(3).
C31	Married Son or Daughter of U.S. Citizen (Conditional)	INA 203(a)(3) & INA 216.
C32	Spouse of C31 (Conditional)	INA 203(d), INA 203(a)(3), & INA 216.
C33	Child of C31 (Conditional)	INA 203(d), INA 203(a)(3), & INA 216.
B31	Self-petition Married Son or Daughter of U.S. Citizen	INA 204(a)(1)(A)(iv) & INA 203(a)(3).
B32	Spouse of B31	INA 203(d), INA 204(a)(1)(A)(iv) & INA 203(a)(3).
B33	Child of B31	INA 203(d), INA 204(a)(1)(A)(iv), & INA 203(a)(3).
	Family 4th Preference	
F41	Brother or Sister of U.S. Citizen at Least 21 Years of Age	INA 203(a)(4).
F42	Spouse of F41	INA 203(a)(4) & INA 203(d).
F43	Child of F41	INA 203(a)(4) & INA 203(d).
	Employment-Based Preferences	
	Employment 1st Preference (Priority Workers)	
E11	Person with Extraordinary Ability	INA 203(b)(1)(A).
E12	Outstanding Professor or Researcher	INA 203(b)(1)(B).
E13	Multinational Executive or Manager	INA 203(b)(1)(C).
E14	Spouse of E11, E12, or E13	INA 203(d), INA 203(b)(1)(A), INA 203(b)(1)(B), & INA 203(b)(1)(C).
E15	Child of E11, E12, or E13	INA 203(d), INA 203(b)(1)(A), INA 203(b)(1)(B), & INA 203(b)(1)(C).
	Employment 2nd Preference (Professionals Holding Advanced Degrees or Persons of Exceptional Ability)	
E21	Professional Holding Advanced Degree or Person of Exceptional Ability.	INA 203(b)(2).
E22	Spouse of E21	INA 203(b)(2) & INA 203(d).
E23	Child of E21	INA 203(b)(2) & INA 203(d).
	Employment 3rd Preference (Skilled Workers, Professionals, or Other Workers)	
E31	Skilled Worker	INA 203(b)(3)(A)(i).
E32	Professional Holding Baccalaureate Degree	INA 203(b)(3)(A)(ii).
E34	Spouse of E31 or E32	INA 203(b)(3)(A)(i), INA 203(b)(3)(A)(ii), & INA 203(d).
E35	Child of E31 or E32	INA 203(b)(3)(A)(i), INA 203(B)(3)(A)(ii), & INA 203(d).
EW3	Other Worker (Subgroup Numerical Limit)	INA 203(b)(3)(A)(iii).
EW4	Spouse of EW3	INA 203(b)(3)(A)(iii) & INA 203(d).
EW5	Child of EW3	INA 203(b)(3)(A)(iii) & INA 203(d).
	Employment 4th Preference (Certain Special Immigrants)	
BC1	Broadcaster in the U.S. Employed by the International Broadcasting Bureau of the Broadcasting Board of Governors or a Grantee of Such Organization.	INA 101(a)(27)(M) & INA 203(b)(4).
BC2	Accompanying Spouse of BC1	INA 101(a)(27)(M) & INA 203(b)(4).

TABLE 1 TO § 42.11—Continued

Symbol	Class	Section of law
BC3	Accompanying Child of BC1	INA 101(a)(27)(M) & INA 203(b)(4).
SD1	Minister of Religion	INA 101(a)(27)(C)(ii)(I) & INA 203(b)(4).
SD2	Spouse of SD1	INA 101(a)(27)(C)(ii)(I) & INA 203(b)(4).
SD3	Child of SD1	INA 101(a)(27)(C)(ii)(I) & INA 203(b)(4).
SE1	Certain Employee or Former Employee of the U.S. Government Abroad.	INA 101(a)(27)(D) & INA 203(b)(4).
SE2	Spouse of SE1	INA 101(a)(27)(D) & INA 203(b)(4).
SE3	Child of SE1	INA 101(a)(27)(D) & INA 203(b)(4).
SF1	Former Employee of the Panama Canal Company or Canal Zone Government.	INA 101(a)(27)(E) & INA 203 (b)(4).
SF2	Spouse or Child of SF1	INA 101(a)(27)(E) & INA 203 (b)(4).
SG1	Former Employee of the U.S. Government in the Panama Canal Zone (Panamanian National).	INA 101(a)(27)(F) & INA 203 (b)(4).
SG2	Spouse or Child of SG1	INA 101(a)(27)(F) & INA 203 (b)(4).
SH1	Former Employee of the Panama Canal Company or Canal Zone Government (Five Years of Service).	INA 101(a)(27)(G) & INA 203(b)(4).
SH2	Spouse or Child of SH1	INA 101(a)(27)(G) & INA 203(b)(4).
SJ1	Foreign Medical Graduate (Adjustment Only)	INA 101(a)(27)(H).
SJ2	Spouse or Child of SJ1	INA 101(a)(27)(H) & INA 203(b)(4).
SK1	Retired International Organization Employee	INA 101(a)(27)(I)(iii) & INA 203(b)(4).
SK2	Spouse of SK1	INA 101(a)(27)(I)(iv) & INA 203(b)(4).
SK3	Unmarried Son or Daughter of SK1	INA 101(a)(27)(I)(i) & INA 203(b)(4).
SK4	Surviving Spouse of a Deceased International Organization Employee.	INA 101(a)(27)(I)(ii) & INA 203(b)(4).
SL1	Juvenile Court Dependent (Adjustment Only)	INA 101(a)(27)(J) & INA 203(b)(4).
SN1	Retired NATO6 Civilian Employee	INA 101(a)(27)(L) & INA 203(b)(4).
SN2	Spouse of SN1	INA 101(a)(27)(L) & INA 203(b)(4).
SN3	Unmarried Son or Daughter of SN1	INA 101(a)(27)(L) & INA 203(b)(4).
SN4	Surviving Spouse of Deceased NATO6 Civilian Employee	INA 101(a)(27)(L) & INA 203(b)(4).
SP	Beneficiary of a Petition or Labor Certification Application Filed Prior to September 11, 2001, if the Petition or Application was Rendered Void Due to the Terrorist Acts of September 11, 2001, or the Spouse, Child of such Beneficiary, or the Grandparent of a Child Orphaned by a Terrorist Act of September 11, 2001.	Section 421 of Public Law 107–56.
SR1	Religious Worker	INA 101(a)(27)(C)(ii)(II) & (III), as amended & INA 203(b)(4).
SR2	Spouse of SR1	INA 101(a)(27)(C)(ii)(II) & (III), as amended & INA 203(b)(4).
SR3	Child of SR1	INA 101(a)(27)(C)(ii)(II) & (III), as amended & INA 203(b)(4).
SS1	Surviving Spouse or Child of an Employee of the United States Government Abroad.	INA 101(a)(27)(D)(ii).
	Employment 5th Preference (Employment Creation Conditional Status) (Petitions Filed Before March 15, 2022)	
C51	Employment Creation, Outside Targeted Area	INA 203(b)(5)(A).
C52	Spouse of C51	INA 203(b)(5)(A) & INA 203(d).
C53	Child of C51	INA 203(b)(5)(A) & INA 203(d).
T51	Employment Creation in Targeted Rural/High Unemployment Area.	INA 203(b)(5)(B).
T52	Spouse of T51	INA 203(b)(5)(B) & INA 203(d).
T53	Child of T51	INA 203(b)(5)(B) & INA 203(d).
R51	Regional Center Program, Not in Targeted Area	INA 203(b)(5) & Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as amended.
R52	Spouse of R51	INA 203(b)(5), INA 203(d), & Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as amended.
R53	Child of R51	INA 203(b)(5), INA 203(d), & Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as amended.
I51	Regional Center Program, Target Area	INA 203(b)(5) & Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as amended.
I52	Spouse of I51	INA 203(b)(5), INA 203(d), & Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as amended.

TABLE 1 TO § 42.11—Continued

Symbol	Class	Section of law
I53	Child of I51	INA 203(b)(5), INA 203(d), & Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as amended.
Employment 5th Preference (Employment Creation Conditional Status) (Petitions Filed On or After March 15, 2022)		
NU1	Investor in Non-Regional Center, Unreserved	INA 203(b)(5), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
NU2	Spouse of NU1	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
NU3	Child of NU1	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
RU1	Investor in Regional Center, Unreserved	INA 203(b)(5), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
RU2	Spouse of RU1	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
RU3	Child of RU1	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
NR1	Investor in Non-Regional Center, Set Aside—Rural	INA 203(b)(5), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
NR2	Spouse of NR1	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
NR3	Child of NR1	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
NH1	Investor in Non-Regional Center, Set Aside—High Unemployment.	INA 203(b)(5), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
NH2	Spouse of NH1	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
NH3	Child of NH1	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).

TABLE 1 TO § 42.11—Continued

Symbol	Class	Section of law
RR1	Investor in Regional Center, Set Aside—Rural	INA 203(b)(5), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
RR2	Spouse of RR1	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
RR3	Child of RR1	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
RH1	Investor in Regional Center, Set Aside—High Unemployment	INA 203(b)(5), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
RH2	Spouse of RH1	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
RH3	Child of RH1	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
RI1	Investor in Regional Center, Set Aside—Infrastructure	INA 203(b)(5), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
RI2	Spouse of RI1	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
RI3	Child of RI1	INA 203(b)(5), INA 203(d), Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as drafted, & Division BB of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).
Other Categories		
Diversity Immigrants		
DV1	Diversity Immigrant	INA 203(c).
DV2	Spouse of DV1	INA 203(c) & 203(d).
DV3	Child of DV1	INA 203(c) & 203(d).

Rena Bitter,

Assistant Secretary for Consular Affairs, Department of State.

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 11

[Docket No. PTO–C–2021–0045]

RIN 0651–AD58

Changes to the Representation of Others Before the United States Patent and Trademark Office

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule.

SUMMARY: The U.S. Patent and Trademark Office (USPTO or Office) amends the rules of practice in patent cases and the rules regarding the representation of others before the USPTO to better protect the public and improve compliance with USPTO requirements. This final rule formalizes the USPTO's Diversion Pilot Program for patent and trademark practitioners whose physical or mental health issues or law practice management issues resulted in minor misconduct. Formalizing the Pilot Program aligns USPTO disciplinary practice with a majority of states and provides practitioners an opportunity to address the root causes of such misconduct. In addition, this final rule requires foreign attorneys or agents granted reciprocal recognition to practice before the USPTO in trademark matters to provide and update their contact and licensure status information or have their recognition withdrawn so the public will have access to up-to-date information. This final rule also defers to a state's attorney licensing authority regarding alternative business structures between a practitioner and a non-practitioner to reduce the potential for conflicts between the USPTO and the attorney licensing authority. Further, this final rule removes a fee required when changing one's status from a patent agent to a patent attorney and makes minor adjustments to other provisions related to the representation of others before the USPTO.

DATES: This rule is effective August 14, 2023.

FOR FURTHER INFORMATION CONTACT: Will Covey, Deputy General Counsel for the Office of Enrollment and Discipline (OED) and OED Director, at 571–272–4097, or *Will.Covey@uspto.gov.*

SUPPLEMENTARY INFORMATION:

Purpose

The USPTO amends 37 CFR parts 1 and 11 to better protect the public and improve compliance with the requirements of part 11. 35 U.S.C. 2(b)(2)(A) and 2(b)(2)(D) provide the USPTO with the authority to establish regulations to govern ''the conduct of proceedings in the Office'' and ''the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office,'' respectively. Title 37 CFR part 11 contains those regulations that govern the representation of others before the USPTO, including regulations related to the recognition to practice before the USPTO, investigations, disciplinary proceedings, and the USPTO Rules of Professional Conduct.

The USPTO formalizes its OED Diversion Pilot Program (Pilot Program) initiated in September 2017 for patent and trademark practitioners whose physical or mental health issues or law practice management issues resulted in minor misconduct. The public has been supportive of the Pilot Program. Making the Pilot Program permanent will proactively encourage practitioners to address the root causes of their misconduct so that they may provide valuable service to the public. It aligns the USPTO's disciplinary practice with a majority of state attorney disciplinary systems.

The USPTO also requires foreign attorneys or agents granted reciprocal recognition in trademark matters to provide and update their contact and licensure status information or have their recognition withdrawn in order to provide the public with current information.

Certain state attorney licensing authorities have begun permitting alternative business structures between an attorney and a non-attorney, generally consisting of an arrangement where the non-attorney is permitted to partner with the attorney in the practice of law, possess an ownership interest in a law firm, or otherwise share in legal fees. However, such arrangements were previously prohibited by the USPTO Rules of Professional Conduct, creating potential conflicts for patent and trademark practitioners who are licensed to practice law in those states. Therefore, this rule changes the USPTO Rules of Professional Conduct so that, hereafter, the USPTO defers to a state's attorney licensing authority regarding certain aspects pertaining to the sharing of legal fees between a practitioner and a non-practitioner in order to reduce the potential for such conflicts.

Lastly, the USPTO makes revisions to promote efficiency and clarity in its regulations, such as to remove a fee required when changing one's status from a patent agent to a patent attorney in order to encourage more practitioners to update their status; align the rule governing the limited recognition of persons ineligible to become registered to practice before the Office in patent matters because of their immigration status with existing practice; clarify procedures and improve efficiencies regarding disciplinary proceedings and appeals; and remove a reference to ''emeritus status.''

Formalizing a Diversion Program for Practitioners

The USPTO amends part 11 to formalize its OED Diversion Pilot Program for patent and trademark practitioners whose physical or mental health issues or law practice management issues resulted in minor misconduct. For example, a practitioner who lacked diligence in a matter due to a law practice management issue that resulted in minimal impact on their clients and/or the public may wish to consider diversion. The program allows those practitioners to avoid formal discipline by successfully completing diversion agreements with the OED Director. The goal of the program is to help practitioners address the root causes of such misconduct and adhere to high standards of ethics and professionalism in order to provide valuable service to the public.

Diversion is intended to be an action that the OED Director may take to dispose of a disciplinary investigation. The program is not typically available to a practitioner after the filing of a disciplinary complaint by the OED Director under 37 CFR 11.34. However, in extraordinary circumstances, the OED Director may enter into a diversion agreement with an eligible practitioner after a complaint has been filed. If diversion is requested after a complaint has been filed, the matter will be referred to the OED Director for consideration. The terms of any diversion agreement will be determined by the OED Director and the practitioner.

In 2017, the USPTO initiated the OED Diversion Pilot Program for patent and trademark practitioners. The USPTO extended the Pilot Program until November 15, 2023 or until a formalized program superseded the pilot. See Extension of Diversion Pilot Program, 1503 OG 314 (Oct. 18, 2022). The Pilot Program has enabled practitioners to successfully implement specific remedial measures and improve their practice, and the USPTO received public comment urging that the Pilot Program be incorporated into part 11. See Changes to Representation of Others Before the United States Patent and

Trademark Office, 86 FR 28442, 28446 (May 26, 2021). This final rule amends part 11 to formalize the Pilot Program, thus emphasizing the USPTO's commitment to wellness within the legal profession and aligning the USPTO with the practices of more than 30 attorney disciplinary systems in the United States.

The criteria for participation are set forth at 37 CFR 11.30. The criteria address eligibility, completion of the program, and material breaches of the diversion agreement. (Any other aspects of diversion not fully addressed in § 11.30, such as specific details regarding the material breach of an agreement, will be addressed in individualized diversion agreements.) Based on the American Bar Association Model Rules for Lawyer Disciplinary Enforcement, the criteria also draw from experience gained during the administration of the Pilot Program. Specifically, the criteria now allow practitioners who have been disciplined by another jurisdiction within the past three years to participate if the discipline was based on the conduct that forms the basis for the OED Director's investigation. For example, participation in the USPTO's diversion program may be appropriate in cases in which the practitioner was recently publicly disciplined by a jurisdiction that does not have a diversion program. See *Changes to Representation of Others Before the United States Patent and Trademark Office, 86 FR 28442, 28443 (May 26, 2021).* Additional experience gained from the Pilot Program also indicated that eligibility could be extended to practitioners evidencing a pattern of similar misconduct if the misconduct at issue is minor and related to a chronic physical or mental health condition or disease. Under the Pilot Program criteria, practitioners recently disciplined by another jurisdiction and practitioners evidencing a pattern of similar misconduct were not eligible to participate.

The OED Director may consider all relevant factors when determining whether a practitioner meets the criteria. See generally, Model Rules of Lawyer Disciplinary Enforcement Rule 11 cmt. (American Bar Association, 2002) (''Both mitigating and aggravating factors should also be considered. The presence of one or more mitigating factors may qualify an otherwise ineligible respondent for the program.'').

The USPTO believes that the diversion program is a valuable tool that will benefit the public by fostering the skills and abilities of those individuals who represent others before the USPTO. Additional information may be found in a diversion guidance document, available at *https://www.uspto.gov/sites/default/files/documents/OED-Diversion-Guidance-Document.pdf.*

Changes to the Regulation of Foreign Attorneys or Agents Granted Reciprocal Recognition in Trademark Matters

The USPTO amends § 11.14 to ascertain the licensure status and contact information of foreign attorneys or agents who are granted reciprocal recognition in trademark matters under § 11.14(c)(1). The amendments in this final rule provide potential clients with more certainty regarding the good standing of a foreign attorney or agent.

This final rule requires that any foreign attorney or agent granted reciprocal recognition in trademark matters under § 11.14(c)(1) must provide the OED Director their postal address, at least one and up to three email addresses where they receive email, and a business telephone number, as well as any change to their postal address, email addresses, and business telephone number, within 30 days of the date of any change. A foreign attorney or agent granted reciprocal recognition under § 11.14(c)(1) must also notify the OED Director of any lapse in their authorization to represent clients before the trademark office in the country in which they are registered and reside within 30 days of the lapse.

The USPTO also amends the rules of practice so that the OED Director may address a letter to any foreign attorney or agent granted reciprocal recognition under § 11.14(c)(1) for the purposes of ascertaining the validity of the foreign attorney or agent's contact information and good standing with the trademark office or other duly constituted authority in the country in which they are registered and reside (for Canadian trademark agents, the term ''trademark office'' shall mean the College of Patent Agents and Trademark Agents with respect to matters of practice eligibility in Canada). Any such foreign attorney or agent failing to reply and provide any information requested by the OED Director within a time limit specified will be subject to having their reciprocal recognition withdrawn by the OED Director. Withdrawal of recognition by the OED Director does not obviate the foreign attorney's or agent's duty to comply with any other relevant USPTO rules, such as the requirement to withdraw from pending trademark matters.

Unless good cause is shown, the OED Director shall promptly withdraw the reciprocal recognition of foreign attorneys or agents who: (1) are no longer eligible to represent others before the trademark office of the country upon which reciprocal recognition is based, (2) no longer reside in such country, (3) have not provided current contact information, or (4) failed to reply to the letter from the OED Director within the time limit specified and/or provide any of the information requested by the OED Director in that letter. The amended rule requires the OED Director to publish a notice of any withdrawal of recognition.

Lastly, in this final rule the USPTO amends the rules of practice so that any foreign attorney or agent whose recognition has been withdrawn may reapply for recognition upon submission of a request to the OED Director and payment of the application fee in § 1.21(a)(1)(i), as provided under amended § 11.14(f).

Removal of the Term ''Nonimmigrant Alien'' From § 11.9(b)

This final rule amends § 11.9(b) in regard to limited recognition for individuals who are neither U.S. citizens nor lawful permanent residents, but who nevertheless have been granted status and the authority to work in the United States by the U.S. Government in order to practice before the USPTO in patent matters. Specifically, the USPTO removes the term ''nonimmigrant alien'' from § 11.9(b) because the term does not include all individuals eligible for limited recognition under this provision. For example, the term ''nonimmigrant alien'' does not include all individuals who are neither U.S. citizens nor lawful permanent residents, but who nevertheless have been granted status and the authority to work in the United States by the U.S. Government. Rather, the appropriate description for those who may qualify for limited recognition includes individuals who: (1) are ineligible to become registered under § 11.6 because of their immigration status, (2) are authorized by the U.S. Government to be employed or trained in the United States to represent a patent applicant by preparing or prosecuting a patent application, and (3) meet the requirements of paragraphs (d) and (e) of § 11.9. This revision results in no change in practice.

Clarification That Limited Recognition Shall Not Be Granted or Extended to a Non-U.S. Citizen Residing Outside the United States

In this final rule, the USPTO amends § 11.9(b) to clarify that limited recognition to practice before the USPTO in patent matters for individuals who are neither U.S. citizens nor lawful permanent residents, but who nevertheless have been granted status and the authority to work in the United

States by the U.S. Government, shall not be granted or extended to non-U.S. citizens residing outside the United States. This is consistent with current practice in which an individual's limited recognition will not terminate if the individual has been approved by the U.S. Government to temporarily depart from the United States, but will terminate when the individual ceases to reside in the United States.

Removal of Fee Required When Changing Status From Patent Agent to Patent Attorney

In this final rule, the USPTO eliminates the $110.00 fee in § 1.21(a)(2)(iii) that is charged when a registered patent agent changes their registration from an agent to an attorney. It is expected that the removal of this fee will improve the accuracy of the register of patent attorneys and agents by incentivizing patent agents who become patent attorneys to promptly update their status in that register.

Arrangements Between Practitioners and Non-Practitioners

This final rule adds § 11.504(e) to address when a practitioner enters into an arrangement to share legal fees with a non-practitioner, to form a partnership with a non-practitioner, or to be part of a for-profit association or corporation owned by a non-practitioner. In the event of such arrangement, § 11.504(e) is intended to defer to the attorney licensing authority of the State(s) (as defined in § 11.1, ''any of the 50 states of the United States of America, the District of Columbia, and any commonwealth or territory of the United States of America'') that affirmatively regulate(s) such arrangement, in order to avoid a conflict between § 11.504(a), (b), and (d)(1) and (2) of the USPTO Rules of Professional Conduct and the laws, rules, and regulations of the attorney licensing authority of any such State(s). It is further intended to treat an attorney subject to the USPTO Rules of Professional Conduct and a registered patent agent similarly when both participate together in the same such arrangement. No deference to an attorney licensing authority of a State is intended when that licensing authority has no laws, rules, and regulations that address such arrangement or the State does not affirmatively regulate such arrangement.

However, the added flexibility does not obviate the practitioner's obligations under any other USPTO rules, including the USPTO Rules of Professional Conduct, that may be relevant to such an arrangement. Further, this addition does not permit a person who recommends, employs, or pays the practitioner to render legal services for another to direct or regulate the practitioner's professional judgment in rendering such legal services as described in § 11.504(c), nor does this addition permit the practitioner to practice with or in the form of a professional corporation or association authorized to practice law for a profit, if a non-practitioner has the right to direct or control the professional judgment of the practitioner as described in § 11.504(d)(3).

Clarification of Written Memoranda Regarding Motions in Disciplinary Proceedings

In this final rule, the USPTO amends § 11.43 to clarify that, while all motions must set forth a basis for the requested relief, including a concise statement of the facts and arguments along with a citation of the authorities upon which the movant relies, (1) only motions for summary judgment and motions to dismiss are required to be accompanied by a written memorandum setting forth that basis, and (2) the prescribed time periods to file response and reply memoranda regarding such motions only apply to motions for summary judgment and motions to dismiss. While parties must provide support for all motions, limiting memoranda and the specified briefing schedule to motions for summary judgment and motions to dismiss promotes the goal of continued efficient progress of disciplinary proceedings. Hearing officers retain the discretion to order memoranda and set time limits for other types of motions and papers.

Clarification That Disciplinary Hearings May Continue To Be Held by Videoconference

This final rule amends § 11.44(a) to clarify that hearings may be held by videoconference. The amendment reflects the current practice of scheduling and conducting remote hearings. The amendment also clarifies that the transcript of the hearing need not be created by a stenographer.

Five Days To Serve Discovery Requests After Authorization; 30 Days To Respond After Service

In this final rule, the USPTO amends § 11.52 to improve the procedures for written discovery in disciplinary proceedings and to order those procedures in a more chronological fashion. Accordingly, the contents of paragraphs (a) and (b) are restructured into revised paragraphs (a), (b), and (c). Former paragraph (c) is redesignated as paragraph (d), and the cross-reference to former paragraph (a) is updated. Former paragraphs (d) through (f) are redesignated as paragraphs (e) through (g).

First, under paragraph (a), the amended rule sets forth the types of requests for which a party may seek authorization in a motion for written discovery. While the previous rule sets forth that information in paragraph (b), the amended rule logically sets forth that information in paragraph (a) because paragraph (a) pertains to the content of the initial motion for written discovery.

Second, under paragraph (b), the amended rule requires a copy of the proposed written discovery requests and a detailed explanation, for each request made, of how the discovery sought is reasonable and relevant to an issue actually raised in the complaint or the answer. Any response to the motion shall include specific objections to each request, if any. Any objection not raised in the response will be deemed to have been waived.

Third, under paragraph (c), the amended rule requires the moving party to serve a copy of any authorized discovery requests following the issuance of an order authorizing discovery within a default deadline of five days following the order. This requirement ensures that the opposing party promptly receives a copy of the authorized requests to which the party must respond. Amended paragraph (c) also sets a default deadline of 30 days from the date of service of the authorized requests for the opposing party to serve responses. Setting the default period to begin on the date of service provides the opposing party a predictable and definitive time period for responding to authorized discovery requests in circumstances in which the hearing officer's order does not specify a different deadline.

Changes to Procedures Regarding Appeals to the USPTO Director

In this final rule, the USPTO amends § 11.55(m) to remove the requirement to submit a supporting affidavit when moving for an extension of time to file a brief regarding an appeal of the initial decision of a hearing officer and to place the amended requirement to file a motion for an extension in a new paragraph (p) at the end of § 11.55. Affidavits are removed to eliminate an unnecessarily burdensome requirement in requesting the extension of time, while retaining the necessity to show good cause. The provision is moved to the new paragraph (p) because it logically falls at the end of § 11.55.

Removal of Emeritus Status

The USPTO removes the reference to ''emeritus status'' in § 11.19(a) because no such status was ever finalized and inadvertently remains from a previous rulemaking.

Proposed Rule: Comments and Responses

The USPTO published a proposed rule on September 8, 2022, at 87 FR 54930, soliciting comments on the proposed amendments to 37 CFR parts 1 and 11. The USPTO received five unique comments from four organizations and one individual. These comments are publicly available at the Federal eRulemaking Portal at *www.regulations.gov.* The Office received comments both generally supporting and objecting to the revisions to the rules of practice. A summary of the comments and the USPTO's responses are provided below.

Comment 1. Two commenters support the proposal to formalize the USPTO's Diversion Pilot Program. One commenter encourages expanding the eligibility criteria for participation and increasing the use of the program.

Response 1. The USPTO appreciates the support for formalizing its Diversion Pilot Program. The eligibility criteria for participation in the Diversion Program are set forth in 37 CFR 11.30 in this final rule. The criteria are based upon the American Bar Association Model Rules for Lawyer Disciplinary Enforcement (amended August 12, 2002) and are now broadened based on experience gained during the Pilot Program. Specifically, eligibility is extended to a practitioner who evidences a pattern of similar misconduct if the misconduct at issue is minor and related to a chronic physical or mental health condition or disease. Eligibility is also extended to a practitioner who has been disciplined by another jurisdiction within the past three years as long as the discipline was based on the conduct that forms the basis for the OED Director's investigation. Under the Pilot Program, a practitioner who evidenced a pattern of similar misconduct or a practitioner who was recently disciplined by their state bar was not eligible to participate. The USPTO believes that the Diversion Program is a valuable proactive tool that will provide a practitioner the opportunity to curtail future misconduct. Accordingly, the USPTO will continue to evaluate the eligibility criteria over the course of the program.

Comment 2. Two commenters express concerns regarding the proposal to require a written memorandum of law only for a motion for summary judgment or a motion to dismiss. Specifically, the commenters contend that the proposal may impact the due process rights of respondents; eliminate memoranda of law in other important motions; and impact the ability of the respondent (and tribunal) to understand the relevant facts, the applicable law, and the application of the law to the facts in support of the relief requested. The commenters also express concern that no data or objective evidence has been provided in support of a benefit to respondents when motions unsupported by a memorandum of law are filed against them. The commenters suggest that the USPTO should either withdraw the proposal or amend it to permit a motion to be filed without a supporting memorandum of law only for narrowly defined, non-substantive issues.

Response 2. The USPTO appreciates the comments and, after review and consideration, has amended 37 CFR 11.43 to clarify that each motion must set forth a basis for the requested relief, including a concise statement of the facts and supporting reasons, along with a citation of the authorities upon which the movant relies. The amended text requires the moving party to advance in their motion any facts and supporting reasons deemed necessary to support the requested relief. The USPTO notes that the prior provision in 37 CFR 11.43 that required memoranda to accompany all motions had only been in place since June 25, 2021. Before then there was no requirement that a motion be accompanied by a memorandum of law. Instead, the form and content of motions and accompanying papers were governed by the hearing officer's orders, which typically required all motions to be so accompanied. However, respondents who are unrepresented by counsel often failed to file memoranda of law with their motions, regardless of the orders. Accordingly, the change to § 11.43 may benefit such unrepresented respondents who may find preparing a memorandum of law burdensome or may overlook the requirement. Nothing in the amended text authorizes or endorses the filing of motions that are not adequately supported by facts, reasons, and legal authorities. Rather, the amendment removes the current requirement that a separate legal memorandum must be filed for all motions and limits the requirement to only certain dispositive motions.

Comment 3. One commenter recommends that in developing policies regarding the use of video hearings, the USPTO may wish to consult Recommendation 2021–4, *Virtual Hearings in Agency Adjudication,* 86 FR 36083 (July 8, 2021), which identifies best practices for improving existing virtual-hearing programs and establishing new ones in accord with principles of fairness and efficiency and with due regard for participant satisfaction.

Response 3. The USPTO appreciates the comment. The USPTO will endeavor to ensure that hearing officers and the USPTO's counsel keep abreast of recommendations, developments, and updates with respect to virtual hearings, including the referenced Recommendation 2021–4, in order to promote remote hearings that proceed efficiently, fairly, and to the satisfaction of participants.

Comment 4. Three commenters raise concerns in regard to amended 37 CFR 11.44(a), pertaining to remote hearings, stating that disciplinary proceedings are quasi-criminal in nature and that due process must be considered. Two of the commenters particularly assert that respondents and their counsel are entitled to, or should be entitled to, an in-person right to confront witnesses, if so desired.

Response 4. The USPTO appreciates the comments and endeavors to fully protect respondents' due process rights in all disciplinary proceedings, whether conducted remotely or in-person. USPTO disciplinary proceedings provide respondents with notice of the charges against them and opportunities to be heard, explain, and defend themselves. See *In re Ruffalo,* 390 U.S. 544, 550 (1968). Federal courts have consistently distinguished the rights of respondents in disciplinary cases from those of criminal defendants. See *In re Sibley,* 564 F.3d 1335, 1341 (D.C. Cir. 2009); *Rosenthal* v. *Justices of the Supreme Court of Cal.,* 910 F.2d 561, 564 (9th Cir. 1990), *cert. denied,* 498 U.S. 1087 (1991); *In re Stamps,* 173 Fed. App'x. 316, 318 (5th Cir. 2006) (per curiam) (unpublished); *In re Marzocco,* No. 98–3960, 1999 WL 968945, at *1 (6th Cir. 1999) (unpublished). Nonetheless, whether the hearing is held in-person or remotely, respondents have the opportunity to cross-examine witnesses and have the witnesses' credibility evaluated by a neutral hearing officer.

Comment 5. Two commenters express concerns related to subpoenas that may be used in USPTO disciplinary proceedings. The commenters note the geographic limitations of Federal Rule of Civil Procedure 45 and assert that the ''place'' of hearing for USPTO disciplinary hearings is where the hearing officer is located, not where a witness may be located in the case of a remote hearing. Therefore, the commenters argue that hearing officers

can only authorize parties to apply to the court in the jurisdiction where the trial is held to obtain a hearing subpoena and compel the in-person appearance of a witness. Accordingly, the commenters assert that the proposed amendment in regard to remote hearings incorrectly presumes that hearing officers have nationwide hearing subpoena power. The commenters add that the only way to ensure testimony by witnesses outside the subpoena power of a trial court is to have them testify by deposition.

Response 5. The USPTO disagrees with the sentiments in these comments. Although hearing officers do not issue subpoenas, they have the power to authorize the issuance of subpoenas by federal district courts nationwide pursuant to 35 U.S.C. 24 and 37 CFR 11.38, 11.39, and 11.51. The legitimacy and enforceability of a subpoena issued to a witness in a particular disciplinary proceeding may be determined on a case-by-case basis. In addition to authorizing hearing subpoenas, hearing officers may authorize subpoenas for remote depositions and have done so in the past. There is a benefit to hearing officers conducting remote hearings, where they can hear and observe testimony in real time and ask questions of the witness, instead of being presented with deposition transcripts or videos, where the hearing officers have no opportunity to interact with the witness or observe the witness in real time.

Comment 6. Three commenters object to characterizing the amendment in regard to remote hearings as a ''clarification'' of existing practice. The commenters assert that conducting remote hearings is not authorized by the existing rules and that doing the same since the beginning of the COVID pandemic does not authorize them or make them legitimate. One commenter also noted that members of the public had no way to know that hearing officers had been conducting remote hearings because disciplinary proceedings are subject to the Privacy Act of 1974.

Response 6. The USPTO disagrees with the sentiments in these comments. The amendment reflects existing practice. Hearing officers have invoked their broad authority under 37 CFR 11.39(c) to conduct remote hearings in USPTO disciplinary proceedings. At least one other jurisdiction has also recognized this authority. See *Atty. Grievance Commn. of Maryland* v. *Agbaje,* 93 A.3d 262, 275–76 (Md. 2014). It is further noted that the USPTO conducts hearings in proceedings between parties where some or all participants appear remotely. For example, the Trademark Trial and Appeal Board has held such hearings since before the COVID pandemic began, and the Patent Trial and Appeal Board has held numerous remote hearings since the advent of the pandemic. Regarding notice to the public, the amendment expressly states that a virtual hearing is an additional option for the hearing officer. Parties may proactively move for or against a virtual hearing. Further, the amended provision provides notice to the public that a virtual hearing is available, thereby potentially giving the respondent additional time in the early stages of a proceeding either to request and prepare for a remote hearing or to formulate a request against a remote hearing. Nothing in this amendment is intended to preclude or restrict a hearing officer's authority to order an in-person hearing.

Comment 7. Three commenters posit that remote hearings should be available only if a respondent elects one or, similarly, that remote hearings should be available only if both parties agree.

Response 7. The USPTO declines to adopt such a limit on a hearing officer's discretion to order a remote hearing. The amendment does not mandate remote hearings, but rather recognizes that a hearing officer may exercise discretion to order a hearing to be remote in whole or in part. Hearing officers will need to consider various factors in determining whether to conduct a remote hearing in whole or in part, including but not limited to the stated preferences and needs of the parties. For example, remote hearings may reduce the cost of the disciplinary proceeding for the Office and respondent. See generally, 37 CFR 11.60(d)(1).

Comment 8. One commenter states that the phrase ''the hearing officer shall set the time and place for the hearing'' in 37 CFR 11.44(a) refers to a physical location, and states that virtual hearings depart from this meaning.

Response 8. To the extent that the commenter appears to suggest that the quoted phrase obviates the possibility of remote hearings, the USPTO disagrees because amended 37 CFR 11.44(a) explicitly provides for remote hearings. Further, hearing officers have invoked their broad authority under 37 CFR 11.39(c) to ''determine the time and place of any hearing and regulate its course and conduct'' to include conducting the hearing via videoconference. In addition, at least one tribunal has found that the parties, witnesses, and hearing officers are still ''located'' at some place during a remote proceeding, just simply not all at the same location. See *Legaspy* v. *Fin. Indus. Regul. Auth., Inc.,* No. 20 C 4700, 2020 WL 4696818, at *3 (N.D. Ill. Aug. 13, 2020).

Comment 9. Three commenters express support for the amendment to require reciprocally recognized trademark practitioners to update their contact information with the USPTO within 30 days of any changes thereto. One commenter expresses a concern, however, that such requirement lacks an effective enforcement mechanism. As such, the commenter suggests imposing escalating fees for late submissions of contact information updates. The commenter posits that the threat of penalties would increase compliance with the new rule. Finally, the commenter appears to suggest that practitioners who are late in providing updated contact information by a full year, should be automatically removed from the rolls.

Response 9. The USPTO declines to impose such new fees at this time because the public would not have had a chance to review and comment on the proposal. The USPTO also declines to create automatic removal provisions because such provisions may implicate the Administrative Procedure Act's requirements to provide notice and a hearing before a license may be revoked.

Comment 10. One commenter suggests that the text requiring a foreign attorney or agent granted reciprocal recognition in trademark matters to provide and update their contact information with the USPTO be included under 37 CFR 11.11(a) which currently requires a registered patent practitioner and any person granted limited recognition under 37 CFR 11.9(b) to provide and update their contact information. The commenter appears to make the suggestion under the understanding that ''those who have reciprocal recognition are granted limited recognition.''

Response 10. The USPTO thanks the commenter for the suggestion. Assuming the USPTO correctly understands the suggestion, the USPTO wishes to clarify there is no overlap between the categories of: (1) foreign trademark practitioners who are reciprocally recognized to practice before the USPTO in certain trademark matters under 37 CFR 11.14 as long as they do not reside in the United States, and (2) foreigners who reside in the United States and are granted limited recognition to practice before the USPTO in patent matters under 37 CFR 11.9.

Comment 11. One commenter supports in principle the proposed

amendment to defer to the laws, rules, and regulations of the attorney licensing authority of the State of a practitioner who enters into an arrangement to share legal fees with a non-practitioner, form a partnership with the non-practitioner, or be part of an organization owned by a non-practitioner. However, the commenter believes that the USPTO should undertake further study and review of the potential outcomes resulting from the amendment, as well as review the efforts of the American Bar Association and other jurisdictions as they modify and interpret their rules to clarify or reconsider existing positions on alternative business arrangements with non-attorneys. Another commenter views the sharing of legal fees with non-attorneys as inconsistent with the core values of the legal profession but recognizes that some jurisdictions now permit such fee-sharing and others may follow. Accordingly, the commenter notes that fear of violating the then-effective rule, which generally prohibited such arrangements, may have made practitioners who are admitted to a jurisdiction that permits such fee sharing reluctant to enter into the same. Therefore, while the commenter appreciates the USPTO's clarity, the commenter suggests that the USPTO monitor the use of non-practitioners to make filings, as well as the commoditization of legal services by non-practitioner owned companies.

Response 11. The USPTO appreciates these comments as well as the concerns identified. The USPTO will continue to consider the potential and actual outcomes of the addition of 37 CFR 11.504(e) as well as related changes in other jurisdictions. The USPTO notes prior reports by Supreme Court of Arizona's Task Force on the Delivery of Legal Services in 2019, which preceded that state's elimination of the equivalent of 37 CFR 11.504; the State Bar of California Task Force on Access through Innovation of Legal Services' Final Report and Recommendations in 2020, which appear to have been partially implemented; and the Utah Supreme Court's Standing Order No. 15 of 2020 (as amended in 2021) implementing changes to the equivalent of 37 CFR 11.504. The USPTO also notes that Georgia has implemented changes very similar to this final rule's addition of 37 CFR 11.504(e) in Georgia Rule of Professional Conduct 5.4(e) and (f).

In regard to the second commenter's concern regarding the use of non-practitioners to make filings, the USPTO notes that existing provisions regarding who may practice before the USPTO, prohibitions regarding the unauthorized practice of law before the USPTO, and provisions on who may properly present a document to the USPTO remain unchanged. In addition to the suggestions of the commenters, the USPTO has identified a situation of concern in which a registered patent agent (*i.e.,* a non-attorney registered to practice before the Office in patent matters) could be in violation of the proposed 11.504(e) even though an attorney in the same firm who is also subject to the USPTO Rules of Professional Conduct would not be in violation of the same provision. As such, the USPTO has simplified proposed 11.504(e) to clarify that a practitioner need not also be authorized to practice law by the attorney licensing authority in the State(s) that affirmatively regulate(s) the arrangement if the arrangement is fully compliant with the laws, rules, and regulations of the attorney licensing authority of any such State(s).

Comment 12. One commenter supports the proposal to eliminate the fee imposed upon a registered patent practitioner for requesting a status change from patent agent to patent attorney. The commenter also requests that the USPTO remove fees to convert an individual's status from limited recognition to either patent agent or patent attorney status, or when a practitioner changes their status from patent attorney to patent agent.

Response 12. The USPTO is unable to consider the removal of additional fees in this rulemaking, as further study will be required.

Changes From Proposed Rule

As discussed in more detail below, the following sections contain changes from the proposed rule:

Section 11.14 is modified after further consideration to clarify that a practitioner granted reciprocal recognition under paragraph (c)(1) shall notify the OED Director of a lapse in authorization within 30 days of the lapse, which was previously unspecified in paragraph (g) but is a logical outgrowth of the proposed rule. The section is further modified to add a header to paragraph (d) in conformity with the other paragraphs of that section. Paragraph (h) is further modified to clarify that the transmission of the letter to a practitioner recognized under paragraph (c)(1) is sufficient rather than receipt. This recognizes the challenge of verifying service on a practitioner who is definitionally located outside the United States per paragraph (c)(1) in light of the duty of the practitioner to be reachable by clients and tribunals in accordance with the USPTO disciplinary rules. Lastly, after further consideration, references to ''must'' in paragraphs (g) and (h) have been changed to ''shall'' for consistency with other paragraphs in § 11.14.

Section 11.43 is modified after further consideration and in response to public comment to clarify that each motion must set forth a basis for the requested relief, including a concise statement of the facts and supporting reasons, along with a citation of the authorities upon which the movant relies. This change may benefit unrepresented respondents who may find preparing a memorandum of law burdensome. See Comment and Response 2.

Section 11.52(d) is modified to update a cross-reference in the proposed rule that unintentionally referred to paragraph (a). The cross-reference has been updated to refer to paragraph (c).

Section 11.504(e) is modified after further consideration and in response to public comment to clarify that a practitioner who enters into an alternative business arrangement with a non-practitioner need not also be authorized to practice law by the attorney licensing authority in the State(s) that affirmatively regulate(s) the arrangement if the arrangement is fully compliant with the laws, rules, and regulations of the attorney licensing authority of any such State(s). A registered patent agent and an attorney who participate together in the same such arrangement and are both subject to the USPTO Rules of Professional Conduct are to be treated similarly in regard to § 11.504(a), (b), and (d)(1), and (d)(2) in cases when the attorney licensing authority of any such State(s) affirmatively regulate(s) an alternative business structure with a non-practitioner. Further, these changes clarify that the exception created by § 11.504(e) does not apply when the attorney licensing authority of any such State(s) has no laws, rules, and regulations that address an alternative business structure with a non-attorney, and that the exception does not apply when the State does not affirmatively regulate such arrangement. See Comment and Response 11.

Discussion of Specific Rules

The USPTO eliminates the fee in § 1.21(a)(2)(iii) for changing one's status from a registered patent agent to a registered patent attorney.

The USPTO amends § 11.7(l) to reflect the elimination of the fee set forth in § 1.21(a)(2)(iii).

The USPTO amends § 11.9(b) to remove the term ''nonimmigrant alien'' and to clarify that limited recognition shall not be granted or extended to a

non-U.S. citizen residing outside the United States.

The USPTO amends § 11.14(c)(1) to remove unnecessary references to paragraph (c).

The USPTO amends § 11.14(d) to add a header in conformity with the other paragraphs of that section.

The USPTO amends § 11.14(f) to add references to § 11.14(c)(1) where § 11.14(c) was previously referenced.

The USPTO adds § 11.14(g) to create a requirement for a foreign attorney or agent granted reciprocal recognition under § 11.14(c)(1) to notify the OED Director of updates to contact information within 30 days of the date of the change and to notify the OED Director of any lapse in their authorization to represent clients before the trademark office in the country in which they are registered and reside within 30 days of the date of the lapse.

The USPTO adds § 11.14(h) to ascertain the validity of a reciprocally recognized foreign attorney's or agent's contact information and good standing with the trademark office or other duly constituted authority in the country in which the agent is registered and resides. Any foreign attorney or agent failing to give any information requested by the OED Director within a time limit specified is subject to having their reciprocal recognition withdrawn.

The USPTO adds § 11.14(i) to create a process to withdraw reciprocal recognition of a foreign attorney or agent registered under paragraph (c)(1) if they: (1) are no longer registered with, in good standing with, or otherwise eligible to practice before, the trademark office of the country upon which reciprocal recognition is based; (2) no longer reside in such country; or (3) have not provided current contact information or have failed to validate their good standing with the trademark office in the country in which they are registered and reside as required in amended § 11.14(g) and (h).

The USPTO adds § 11.14(j) to specify that the process for a foreign attorney or agent whose recognition has been withdrawn and who desires to become reinstated is to reapply for recognition under § 11.14(f).

The USPTO amends § 11.19(a) to remove the term ''emeritus status.''

The USPTO amends § 11.22(h)(3) and (4) and adds § 11.22(h)(5) to state that the OED Director may dispose of an investigation by entering into a diversion agreement with a practitioner.

The USPTO adds § 11.30 to state the criteria by which the OED Director may enter into a diversion agreement with a practitioner.

The USPTO amends § 11.43 to clarify that all motions shall set forth the basis for requested relief, but prescribed time periods apply to only certain motions and that those motions shall be accompanied by a written memorandum.

The USPTO amends § 11.44(a) to clarify that hearings may be held by videoconference and that the transcript of the hearing need not be created by a stenographer.

The USPTO amends § 11.52 to revise and restructure the contents of paragraphs (a) and (b) into revised paragraphs (a), (b), and (c) to provide clarity regarding certain discovery obligations on the part of the propounding and responding parties. Former paragraph (c) is redesignated as paragraph (d), and the cross-reference to former paragraph (a) is updated. Former paragraphs (d) through (f) are redesignated as paragraphs (e) through (g).

The USPTO amends § 11.55(m) to eliminate the requirement to submit an affidavit of support with a motion for an extension of time to file a brief regarding an appeal to the USPTO Director and to reorganize the section to move to new paragraph (p) the provision allowing the USPTO Director to extend, for good cause, the time for filing such a brief.

The USPTO adds § 11.504(e) to address circumstances when a practitioner enters into an arrangement to share legal fees with a non-practitioner, to form a partnership with a non-practitioner, or to be part of a for-profit association or corporation owned by a non-practitioner. Specifically, § 11.504(e) defers to the attorney licensing authority of the State(s) that affirmatively regulate(s) such arrangement provided such arrangement fully complies with the laws, rules, and regulations of the attorney licensing authority of any such State(s).

Rulemaking Requirements

A. Administrative Procedure Act

The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. See *Perez* v. *Mortgage Bankers Ass'n,* 135 S. Ct. 1199, 1204 (2015) (interpretive rules ''advise the public of the agency's construction of the statutes and rules which it administers'') (citations and internal quotation marks omitted); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive); *Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals are procedural where they do not change the substantive standard for reviewing claims).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. See *Perez,* 135 S. Ct. at 1206 (notice-and-comment procedures are not required when an agency ''issue[s] an initial interpretive rule'' or when it amends or repeals that interpretive rule); *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice-and-comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'') (quoting 5 U.S.C. 553(b)(A)). Nevertheless, the USPTO has chosen to seek public comment before implementing the rule to benefit from the public's input.

B. Regulatory Flexibility Act

For the reasons set forth in this rulemaking, the Senior Counsel for Regulatory and Legislative Affairs, Office of General Law, of the USPTO, has certified to the Chief Counsel for Advocacy of the Small Business Administration that the changes in this rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b).

This rule eliminates the $110.00 fee that is charged when a registered patent agent changes their registration from an agent to an attorney to incentivize patent agents who become patent attorneys to promptly update their status in the register. This change is expected to impact approximately 340 patent agents each year. Patent agents who become licensed attorneys are expected to request a change in status in order to accurately convey their status to the public. The USPTO does not collect or maintain statistics on the size status of impacted entities, which would be required to determine the number of small entities that would be affected by the rule. However, assuming that all patent agents impacted by this rule are small entities, the elimination of the fee will not impact a substantial number of small entities because the approximately 340 patent agents do not constitute a significant percentage of the approximately 47,000 patent practitioners registered to appear before the Office. In addition, the elimination

of the $110.00 fee will result in a modest benefit to those patent agents, as they are no longer be required to pay the fee when changing their designation from patent agent to patent attorney.

This rule also amends the rules regarding the representation of others before the USPTO by implementing new requirements and clarifying or improving existing regulations to better protect the public. This rule makes changes to the rules governing reciprocal recognition for the approximately 400 recognized foreign attorneys or agents who practice before the Office in trademark matters. These changes require any reciprocally recognized foreign attorney or agent to keep contact information up to date, provide proof of good standing as a trademark practitioner before the trademark office of the country in which they reside, and notify the OED Director of any lapse in their authorization to represent clients before the trademark office in the country in which they are registered and reside. Absent a showing of cause, failure to comply shall result in the withdrawal of the reciprocal recognition, but an opportunity for reinstatement may be offered.

The Office also makes changes to its disciplinary procedures to formalize a diversion program for patent and trademark practitioners who struggle with physical or mental health issues or law practice management issues. The program assists those practitioners in addressing the root causes of those issues, in lieu of formal discipline.

Finally, this rule makes other minor administrative changes to the regulations to simplify and otherwise improve consistency with existing requirements, thereby facilitating the public's compliance with existing regulations, including aligning with existing practice the rule governing practice before the Office by persons ineligible to become registered under § 11.6 because of their immigration status; changing the rule governing the professional independence of a practitioner to allow a practitioner to share legal fees with a non-practitioner, to form a partnership with a non-practitioner, or to be part of a for-profit association or corporation owned by a non-practitioner, provided such arrangement fully complies with the laws, rules, and regulations of the attorney licensing authority of the State(s) that affirmatively regulate(s) such arrangement; clarifying the procedures regarding disciplinary hearings and appeals of the same; and removing an inadvertent reference to ''emeritus status.''

These changes to the rules governing the recognition to practice before the Office apply to the approximately 400 reciprocally recognized trademark practitioners who currently appear before the Office and approximately 47,000 patent practitioners registered or granted limited recognition to appear before the Office, as well as licensed attorneys practicing in trademark and other non-patent matters before the Office. The USPTO does not collect or maintain statistics on the size status of impacted entities, which would be required to determine the number of small entities that would be affected by the rule. However, a large number of the changes in this rule are not expected to have any impact on otherwise regulated entities because the changes to the regulations are procedural in nature. The one change that may impose a new requirement is the provision for the approximately 400 reciprocally recognized foreign attorneys or agents to provide contact information and certificates of good standing as trademark practitioners before the trademark offices of the countries in which they reside. However, this provision is not expected to place a significant burden on those foreign attorneys or agents. The changes are expected to be of minimal or no additional burden to those practicing before the Office.

For the reasons discussed above, this rulemaking will not have a significant economic impact on a substantial number of small entities.

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

This rulemaking has been determined to be significant for purposes of E.O. 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review)

The Office has complied with E.O. 13563 (Jan. 18, 2011). Specifically, the Office has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across Government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism)

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation)

This rulemaking will not: (1) have substantial direct effects on one or more Indian Tribes; (2) impose substantial direct compliance costs on Indian Tribal governments; or (3) preempt Tribal law. Therefore, a Tribal summary impact statement is not required under E.O. 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects)

This rulemaking is not a significant energy action under E.O. 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under E.O. 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform)

This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden, as set forth in sections 3(a) and 3(b)(2) of E.O. 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children)

This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under E.O. 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property)

This rulemaking will not effect a taking of private property or otherwise have taking implications under E.O. 12630 (Mar. 15, 1988).

K. Congressional Review Act

Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the USPTO will submit a report containing the final rule and other required information to

the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this rulemaking are not expected to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995

The changes in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act of 1969

This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act of 1995

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

O. Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This rulemaking involves information collection requirements that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The collections of information involved in this rulemaking have been reviewed and previously approved by OMB under OMB control numbers 0651–0012 (Admission to Practice and Roster of Registered Patent Attorneys and Agents Admitted to Practice Before the USPTO) and 0651–0017 (Practitioner Conduct and Discipline).

This rulemaking benefits the public by improving the accuracy of the register of attorneys and agents who are permitted to practice before the USPTO in patent matters. Specifically, removing the fee to change from agent to attorney is expected to incentivize a registered patent agent who is an attorney but has not updated their registration status to do so. The fee removal reduces the estimated cost burdens associated with 0651–0012 by $27,720; (252 respondents × $110 fee = $27,720). Accordingly, the current estimate of patent agents who change to attorney in 0651–0012 are expected to increase from 252 practitioners to the new estimate of at least 340 practitioners.

The expected increase in practitioners who change their registration status will result in a slight hourly burden increase of 44 hours; (88 practitioners × 0.5 hours = 44 hours). The USPTO further estimates that this increase of 88 respondents will add seven hours of recordkeeping burden to 0651–0012; (88 practitioners × 0.083 hours = 7 hours). These burden estimates are based on the prior OMB approved burdens associated with information collection 0651–0012 and may be different from any forecasts mentioned in other parts of this rule. Overall, this final rule adds 51 burden hours and removes $27,720 in cost burdens.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information has a currently valid OMB control number.

P. E-Government Act Compliance

The USPTO is committed to compliance with the E-Government Act 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.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 11

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the USPTO amends 37 CFR parts 1 and 11 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

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

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

§ 1.21 [Amended]

■ 2. Amend § 1.21 by removing paragraph (a)(2)(iii).

PART 11—REPRESENTATION OF OTHERS BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

■ 3. The authority citation for part 11 continues to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 2(b)(2), 32, 41; Sec. 1, Pub. L. 113–227, 128 Stat. 2114.

■ 4. Amend § 11.7 by revising paragraph (l) to read as follows:

§ 11.7 Requirements for registration.

* * * * *

(l) *Transfer of status from agent to attorney.* An agent registered under § 11.6(b) may request registration as an attorney under § 11.6(a). The agent shall demonstrate their good standing as an attorney.

■ 5. Amend § 11.9 by revising paragraph (b) to read as follows:

§ 11.9 Limited recognition in patent matters.

* * * * *

(b) An individual ineligible to become registered under § 11.6 because of their immigration status may be granted limited recognition to practice before the Office in patent matters, provided the U.S. Government authorizes employment or training in the United States for the individual to represent a patent applicant by preparing or prosecuting a patent application, and the individual fulfills the provisions of paragraphs (d) and (e) of this section. Limited recognition shall be granted only for a period consistent with the terms of the immigration status and employment or training authorized. Limited recognition is subject to United States immigration rules, statutes, laws,

and regulations. If granted, limited recognition shall automatically terminate if the individual ceases to: lawfully reside in the United States, maintain authorized employment or training, or maintain their immigration status. Limited recognition shall not be granted or extended to a non-U.S. citizen residing outside the United States.

* * * * *

■ 6. Amend § 11.14 by revising paragraph (c)(1), adding a heading to paragraph (d), revising paragraph (f), and adding paragraphs (g) through (j) to read as follows:

§ 11.14 Individuals who may practice before the Office in trademark and other non-patent matters.

* * * * *

(c) * * *

(1) Any foreign attorney or agent who is not a resident of the United States who shall file a written application for reciprocal recognition under paragraph (f) of this section and prove to the satisfaction of the OED Director that they are a registered and active member in good standing as a trademark practitioner before the trademark office of the country in which they reside and practice and possess good moral character and reputation, may be recognized for the limited purpose of representing parties located in such country before the Office in the presentation and prosecution of trademark matters, provided the trademark office of such country and the USPTO have reached an official understanding to allow substantially reciprocal privileges to those permitted to practice in trademark matters before the Office. Recognition under this paragraph (c)(1) shall continue only during the period in which the conditions specified in this paragraph (c)(1) are met.

* * * * *

(d) *Effect of recognition.* * * *

* * * * *

(f) *Application for reciprocal recognition.* An individual seeking reciprocal recognition under paragraph (c)(1) of this section, in addition to providing evidence satisfying the provisions of paragraph (c)(1) of this section, shall apply in writing to the OED Director for reciprocal recognition, and shall pay the application fee required by § 1.21(a)(1)(i) of this subchapter.

(g) *Obligation to provide updated contact information and licensure status.* A practitioner granted reciprocal recognition under paragraph (c)(1) of this section shall provide to the OED Director their postal address, at least one and up to three email addresses where they receive email, and a business telephone number, as well as any change to such addresses and telephone number within 30 days of the date of the change. Any reciprocally recognized practitioner failing to provide the information to the OED Director or update the information within 30 days of the date of change is subject to having their reciprocal recognition withdrawn under paragraph (i) of this section. A practitioner granted reciprocal recognition under paragraph (c)(1) of this section shall notify the OED Director of any lapse in their authorization to represent clients before the trademark office in the country in which they are registered and reside within 30 days of the lapse.

(h) *Communications with recognized trademark practitioners.* The OED Director may address a letter to any practitioner granted reciprocal recognition under paragraph (c)(1) of this section, to the postal address last provided to the OED Director, for the purposes of ascertaining the practitioner's contact information and/or the practitioner's good standing with the trademark office in the country in which the practitioner is registered and resides. Any practitioner to whom such a letter is sent shall provide their contact information, and, if requested, a certificate of good standing with the trademark office in the country in which the practitioner is registered and resides. Any practitioner failing to reply and give any information requested by the OED Director within a time limit specified will be subject to having their reciprocal recognition withdrawn under paragraph (i) of this section.

(i) *Withdrawal of reciprocal recognition.* Upon notice that a trademark practitioner registered under paragraph (c)(1) of this section is no longer registered with, in good standing with, or otherwise eligible to practice before the trademark office of the country upon which reciprocal recognition is based; that such practitioner no longer resides in such country; or that such practitioner has not provided information required in paragraphs (g) and/or (h) of this section, and absent a showing of cause why the practitioner's recognition should not be withdrawn, the OED Director shall promptly withdraw such recognition and publish a notice of such action.

(j) *Reinstatement of reciprocal recognition.* Any practitioner whose recognition has been withdrawn pursuant to paragraph (i) of this section may reapply for recognition under paragraph (f) of this section.

■ 7. Amend § 11.19 by revising paragraph (a) to read as follows:

§ 11.19 Disciplinary jurisdiction; grounds for discipline and for transfer to disability inactive status.

(a) *Disciplinary jurisdiction.* All practitioners engaged in practice before the Office, all practitioners administratively suspended under § 11.11, all practitioners registered or recognized to practice before the Office in patent matters, all practitioners resigned or inactivated under § 11.11, all practitioners authorized under § 41.5(a) or § 42.10(c) of this chapter, and all practitioners transferred to disability inactive status or publicly disciplined by a duly constituted authority are subject to the disciplinary jurisdiction of the Office and to being transferred to disability inactive status. A non-practitioner is also subject to the disciplinary authority of the Office if the person engages in or offers to engage in practice before the Office without proper authority.

* * * * *

■ 8. Amend § 11.22 by revising paragraphs (h)(3) and (4) and adding paragraph (h)(5) to read as follows:

§ 11.22 Disciplinary investigations.

* * * * *

(h) * * *

(3) Instituting formal charges upon the approval of the Committee on Discipline;

(4) Entering into a settlement agreement with the practitioner and submitting the same for the approval of the USPTO Director; or

(5) Entering into a diversion agreement with the practitioner.

* * * * *

■ 9. Add § 11.30 to read as follows:

§ 11.30 Participation in the USPTO Diversion Program.

(a) Before or after a complaint under § 11.34 is filed, the OED Director may dispose of a disciplinary matter by entering into a diversion agreement with a practitioner. Diversion agreements may provide for, but are not limited to, law office management assistance, counseling, participation in lawyer assistance programs, and attendance at continuing legal education programs. Neither the OED Director nor the practitioner is under any obligation to propose or enter into a diversion agreement. To be an eligible party to a diversion agreement, a practitioner cannot have been disciplined by the USPTO or another jurisdiction within the past three years, except that discipline by another jurisdiction is not disqualifying if that discipline in

another jurisdiction was based on the conduct forming the basis for the current investigation.

(b) For a practitioner to be eligible for diversion, the conduct at issue must not involve:

(1) The misappropriation of funds or dishonesty, deceit, fraud, or misrepresentation;

(2) Substantial prejudice to a client or other person as a result of the conduct;

(3) A serious crime as defined in § 11.1; or

(4) A pattern of similar misconduct unless the misconduct at issue is minor and related to a chronic physical or mental health condition or disease.

(c) The diversion agreement is automatically completed when the terms of the agreement have been fulfilled. A practitioner's successful completion of the diversion agreement bars the OED Director from pursuing discipline based on the conduct set forth in the diversion agreement.

(d) A material breach of the diversion agreement shall be cause for termination of the practitioner's participation in the diversion program. Upon a material breach of the diversion agreement, the OED Director may pursue discipline based on the conduct set forth in the diversion agreement.

■ 10. Revise § 11.43 to read as follows:

§ 11.43 Motions before a hearing officer.

Motions, including all prehearing motions commonly filed under the Federal Rules of Civil Procedure, shall be served on the opposing party and filed with the hearing officer. Each motion shall set forth a basis for the requested relief, including a concise statement of the facts and supporting reasons, along with a citation of the authorities upon which the movant relies. For any motion for summary judgment or motion to dismiss, the basis shall be provided in a written memorandum accompanying the motion. All motions and memoranda shall be double-spaced and written in 12-point font unless otherwise ordered by the hearing officer. Unless the hearing officer extends the time for good cause, the opposing party shall serve and file a memorandum in response to any motion for summary judgment or motion to dismiss within 21 days of the date of service of the motion, and the moving party may file a reply memorandum within 14 days after service of the opposing party's responsive memorandum. Every motion must include a statement that the moving party or attorney for the moving party has conferred with the opposing party or attorney for the opposing party in a good-faith effort to resolve the issues raised by the motion and whether the motion is opposed. If, prior to a decision on the motion, the parties resolve issues raised by a motion presented to the hearing officer, the parties shall promptly notify the hearing officer.

■ 11. Amend § 11.44 by revising paragraph (a) to read as follows:

§ 11.44 Hearings.

(a) The hearing officer shall preside over hearings in disciplinary proceedings. After the time for filing an answer has elapsed, the hearing officer shall set the time and place for the hearing. In cases involving an incarcerated respondent, any necessary oral hearing may be held at the location of incarceration. The hearing officer may order a hearing to be conducted by remote videoconference in whole or in part. Oral hearings will be recorded and transcribed, and the testimony of witnesses will be received under oath or affirmation. The hearing officer shall conduct the hearing as if the proceeding were subject to 5 U.S.C. 556. A copy of the transcript of the hearing shall become part of the record. A copy of the transcript shall also be provided to the OED Director and the respondent at the expense of the Office.

* * * * *

■ 12. Amend § 11.52 by:

■ a. Revising paragraphs (a) and (b);

■ b. Redesignating paragraphs (c) through (f) as paragraphs (d) through (g);

■ c. Adding a new paragraph (c); and

■ d. Revising newly redesignated paragraph (d).

The revisions and addition read as follows:

§ 11.52 Written discovery.

(a) After an answer is filed under § 11.36, a party may file a motion under § 11.43 seeking authorization to propound written discovery of relevant evidence, including:

(1) A reasonable number of requests for admission, including requests for admission as to the genuineness of documents;

(2) A reasonable number of interrogatories;

(3) A reasonable number of documents to be produced for inspection and copying; and

(4) A reasonable number of things other than documents to be produced for inspection.

(b) The motion shall include a copy of the proposed written discovery requests and explain in detail, for each request made, how the discovery sought is reasonable and relevant to an issue actually raised in the complaint or the answer. Any response shall include specific objections to each request, if any. Any objection not raised in the response will be deemed to have been waived.

(c) The hearing officer may authorize any discovery requests the hearing officer deems to be reasonable and relevant. Unless the hearing officer orders otherwise, within 5 days of the hearing officer authorizing any discovery requests, the moving party shall serve a copy of the authorized discovery requests to the opposing party and, within 30 days of such service, the opposing party shall serve responses to the authorized discovery requests.

(d) Discovery shall not be authorized under paragraph (c) of this section of any matter that:

(1) Will be used by another party solely for impeachment;

(2) Is not available to the party under 35 U.S.C. 122;

(3) Relates to any other disciplinary proceeding before the Office;

(4) Relates to experts;

(5) Is privileged; or

(6) Relates to mental impressions, conclusions, opinions, or legal theories of any attorney or other representative of a party.

* * * * *

■ 13. Amend § 11.55 by revising paragraph (m) and adding paragraph (p) to read as follows:

§ 11.55 Appeal to the USPTO Director.

* * * * *

(m) Unless the USPTO Director permits, no further briefs or motions shall be filed.

* * * * *

(p) The USPTO Director may extend the time for filing a brief upon the granting of a motion setting forth good cause warranting the extension.

■ 14. Amend § 11.504 by adding paragraph (e) to read as follows:

§ 11.504 Professional independence of a practitioner.

* * * * *

(e) The prohibitions of paragraph (a), (b), or (d)(1) or (2) of this section shall not apply to an arrangement that fully complies with the laws, rules, and regulations of the attorney licensing authority of the State(s) that affirmatively regulate(s) such arrangement.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2023–14606 Filed 7–13–23; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–TRI–2022–0262; FRL–2425.1–03–OCSPP]

RIN 2025–AA17

Addition of Diisononyl Phthalate Category; Community Right-to-Know Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is adding a diisononyl phthalate (DINP) category to the list of toxic chemicals subject to the reporting requirements under the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Pollution Prevention Act (PPA). In this action, EPA is adding the DINP category to the toxic chemical list as a category defined to include branched alkyl di-esters of 1,2 benzenedicarboxylic acid in which alkyl ester moieties contain a total of nine carbons. The DINP category meets the EPCRA chronic human health effects toxicity criterion because the members of the category can reasonably be anticipated to cause serious or irreversible reproductive dysfunctions as well as other serious or irreversible chronic health effects in humans, specifically, developmental, kidney, and liver toxicity.

DATES: The final rule is effective on September 12, 2023.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–TRI–2022–0262, is available at *https://www.regulations.gov.* Additional instructions on visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Rachel Dean, Data Gathering and Analysis Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–1303; email: *dean.rachel@epa.gov.*

For general information contact: The Emergency Planning and Community Right-to-Know Hotline; telephone numbers: toll free at (800) 424–9346 (select menu option 3) or (703) 348–5070 in the Washington, DC Area and International; or go to *https://www.epa.gov/home/epa-hotlines.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you own or operate a facility that manufactures, processes, or otherwise uses any chemicals in the diisononyl phthalate (DINP) category. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Facilities subject to reporting under EPCRA section 313 include:

- Facilities included in the following NAICS manufacturing codes (corresponding to Standard Industrial Classification (SIC) codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327*, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 113310, 211130*, 212323*, 212390*, 488390*, 512230*, 512250*, 5131*, 516210*, 519290*, 541713*, 541715* or 811490*. *Exceptions and/or limitations exist for these NAICS codes.
- Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 211130* (corresponds to SIC code 1321, Natural Gas Liquids, and SIC 2819, Industrial Inorganic Chemicals, Not Elsewhere Classified); or 212114, 212115, 212220, 212230, 212290*; or 2211*, 221210*, 221330 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (corresponds to SIC codes 4911, 4931, and 4939, Electric Utilities); or 424690, 424710 (corresponds to SIC code 5171, Petroleum Bulk Terminals and Plants); 425120 (limited to facilities previously classified in SIC code 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 562112 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC code 7389, Business Services, NEC)); or 562211*, 562212*, 562213*, 562219*, 562920 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (corresponds to SIC code 4953, Refuse Systems). *Exceptions and/or limitations exist for these NAICS codes.
- Federal facilities.
- Facilities that the EPA Administrator has specifically required to report to TRI pursuant to a determination under EPCRA section 313(b)(2).

A more detailed description of the types of facilities covered by the NAICS codes subject to reporting under EPCRA section 313 can be found at: *https://www.epa.gov/toxics-release-inventory-tri-program/tri-covered-industry-sectors.* To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in 40 CFR part 372, subpart B. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

This action is issued under EPCRA sections 313(d), 313(e)(1) and 328, 42 U.S.C. 11023(d), 11023(e)(1) and 11048. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986.

EPCRA section 313, 42 U.S.C. 11023, requires owners/operators of certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their facilities' environmental releases and other waste management information on such chemicals annually. These facility owners/operators must also report pollution prevention and recycling data for such chemicals, pursuant to PPA section 6607, 42 U.S.C. 13106.

Under EPCRA section 313(c), Congress established an initial list of toxic chemicals subject to EPCRA toxic chemical reporting requirements that was comprised of 308 individually listed chemicals and 20 chemical categories.

EPCRA section 313(d) authorizes EPA to add or delete chemicals from the list and sets criteria for these actions. EPCRA section 313(d)(2) states that EPA may add a chemical to the list if the Administrator determines, in his judgment, that there is sufficient evidence to establish that any of the listing criteria in EPCRA section 313(d)(2) are met. Therefore, to add a chemical, EPA must determine that at least one criterion is met, but need not determine whether any other criterion is met. Conversely, to delete a chemical from the list, EPCRA section 313(d)(3) dictates that EPA must determine that there is not sufficient evidence to establish any of the criteria described in EPCRA section 313(d)(2). The listing criteria in EPCRA section 313(d)(2)(A)–(C) are as follows:

- The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of

continuous, or frequently recurring, releases.

- The chemical is known to cause or can reasonably be anticipated to cause in humans: cancer or teratogenic effects, or serious or irreversible reproductive dysfunctions, neurological disorders, heritable genetic mutations, or other chronic health effects.
- The chemical is known to cause or can be reasonably anticipated to cause, because of its toxicity, its toxicity and persistence in the environment, or its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

EPA often refers to the EPCRA section 313(d)(2)(A) criterion as the ''acute human health effects criterion;'' the EPCRA section 313(d)(2)(B) criterion as the ''chronic human health effects criterion;'' and the EPCRA section 313(d)(2)(C) criterion as the ''environmental effects criterion.''

Under EPCRA section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA issued a statement of policy in the **Federal Register** of February 4, 1987 (52 FR 3479) providing guidance regarding the recommended content of and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the metal compounds categories reportable under EPCRA section 313. EPA published in the **Federal Register** of November 30, 1994 (59 FR 61432) (FRL–4922–2) a statement clarifying its interpretation of the EPCRA section 313(d)(2) and (d)(3) criteria for modifying the EPCRA section 313 list of toxic chemicals.

C. What action is the Agency taking?

In response to a petition, EPA is adding DINP as a category to the list of toxic chemicals subject to the reporting requirements under section 313 of EPCRA. As discussed in more detail later in this document, EPA is concluding that the members of the DINP category meet the EPCRA section 313(d)(2)(B) criterion for listing.

Additionally, as indicated in the supplemental proposal and as is now being finalized via this rulemaking, EPA is listing DINP as a chemical category that includes all branched alkyl di-esters of 1,2 benzenedicarboxylic acid in which alkyl ester moieties contain a total of nine carbons. This category includes but is not limited to the chemicals covered by the CAS numbers and names identified by EPA at the time of this rulemaking. In the supplemental proposal, EPA identified the following chemicals: Diisononyl phthalate (CAS Number 28553–12–0), Branched dinonyl phthalate (CAS Number 71549–78–5), Branched dinonyl phthalate (CAS Number 14103–61–8), and Di(C8–10, C9 rich) branched alkyl phthalate (CAS Number 68515–48–0). EPA has since identified that Bis(7-methyloctyl) phthalate (CAS Number 20548–62–3) and Bis(3-ethylheptan-2-yl) benzene-1,2-dicarboxylate (CAS Number 111983–10–9) also meet the definition of DINP being used for this listing and thus are also being included in the listing at 40 CFR 372.65(c) to assist facilities in identifying members of the DINP chemical category.

Further, in response to public comments and further review of available information, EPA has updated the 2022 Technical Review of DINP (Ref. 1) provided with the supplemental notice of proposed rulemaking (87 FR 48128, August 8, 2022). The updated 2023 Technical Review of DINP (Ref. 2) is in the docket for this rule. For the reasons more fully explained in the updated 2023 Technical Review of DINP (Ref. 2), EPA is now listing the DINP category based on our conclusion that it is reasonably anticipated to cause serious or irreversible reproductive dysfunctions and other serious or irreversible chronic health effects in humans, including developmental, kidney, and liver toxicity. EPA has determined that the DINP can reasonably be anticipated to cause serious or irreversible chronic human health effects at moderately low to low doses and thus data show that DINP has moderately high to high human health toxicity.

As indicated previously, EPCRA section 313(d)(2) states that EPA may add a chemical to the list if the Administrator determines, in his judgment, that there is sufficient evidence to establish that any of the listing criteria in EPCRA section 313(d)(2) are met. Therefore, to add a chemical, EPA must determine that at least one criterion is met, but need not determine whether any other criterion is met. Accordingly, EPA is basing this addition on its conclusion that DINP is reasonably anticipated to cause serious or irreversible reproductive dysfunctions and other serious or irreversible chronic health effects in humans, including developmental, kidney, and liver toxicity.

Given multiple endpoint findings of serious or irreversible chronic noncancer health effects, it was not necessary for the Agency to rely on hazards related to cancer concerns as a basis for a TRI listing of a DINP chemical category. The Agency is not, with this action, taking a position as to whether or not DINP presents cancer concerns that would support a TRI listing of the chemical category. In response to comments received on the supplemental proposal, EPA has updated it hazard analysis to include additional literature on cancer-related research on DINP. However, EPA is forgoing further analysis of this particular topic as it relates to the EPCRA 313 listing criteria. Given forthcoming additional hazard analyses being conducted by the EPA (*e.g.,* pursuant to section 6 of the Toxic Substances Control Act) and ensuring that the Agency has adequate resources to conduct its other TRI activities, EPA has determined it appropriate to reduce the scope of analysis for purposes of this listing.

D. Why is the Agency taking this action?

EPA is taking this action in response to a petition submitted under EPCRA section 313(e)(1) (Ref.3). In this case, EPA is granting the petition to list DINP. Additional details about the petition are included in the 2000 proposed rule and the 2022 supplemental proposed rule (87 FR 48128, August 8, 2022).

E. What are the estimated incremental impacts of this action?

EPA prepared an economic analysis for this action entitled, ''Economic Analysis for the Addition of Diisononyl Phthalate Category; Community Right-to-Know Toxic Chemical Release Reporting'' (Ref. 4), which presents an analysis of the costs of the addition of the DINP category. EPA estimates that this action would result in an additional 198 to 396 reports being filed annually. EPA estimates that the costs of this action will be approximately $968,546 to $1,935,041 in the first year of reporting and approximately $461,212 to $921,448 in the subsequent years. In addition, EPA has determined that of the 181 to 365 small businesses affected by this action, none are estimated to incur annualized cost impacts of more than 1%. Thus, this action is not expected to have a significant adverse economic impact on a substantial number of small entities.

II. Summary of Proposed Rule

On September 5, 2000 (65 FR 53681; FRL–6722–3), in response to a petition filed under the EPCRA, EPA issued a proposed rule to add a DINP category to the list of toxic chemicals subject to the reporting requirements under EPCRA section 313 and PPA section 6607. EPA proposed to add this chemical category

to the EPCRA section 313 toxic chemical list based on the Agency's preliminary conclusion that this category met the EPCRA chronic human health effects toxicity criterion. In response to comments on the proposal, EPA revised its hazard assessment for DINP and issued a notice of data availability (NODA) requesting comments on the revised hazard assessment (70 FR 34437, June 14, 2005 (FRL–7532–4)). In the NODA, EPA proposed to list DINP based on serious or irreversible chronic health effects including liver, kidney, and developmental toxicity but reserved judgment on whether cancer was an endpoint of concern for DINP. On August 8, 2022 (87 FR 48128; FRL–2425.1–04–OCSPP), EPA published a supplemental proposal, providing updated supporting materials for the proposal (*e.g.,* hazard assessment for DINP (*i.e.,* 2022 Technical Review of DINP) (Ref. 1)).

III. Summary of Comments Received and EPA Responses

EPA received 15 comments on the supplemental proposed rule. Two comments came from trade associations: the American Chemistry Council (ACC) and the National Association of Chemical Distributors (NACD). Two comments came from environmental/public interest groups: Earthjustice (including Alaska Community Action on Toxics, Breast Cancer Prevention Partners, Center for Environmental Health, Center for Food Safety, Defend Our Health, Learning Disabilities Association of America, Sierra Club) and Environmental Defense Fund (EDF). One comment also came from an individual company: UPC Technology Corporation (UPC). Nine of the on-topic comments came from both private citizens and an anonymous commenter. There was also one off-topic anonymous comment. This unit provides summaries of the most significant comments and EPA's responses. A complete set of comments and EPA's detailed responses can be found in the Response to Comments (RTC) document that is available in the docket for this rulemaking (Ref. 5).

A. Comments Supporting EPA's Proposed Listing of DINP

Earthjustice, EDF, and all private citizens and the anonymous commenter expressed support for EPA's proposed addition of DINP to the TRI list. Additionally, Earthjustice urged EPA to work quickly to publish the rule as EPCRA does not require multiple toxicity endpoints for listing.

B. Comments on the Listing Standard

Comment: UPC disagreed with EPA's proposed listing. UPC claimed that adding DINP to the TRI chemicals list will cause companies to shift away from DINP, instead dealing with chemicals which have not been as well reviewed as DINP, and might be more toxic than DINP, and that listing DINP would create a barrier to international trade. They cited European Chemicals Agency 's (ECHA's) 2018 decision not to label DINP as a hazardous chemical as justification for why DINP would not satisfy EPCRA's requirements for listing.

EPA response: EPA respectfully disagrees with the commenter that DINP does not meet the TRI chemical listing criteria specified in EPCRA section 313(d)(2). Additionally, the fact that a chemical is not on a given organization's ''hazardous chemical'' list does not mean that the chemical fails to meet the EPCRA section 313(d)(2) listing criteria. The Agency's full rationale for listing the DINP category is detailed in the 2023 Technical Review of DINP (Ref. 2) and Response to Comments (Ref. 5).

Comment: ACC also disagreed with EPA's proposed listing of DINP. They asserted that EPA did not apply the correct legal standard because the Agency did not list DINP based on ''cancer, birth defects, or serious or irreversible reproductive dysfunctions, neurological disorders, or heritable genetic mutations.'' ACC also asserts that EPA improperly put the onus on the commenters to prove that DINP *is not* adverse to humans, rather than EPA showing that it *is* adverse to humans; and that EPA is assuming or ''suspects'' that DINP is a hazard, rather than having sufficient information that it does, in fact, meet the listing criteria.

EPA response: Section 313(d)(2) of EPCRA sets out the legal standard for adding new chemicals to the TRI list, and EPA applied this standard when deciding to add DINP. Commenters incorrectly describe this standard, which allows for listing based on sufficient evidence to establish any one of several criteria, including that the chemical is known to cause or can reasonably be anticipated to cause in humans ''cancer or teratogenic effects, or serious or irreversible reproductive dysfunctions, neurological disorders, heritable genetic mutations, or other chronic health effects''. The Agency reasonably relied on hazards identified from animal studies which could plausibly be extrapolated to humans based on a weight of evidence (WoE) evaluation of health hazards posed by DINP in determining that DINP can reasonably be anticipated to cause one or more serious or irreversible chronic health effects in humans.

As documented in the 2023 Technical Review of DINP (Ref. 2), the evidence available to EPA is sufficient to establish that DINP can reasonably be anticipated to cause in humans serious or irreversible reproductive dysfunctions as well as other serious or irreversible chronic health effects in humans, specifically, developmental, kidney, and liver toxicity. This evidence includes evidence of developmental toxicity, such as: reduced pup weights, skeletal variations, and dilated renal pelvises; and also evidence of reproductive dysfunctions such that ''gestational exposure to DINP has been shown to induce effects consistent with the spectrum of effects such as reduced fetal testicular testosterone, decreased AGD, increased male pup nipple retention, altered reproductive organ weight, testicular pathology, and a low incidence of reproductive tract malformation in some studies (such effects are sometimes generally referred to as 'phthalate syndrome').'' (Ref. 2). This evidence also includes evidence of other serious or irreversible chronic health effects; specifically, non-cancer liver and kidney toxicity.

Comment: ACC points to studies in non-human primates to argue that primates are much less sensitive to DINP than are rodents. ACC argues that the timeline of the primate studies was similar to that of rodent studies, so they should be considered.

EPA response: The commenter's argument does not consider the explanation that the short study duration (especially relative to the lifespan of the test species) accounts for the lack of treatment-related effects, and instead attributes the differential toxicity to differences in species sensitivity. ACC was referring to a 14-day study in macaques (Ref. 6) and a 90-day study in marmosets (Ref. 7). The marmoset study did show decreases in body weights and body weight gains in both sexes. However, the non-human primate studies were not further evaluated due to being considered insufficient in study design and duration to evaluate DINP for carcinogenicity as well as for potential reproductive and developmental effects.

C. Comments Related to Hazard: Cancer

Comment: ACC commented on EPA's proposal to list DINP based on cancer as an endpoint, and stated that the EPA could not list DINP on the TRI simply because it was on the California Prop 65 list. ACC further commented that certain animal tumors discussed in the

2022 Technical Review of DINP (Ref. 1) as evidence for listing DINP due to carcinogenicity (including alpha-2u-globulin-mediated kidney cancers in male rats, mononuclear cell leukemia (MNCL), and PPARα-mediated liver tumors) are not indicative of human hazard. The comment claimed that there is significant evidence to show that all three DINP-induced rodent tumors are specific to rodents and not relevant to human cancer.

EPA response: EPA's decision to list DINP on the TRI is based on EPA's analysis of the available data, and not, as the commenter appears to suggest, on a decision made by another regulatory body. Moreover, as explained in greater detail in the Response to Comments (Ref. 5), EPA has decided not to rely on a cancer endpoint for this action to add a DINP chemical category to the TRI chemical list.

As explained in greater detail in the 2023 Technical Review of DINP (Ref. 2), in this action EPA is adding DINP to the TRI chemical list based on toxicity data demonstrating that these chemicals can be reasonably anticipated to cause serious or irreversible reproductive dysfunctions and other serious or irreversible chronic human health effects, including developmental, liver, and kidney effects. EPA revised the 2022 Technical Review of DINP (Ref. 1) regarding the evaluation of MNCL and tumors in the liver and kidney, in addition to including a new section on ''Tumors Observed in Other Organs'' under the Conclusions on Carcinogenicity Section of the 2023 Technical Review of DINP (Ref. 2). This section provides a brief discussion of the data for pancreatic islet cell carcinomas, testicular interstitial (Leydig) cell carcinomas and uterine adenocarcinomas. EPA did not, however, base its decision to list DINP on these data.

D. Comments Related to Hazard: Reproductive Dysfunctions and Developmental Toxicity

Comment: ACC asserted that, ''in addition to animal evidence, human evidence, where available, would be crucial to the EPA's evaluation, including the developmental endpoint for DINP. However, neither the EPA's Supplemental Notice nor the Revised Technical Review for DINP includes any of the growing epidemiological evidence''.

EPA response: The Agency acknowledges that the evidence of developmental hazard presented to support the listing of DINP on the TRI focused on the evidence in developmental toxicity and reproduction studies in laboratory animals. The Agency determined that this evidence is extensive and unambiguous in interpretation. EPA notes that the epidemiology data on developmental hazard, although pertinent, do not negate the importance of the animal data, especially given the extent of evidence provided by animal data. Further, inconsistent results make it difficult to draw a definitive conclusion on hazard concerns from epidemiological data on DINP. Therefore, EPA determined that the epidemiological studies are not required to inform the Agency's decision to list DINP on the TRI. EPA's discussion of the epidemiological data referenced by ACC in its comment is addressed further in the Response to Comment document (Ref. 5). Furthermore, the Agency does not consider the lack of presentation of epidemiological evidence to detract from the strength of evidence of both developmental and reproductive hazard posed by DINP represented in the animal studies.

Comment: Reduced pup weights were reversible or transient, inconsistently observed, not statistically significant, and did not cause any adverse effects in older rats, so they should not be considered ''serious or irreversible'' effects.

EPA response: EPA disagrees with the characterization of the body weight decreases as transient, which is typically interpreted in evaluation of toxicology studies as the effect being temporary in the presence of continued exposure. In the two major studies cited (both discussed in Waterman *et al.,* 2000 (Ref. 8)), statistical significance was achieved at multiple timepoints. Particularly in the two-generation study (Ref. 8), the decreased F1 offspring body weights became *more* pronounced in statistical significance and in magnitude difference from controls, and occurred at lower doses as the post-natal period proceeded. The effects of DINP on body weight occurred in both sexes and across generations and generally increased in significance and magnitude with time; and importantly, occurred at lower doses in offspring compared to parents.

Regarding ACC's comment that reduced pup weight results are inconsistent, EPA acknowledges that in some studies with shorter exposure durations, longer term effects on growth may not be apparent. In the study by Clewell *et al.* (Ref. 9), pregnant rats were administered DINP in the diet from gestational day (GD) 12 through postnatal day (PND) 14. However, even with this shorter exposure duration, dams exhibited reduced body weight, body weight gain, and food consumption during gestation and lactation at 750 mg/kg/day. Offspring body weights of males were decreased at PND 14 at the high dose on PND 2 (↓12%) and dose-dependently at both the mid- and high-dose on PND 14 (↓10–27%) at termination of dosing. The fact that the male offspring body weights were not significantly decreased by PND 49–50 (↓4%; NS) with no exposure to DINP since PND 14 (~35 days) does not equate to transient decreases (those that occur with continued exposure).

Furthermore, an additional study showed that decreased body weights persisted after the treated period ended. Masutomi *et al.* (Ref. 10) evaluated developmental effects in the offspring of female Sprague-Dawley rats exposed to DINP in the diet at concentrations of 0, 400, 4,000, or 20,000 ppm from GD 15 to PND 10. Even though treatment ceased on PND 10, prepubertal body weights of offspring were still significantly decreased on PND 27. Importantly, the decreased body weight in male offspring occurred at a lower dose than affected maternal body weights, indicating heightened relative sensitivity of male offspring exposed in utero compared to parents. Finally, it is important to note that these decreases were substantial, with decreases of 18% in mid-dose males and 39–47% in high dose males and females, and were highly significant ($p<0.01$). This supporting evidence shows that adverse effects are seen in prepubertal rats born to exposed pregnant females; it can be reasonably expected that results would persist into adulthood.

In short, the decreases in body weight and weight gain in the animals in the reproduction and developmental toxicity studies on DINP are ''serious,'' in part, because they increase in magnitude and significance with time exposed and across generations and occur at lower doses in offspring than in parents.

Comment: ACC questioned EPA's use of skeletal effects and dilated renal pelvises as evidence of DINP toxicity to developmental health. ACC stated that the conclusions of the ECHA and Australia's National Industrial Chemicals Notification and Assessment Scheme (NICNAS) are that supernumerary ribs are common anomalies in rodents which can only be ''indicative of slight developmental effects.'' ACC asserted that animals in multi-generation studies thrived and there was no evidence of adverse effects related to these variations. ACC also asserted that the agency itself is unsure of the biological relevance of increased

rib variations in rats. For the renal pelvises effects, ACC stated that the dilated renal pelvises reported in Waterman *et al.* (2000) (Ref. 8) and Hellwig *et al.* (1997) (Ref. 11) are transient, of doubtful biological and statistical significance, and occur only at maternally toxic doses.

EPA response: Supernumerary ribs are larger (longer) structures with distal cartilage present and are likely to be permanent, ultimately remaining as distinct ribs; whereas ossification sites are smaller (shorter) structures without distal cartilage and are likely to be transient.

The developmental variations seen in Waterman *et al.* (1999) (Ref. 12) include significantly increased incidences of rudimentary lumbar ribs at 500 and 1,000 mg/kg-day, compared to controls. Additionally, incidences of supernumerary cervical ribs were significantly increased at 1000 mg/kg-day, compared to controls. The authors noted that supernumerary lumbar ribs ''have been associated with nonspecific maternal toxicity''; however, this does not preclude its relevance, and it is important to note that significantly increased incidences of rudimentary lumbar ribs were noted at a dose lower than that at which maternal toxicity was observed. Furthermore, no corroborating findings of delayed fetal ossification, which would suggest that fetal effects were secondary to maternal effects, were reported at the high dose in this study. ACC has taken the Agency's statement from the 2022 Technical Review of DINP (Ref. 1) out of context. The full statement was: ''Therefore, although the biological significance of a statistically significant increase in rib variations is uncertain, the Agency believes that the dose-related response observed in the Waterman *et al.* (1999) (Ref. 12) study may represent growth alterations that are indicative of DINP's potential to disrupt normal developmental patterns and produce a developmental hazard.'' The Agency reiterates its conclusion that DINP can reasonably be anticipated to be developmentally toxic to humans.

EPA acknowledges that the dilated renal pelvises observed in Hellwig *et al.* (1997) (Ref. 11) were consistently increased over controls only at the high dose of 1000 mg/kg-day. However, the fact that this fetal finding in this study was noted at a dose that was toxic to the maternal animals does not preclude its toxicological relevance to offspring. And it is important to note that, for DINP–3, increased dilated renal pelvises observed at 1000 mg/kg-day were accompanied in some instances by renal malformations (*e.g.,* hydroureter, agenesis or absence of kidney). Furthermore, in the developmental toxicity study in rats conducted by Waterman *et al.* (1999) (Ref. 12), fetal and litter incidences of dilated renal pelvis were statistically significant and dose-dependently increased in *all* treated groups, whereas maternal toxicity, as evidenced by decreased body weights and weight gains during treatment, was affected only at the high dose of 1000 mg/kg-day. EPA disagrees with the characterization that dilated renal pelvis is a ''normal developmental phenomenon'' (as stated by NICNAS), but acknowledges that the toxicological relevance is dependent upon the incidence and severity. Nevertheless, the commenters mischaracterized NICNAS's conclusion on these variations. The full statement from NICNAS reads: ''These variations are relatively common in rodents; *however,* the induced frequencies (78% vs 25% control for rudimentary lumbar ribs, and 26% vs 0% control for dilated renal pelvises) were outside historical control ranges and thus interpreted as indicative of slight developmental effects.'' (Ref. 13, emphases added). Therefore, NICNAS also interpreted the renal pelvis and additional lumbar ribs to be indicative of adverse effects of DINP.

To summarize, dilated renal pelvises incidences in these studies are treatment-related, and it remains to be seen whether the findings are reversible/transient because that depends on the severity of the effects. However, it is the Agency's determination that dilated renal pelvises, in addition to renal malformations, even at doses with observed maternal toxicity, are biologically significant, and contribute to the WoE for DINP as a developmental toxicant.

Comment: ACC asserted that DINP does not cause a serious or irreversible effect on anogenital distance (AGD) or nipple retention in animals, citing a lack of statistical significance in Clewell *et al.* (2013) (Ref. 14) for AGD and Gray *et al.* (2000) (Ref. 15) for nipple retention. ACC stated that these effects, if they occur, are only transient and do not persist into adulthood. Finally, ACC asserts that DINP is not associated with male reproductive malformations in humans.

EPA response: EPA acknowledges that there is some inconsistency in reporting of significant effects on AGD across available studies of DINP and that permanent, statistically significant reductions in AGD have not been reported in adult offspring following gestational exposure to DINP. However, reduced AGD in males is only one of many effects that make up phthalate syndrome (or androgen insufficiency syndrome). As described in EPA's 2023 Technical Review of DINP (Ref. 2), gestational exposure to DINP has been shown to induce effects consistent with the spectrum of effects that comprise phthalate syndrome (*e.g.,* reduced fetal testicular testosterone, decreased AGD, increased male pup nipple retention, altered reproductive organ weight, testicular pathology, and a low incidence of reproductive tract malformation in some studies). Therefore, EPA still considers a decrease in AGD to be a potential adverse and serious outcome of DINP exposure and a reflection of the suite of effects that comprise phthalate syndrome.

EPA also acknowledges that there is some inconsistency in reporting of nipple retention across available studies of DINP. In Gray *et al.* (2000) (Ref. 15), the finding of permanent nipples in DINP-treated rats was accompanied by several abnormalities in the testes, including testicular atrophy, epididymal agenesis with hypospermatogenesis, and scrotal fluid-filled testis devoid of spermatids. This syndrome may result from inhibition of fetal testis hormone production during sexual differentiation, a process that is critical in all mammals including humans. Furthermore, the finding of nipple retention was not exclusively noted in Gray *et al.* (2000) (Ref. 15). For example, Boberg *et al.* (2011) (Ref. 16) demonstrated a dose-dependent and statistically significant increase in the number of retained nipples in DINP-exposed (GD 7 to PND 19) male pups on PND 13 at 750 mg/kg-day (3.14) and 900 mg/kg-day (3.17) compared to controls (1.98), which ACC failed to mention when citing the findings in the study at PND 90.

In addition to the male reproductive malformations noted in the two studies by Gray *et al.* (2000 (Ref. 15), 2023 (Ref. 17)), EPA discussed the findings of ten additional studies in its 2023 Technical Review of DINP (Ref. 2) which support the WoE for serious adverse impacts on the male reproductive tract. Such effects include: decreased body weight at the onset of puberty; decreased weights of the testes, levator ani plus bulbocavernosus muscles (LABC), and seminal vesicles; decreased testosterone, percent motile sperm, and AGD; increased incidences of multinucleated gonocytes (MNGs) in testes, large Leydig cell aggregates, degeneration of stage XIV meiotic spermatocytes, vacuolar degeneration of Sertoli cells, and scattered cell debris in the epididymal ducts; and effects on male copulatory

behavior (reduced number of mounts, intromissions, and ejaculations).

Phthalate syndrome may result from inhibition of fetal testis hormone production during sexual differentiation, a process that is critical in all mammals including humans. EPA concludes that humans can reasonably be anticipated to be affected if exposed to sufficient concentrations of DINP or its metabolites at critical stages of reproductive development.

E. Comments Related to Hazard: Liver Toxicity

Comment: ACC commented on EPA's identification of spongiosis hepatis as a treatment-related lesion in rats exposed to DINP, and the Agency's position that the occurrence is relevant to human health; more specifically, ACC asserted that the mere fact that a lesion is treatment-related in a rat does not mean it will occur in humans. ACC further stated that the effect did not occur in mice exposed to similar levels of DINP, and that it is not a serious or irreversible effect, even in rats, because EPA did not state whether spongiosis hepatis is linked to any other adverse pathological or toxicological process detrimental to the health of affected rats. ACC added that liver enzyme changes in studies appeared to be sporadic and not indicative of serious liver damage. ACC concluded that spongiosis hepatis is not relevant to human health.

Response: EPA disagrees with ACC's conclusion and maintains that the finding of spongiosis hepatis in rats has human relevance as one of multiple indicators of adverse outcomes to the liver post-DINP exposure. While the human relevance of spongiosis hepatis, in particular, is unclear, that does not preclude its relevance in a WoE evaluation of evidence of hepatotoxicity in the rat, and the Agency does not consider the lack of evidence of a direct human correlate of spongiosis hepatis to detract from the extrapolation of that evidence in animals to relevance to human health. The Agency references Lington *et al.* (1997) (Ref. 18) for the co-occurring findings of other histopathology effects in the liver due to DINP treatment including focal necrosis, hepatopathy associated with leukemia, and hepatocellular enlargement in both sexes, in addition to sinusoid ectasia in males. The Agency also references Moore *et al.* (1998a) (Ref. 19) and Bio/dynamics (1987) (Ref. 20) for co-occurring findings in the liver, including cytoplasmic eosinophilia, diffuse hepatocellular enlargement, and increased pigment in both sexes, and additionally individual cell degeneration/necrosis in the males. Moore *et al.* (1998b) (Ref. 21) also conducted a 2-year study in mice and found similar adverse treatment-related effects on the liver. In all these studies, increases in key indicator enzymes were also observed.

The Agency acknowledges that treatment-related effects on the liver are often along a continuum, with effects early on and at lower doses reflecting an adaptive response (often indicated by increased liver weights and/or hepatocellular hypertrophy) but progressing to an adverse response at prolonged or higher doses, characterized by adverse findings in clinical chemistry and histopathology. While induction of CYP450s as a metabolic activation response of the liver may be an adaptive response, increases in ALT are indicative of liver damage and inherently adverse, and the clinical interpretation of this finding is conserved across species, including humans. For certain enzymes (*e.g.,* ALT), increases, as well as various enzymatic activities when considered with other effects such as histopathology lesions, are adverse effects and support the conclusion that DINP induces serious chronic effects in the liver beyond liver enlargement. Thus, the Agency disagrees with ACC's assertion that the increases in liver weights and enzymes seen in these studies are an adaptive response or are non-serious in the total weight of evidence.

F. Comments Related to Hazard: Kidney Toxicity

Comment: ACC commented that: (a) DINP does not cause and cannot reasonably be anticipated to cause rodent chronic progressive nephropathy (CPN) in human kidneys, as no human analog exists; (b) while EPA may ''speculate,'' per ACC's characterization, that chemicals that cause CPN in rodents may cause other kidney effects in humans, such ''speculation'' is not appropriate for a TRI listing; and (c) even the EPA's ''speculation'' is unlikely to be supported, as there is minimal evidence that DINP is associated with any kidney disease in humans. ACC further points to the lack of adverse effects seen in primate studies as evidence that DINP is not relevant to human health.

EPA response: Although the *mechanism* of DINP-induced kidney toxicity may not be clear, the kidneys are clearly a target of DINP-induced toxicity which can reasonably be anticipated to cause serious or irreversible chronic health effects in humans, as evidenced by increases in absolute and relative kidney weights, clinical chemistry (*e.g.,* increased blood urea nitrogen), urinalysis changes, and findings in gross pathology (*e.g.,* granular pitted/rough kidneys), and histopathology (*e.g.,* reduction in the tubular space and oedema of epithelial cells in the glomeruli, a loss of loop points in the glomerular capillaries, increased granular casts and regenerative/basophilic tubules) in rats and mice. EPA disagrees with ACC's conclusion that the changes in kidney weights in rats are not relevant to human kidney toxicity, and asserts that the lack of an effect in the primate studies ACC mentioned is plausibly related to the shorter duration of dosing relative to the life span of the animal instead of indicating a lack of relevance to humans. (See the ''Generally: EPA has Failed to Apply the Correct Legal Standard in this Case'' section.) Given that increased kidney weight appears as a consistent effect among other kidney injuries following DINP exposure, EPA believes it to be relevant in the WoE supporting DINP kidney toxicity. EPA acknowledges that, in a letter to the U.S. EPA IRIS Program (NIEHS 2019) (Ref. 22), U.S. NTP concluded that the ''morphological spectrum of CPN have no analog in the human kidney and that CPN is distinct entity in the rat (Hard *et al.,* 2009) (Ref. 23).'' However, NTP also acknowledged that ''The etiology of CPN is unknown and represents a complex disease process in rats. Given the fact that there is no definitive pathogenesis for this multifactorial disease process, it cannot be fully ruled out that chemicals which exacerbate CPN in rats may have the potential to exacerbate disease processes in the human kidney.'' Subsequently, the EPA IRIS Program in its toxicological reviews of tert-Butanol (EPA 2021a) (Ref. 24) and ethyl tertiary butyl ether (EPA 2021b) (Ref. 25) (chemicals which cause CPN in male and female rats) concluded that ''a chemical that exacerbates CPN in rats could also exacerbate disease processes in the human kidney'' and that other effects in the kidney were observed that were not confounded by alpha 2u-globulin related processes, and kidney toxicity was selected as the basis of the oral noncancer reference doses that were derived. Similarly, for DINP, available studies demonstrate a spectrum of effects on the kidney. Given the WoE when considering the other effects involving the kidney, and EPA's position, based on the Agency's technical expertise, that chemicals which exacerbate CPN in rodents could also exacerbate disease processes in the human kidney, DINP can reasonably be anticipated to cause serious and/or

irreversible harm to the kidney based on the literature reviewed.

Furthermore, the EPA disagrees with ACC's assertion that the kidney toxicity seen in female mice is irrelevant to human health. Although α-2u-globulin MOA is male rat-specific and has been shown not to be relevant to humans, the MOA for kidney toxicity for female rats and male and female mice remains unclear and so in order to be protective of human health, EPA maintains that CPN is relevant to human health and contributes to the WoE for kidney toxicity for this non-cancer endpoint. A study by Ma *et al.* (Ref. 26) found that oxidative stress may be involved in the hepatic and renal toxicities associated with DINP exposure. In order to be protective of human health, the EPA maintains that oxidative stress-related mechanism are relevant to human health. EPA would like to direct ACC's attention to the ''Conclusions on Chronic Non-cancer Toxicity'' section 2.5.6.2 on ''Kidney Effects'' in the 2023 Technical Review of DINP (Ref. 2) for further details.

G. Comments Related to Exposure

Comment: ACC argued that due to its physico/chemical properties, community exposure to DINP via environmental release is negligible.

EPA response: As EPA has previously stated, including in the supplemental proposal for this rulemaking (87 FR 48128), it is not appropriate to consider exposure for chemicals that are moderately high to highly toxic based on a hazard assessment when determining if a chemical should be added for chronic human health effects pursuant to EPCRA section 313(d)(2)(B) (see 59 FR 61440–61442). EPA concludes that DINP can reasonably be anticipated to cause serious or irreversible chronic human health effects at moderately low to low doses including serious or irreversible reproductive dysfunctions as well as other serious or irreversible chronic health effects in humans, specifically, developmental, kidney, and liver toxicity. The data for DINP demonstrates that DINP has moderately high to high human health toxicity. For listings pursuant to EPCRA section 313(d)(2)(A), EPA must consider whether ''chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.'' However, even pursuant to such listings, the Agency need not confirm that communities are actually exposed to the given chemical, but rather that concentration levels of concern are reasonably likely to exist beyond a facility's boundaries as a result of releases. Further, listings based on EPCRA section 313(d)(2)(B) (as well as EPCRA section 313(d)(2)(C)) do not require an exposure assessment, but rather are based on hazard alone.

Therefore, in accordance with EPA's standard policy on the use of exposure assessments (see November 30, 1994 (59 FR 61432, FRL–4922–2), an exposure assessment is neither necessary nor appropriate for determining whether DINP meets the criteria of EPCRA section 313(d)(2)(B).

Additionally, EPA notes that EPCRA indicates that TRI reporting forms are intended to provide information to governments and the public to inform persons about releases of toxic chemicals to the environment, assist in the conduct of research and data gathering, and to aid in the development of regulations and other similar purposes (see EPCRA section 313(h)). Accordingly, even if releases are very small, the data reported is still useful. For example, such reporting might indicate that a toxic chemical being used in the community is not being released at levels of concern, which would be reassuring to residents. Further, how the public or any particular entity may make use of TRI data on a particular chemical need not factor into whether or not that chemical is on the TRI list of chemicals.

IV. Summary of the Final Rule

EPA is finalizing the addition of a DINP category to the EPCRA section 313 list of toxic chemicals. Based on EPA's review of the available toxicity data, EPA has determined that these chemicals can be reasonably anticipated to cause serious or irreversible reproductive dysfunctions as well as serious or irreversible chronic human health effects in humans, including developmental, kidney, and liver toxicity. Therefore, EPA has determined that the evidence is sufficient for listing the DINP category on the EPCRA section 313 toxic chemicals list pursuant to EPCRA section 313(d)(2)(B).

V. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not itself physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. USEPA. Technical Review of Diisononyl Phthalate. Office Pollution Prevention and Toxics, Data Gathering and Analysis Division and Existing Chemicals Risk Assessment Division. April 11, 2022.
2. USEPA. Technical Review of Diisononyl Phthalate [updated]. Office Pollution Prevention and Toxics, Data Gathering and Analysis Division and Existing Chemicals Risk Assessment Division. June 2023.
3. Letter to EPA Administrator Carol M. Browner, Re: Petition to Add Diisononyl Phthalate (DINP) to the Emergency Planning and Community Right-to-Know Act Section 313 List of Toxic Chemicals. From Laurie Valeriano, Policy Director, Wastington Toxics Coalition. February 24, 2000.
4. USEPA. Economic Analysis for the Addition of Diisononyl Phthalate Category; Community Right-to-Know Toxic Chemical Release Reporting. Prepared by Abt Associates. April 20, 2023.
5. USEPA. Response to Comments Received on the August 8, 2022, Proposed Rule (87 FR 48128): Addition of Diisononyl Phthalate Category; Community Right-to-Know Toxic Chemical Release Reporting. June 2023.
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13. Australia NICNAS, Priority existing chemical assessment report no. 35. Diisononyl phthalate. September 2012, Australian Government Department of Health and Ageing: Sydney, Australia. *https://www.industrialchemicals.gov.au/sites/default/files/PEC35-Diisononyl-phthalate-DINP.pdf.*
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VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023), and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA, 44 U.S.C. 3501 *et seq.* Burden is defined in 5 CFR 1320.3(b). OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2070–0212 and 2050–0078.

Currently, the facilities subject to the reporting requirements under EPCRA section 313 and PPA section 6607 may use either EPA Toxic Chemicals Release Inventory Form R (EPA Form 9350–1), or EPA Toxic Chemicals Release Inventory Form A (EPA Form 9350–2). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. In addition, respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322, 42 U.S.C. 11042, 40 CFR part 350.

OMB has approved the reporting and recordkeeping requirements related to Forms A and R, supplier notification, and petitions under OMB Control number 2070–0212 (EPA Information Collection Request (ICR) No. 2613.02) and those related to trade secret designations under OMB Control 2050–0078 (EPA ICR No. 1428). As provided in 5 CFR 1320.5(b) and 1320.6(a), 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 OMB control numbers relevant to EPA's regulations are listed in 40 CFR part 9 and displayed on the information collection instruments (*e.g.,* forms, instructions).

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action are small manufacturing facilities. The Agency has determined that no small governments or small organizations are expected to be affected by this action; and that of the 198 to 396 entities estimated to be impacted by this action, 181 to 365 are small businesses. All small businesses affected by this action are estimated to incur annualized cost impacts of less than 1%. Thus, this action is not expected to have a significant adverse economic impact on a substantial number of small entities. A more detailed analysis of the impacts on small entities is located in EPA's economic analysis (Ref. 4).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments and EPA did not identify any small governments that would be impacted by this action. EPA's economic analysis indicates that the total industry cost of this action is estimated to be $968,546 to $1,935,041 in the first year of

reporting and $461,212 to $921,448 in subsequent years (Ref. 4).

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not have substantial direct effects on tribal governments, 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 action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of Executive Order 13045. This action is not subject to Executive Order 13045, because it does not concern an environmental health or safety risk. Since this action does not concern human health, EPA's Policy on Children's Health also does not apply.

Although this action does not concern an environmental health or safety risk, the data collected as a result of this action will provide information about releases to the environment that could be used to inform the public on potential exposures to toxic chemical releases, pursuant to the right-to-know principles. EPA also believes that the information obtained as a result of this action could be used by government agencies, researchers, and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential exposures and related human health or environmental risks identified as a result of increased knowledge of exposures to DINP.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards under the NTTAA section 12(d), 15 U.S.C. 272.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or indigenous peoples) and low-income populations.

EPA believes that it is not practicable to assess whether the human health or environmental conditions that exist prior to this action result in disproportionate and adverse effects on people of color, low-income populations and/or indigenous peoples. This action adds a chemical category to the EPCRA section 313 reporting requirements; it does not directly address any human health or environmental risks and does not affect the level of protection provided to human health or the environment. However, EPA believes that the information obtained as a result of this action could be used by the public (including people of color, low-income populations and/or Indigenous peoples) to inform their behavior as it relates to sources of DINP exposure, or by government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce those exposures, as well as assess any potential human health or environmental risks.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: July 6, 2023.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, for the reasons set forth in the preamble, EPA is amending 40 CFR part 372 as follows:

PART 372—TOXIC CHEMICAL RELEASE REPORTING: COMMUNITY RIGHT–TO–KNOW

■ 1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

■ 2. In § 372.65, adding in alphabetical order an entry to Table 3 in paragraph (c) for ''Diisononyl Phthalates (DINP)'' to read as follows:

§ 372.65 Chemicals and chemical categories to which this part applies.

* * * * *

(c) * * *

TABLE 3 TO PARAGRAPH (c)

Category name	Effective date
* * * * * * *	
Diisononyl Phthalates (DINP): Includes branched alkyl di-esters of 1,2 benzenedicarboxylic acid in which alkyl ester moieties contain a total of nine carbons. (This category includes but is not limited to the chemicals covered by the CAS numbers and names listed here) 28553–12–0 Diisononyl phthalate. 71549–78–5 Branched dinonyl phthalate.	1/1/2024

TABLE 3 TO PARAGRAPH (c)—Continued

Category name		Effective date
14103–61–8	Bis(3,5,5-trimethylhexyl) phthalate.	
68515–48–0	Di(C8–10, C9 rich) branched alkyl phthalates.	
20548–62–3	Bis(7-methyloctyl) phthalate.	
111983–10–9	Bis(3-ethylheptan-2-yl) benzene-1,2-dicarboxylate.	
*	* * * * * * *	

[FR Doc. 2023–14642 Filed 7–13–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230224–0053; RTID 0648–XD061]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the West Yakutat District of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2023 total allowable catch of Pacific ocean perch in the West Yakutat District of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), July 11, 2023, through 2400 hours, A.l.t., December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR parts 600 and 679.

The 2023 total allowable catch (TAC) of Pacific ocean perch in the West Yakutat District of the GOA is 1,370 metric tons (mt) as established by the final 2023 and 2024 harvest specifications for groundfish of the GOA (88 FR 13228, March 2, 2023).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2023 TAC of Pacific ocean perch in the West Yakutat District of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,270 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the GOA. While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing of Pacific ocean perch in the West Yakutat district of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 10, 2023.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Kelly Denit,

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

[FR Doc. 2023–14952 Filed 7–11–23; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230224–0053; RTID 0648–XD062]

Fisheries of the Exclusive Economic Zone Off Alaska; Dusky Rockfish in the West Yakutat District of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for dusky rockfish in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2023 total allowable catch of dusky rockfish in the West Yakutat District of the GOA.

DATES: Effective noon Alaska local time (A.l.t.), July 11, 2023, through midnight, A.l.t., December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR parts 600 and 679.

The 2023 total allowable catch (TAC) of dusky rockfish in the West Yakutat District of the GOA is 90 metric tons

(mt) as established by the final 2023 and 2024 harvest specifications for groundfish of the GOA (88 FR 13238, March 2, 2023).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2023 TAC of dusky rockfish in the West Yakutat District of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 60 mt, and is setting aside the remaining 30 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for dusky rockfish in the West Yakutat District of the GOA. While this closure is effective, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the closure of directed fishing of dusky rockfish in the West Yakutat district of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 10, 2023.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: July 11, 2023.

Kelly Denit,

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

[FR Doc. 2023–14972 Filed 7–11–23; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 134
Friday, July 14, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 843

[Docket ID: OPM–2023–0008]

RIN 3206–AO13

Federal Employees' Retirement System; Present Value Conversion Factors for Spouses of Deceased Separated Employees

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule to revise the table of reduction factors for early commencing dates of survivor annuities for spouses of separated employees who die before the date on which they would be eligible for unreduced deferred annuities. The annuity factor for spouses of deceased employees who die in service when those spouses elect to receive the basic employee death benefit in 36 installments under the Federal Employees' Retirement System (FERS) Act of 1986 remains unchanged. These proposed revisions are necessary to ensure that the tables conform to the economic and demographic assumptions adopted by the Board of Actuaries and published in the **Federal Register** on April 14, 2023, as required by law.

DATES: Send comments on or before August 14, 2023.

ADDRESSES: You may submit comments identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Karla Yeakle, (202) 606–0299.

SUPPLEMENTARY INFORMATION: On April 14, 2023, OPM published a notice at 88 FR 23108 in the **Federal Register** to revise the normal cost percentages under the Federal Employees' Retirement System (FERS) Act of 1986, Public Law 99–335, 100 Stat. 514, as amended, based on economic assumptions and demographic factors adopted by the Board of Actuaries of the Civil Service Retirement System. By statute under 5 U.S.C. 8461(i), the revisions to the actuarial assumptions require corresponding changes in factors used to produce actuarially equivalent benefits when required by the FERS Act.

Section 843.309 of title 5, Code of Federal Regulations, regulates the payment of the basic employee death benefit. Under 5 U.S.C. 8442(b), the basic employee death benefit may be paid to a surviving spouse as a lump sum or as an equivalent benefit in 36 installments. In its meeting on May 10, 2022, the Board of Actuaries of the Civil Service Retirement System (the Board) reviewed the long-term economic assumptions and determined that they should remain unchanged; therefore, the factors used to convert the lump sum to 36-installment payments under 5 CFR 843.309(b)(2) will remain unchanged.

Section 843.311 of title 5, Code of Federal Regulations, regulates the benefits for the survivors of separated employees under 5 U.S.C. 8442(c). This section provides a choice of benefits for eligible current and former spouses. If the current or former spouse is the person entitled to the unexpended balance under the order of precedence under 5 U.S.C. 8424, he or she may elect to receive the unexpended balance instead of an annuity. If the separated employee died before having attained the minimum retirement age, the annuity commences on the day the deceased separated employee would have been eligible for an unreduced annuity as specified under this section. If the current or former spouse instead elects to receive an adjusted annuity earlier, beginning on the day after the death of the separated employee, the annuity is actuarially reduced to compensate for it being paid at an earlier date, and is reduced using the factors in appendix A to subpart C of part 843 to make the annuity actuarially equivalent to the present value of the annuity that the spouse or former spouse otherwise would have received. This reduces the risk of any unfunded liability to the Civil Service Retirement and Disability Fund. These proposed revisions amend appendix A to subpart C of part 843 to conform the factors to the revised actuarial assumptions.

OPM has determined that a 30-day period for comments on this proposed rule is sufficient to allow for meaningful public input. These proposed revisions to Appendix A to subpart C of part 843 are necessary under 5 U.S.C. 8461(i). Under section 8461(i) and 5 CFR part 841, subpart D, OPM is required to make changes to the factors used to produce actuarially equivalent benefits under the FERS Act whenever the Board of Actuaries established under 5 U.S.C. 8347(f) revises related economic assumptions. In May 2022, the Board of Actuaries made such revisions. Accordingly, OPM must now implement these revisions and is proposing the corresponding changes, which must go into effect the first day of the fiscal year. OPM historically has not received comments on previous iterations of this rulemaking.

Expected Impact of This Rule

OPM is issuing this proposed rule to revise the table of reduction factors for early commencing dates of survivor annuities for spouses of separated employees who die before the date on which they would be eligible for unreduced deferred annuities. The factors that are currently in effect can be found in appendix A to subpart C of part 843.

Of all the applications for survivor annuity death benefits OPM receives annually, OPM expects this rule to impact approximately one percent of those survivor annuity death applications it receives that is based on the death of a separated employee. Of the changes this rule implements, the most significant change is to conform the factors to the revised actuarial assumptions when the current or former spouse elects to receive an adjusted annuity beginning on the day after the death of the separated employee, the annuity is reduced using the factors in

appendix A to subpart C of part 843 to make the annuity actuarially equivalent to the present value of the annuity that the spouse or former spouse otherwise would have received. When OPM updates the FERS normal cost, the FERS law at 5 U.S.C. 8461(i) requires that OPM make corresponding changes to the factors used to produce actuarially equivalent benefits under FERS. Specifically, this rule is needed to revise the present value conversion factors for certain benefits payable under FERS to current and former spouses of deceased separated employees. This rule allows certain survivors to make choices about what benefits they want to receive and, in some instances, when they want the benefits to begin. Considering the small number of survivor annuities affected, OPM does not anticipate this rule will substantially impact local economies or have a large impact in local labor markets. However, OPM is requesting comment in this rule regarding the impact.

Regulatory Review

OPM has examined the impact of this rule as required by Executive Order 12866 and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). This rule was not designated as a ''significant regulatory action,'' under Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal Governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Reform Act of 1995

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

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB Control Number.

This rule involves an OMB approved collection of information subject to the PRA titled ''Application for Death Benefits (FERS)/Documentation and Elections in Support of Application for Death Benefits when Deceased was an Employee at the Time of Death (FERS),'' OMB Control Number 3206–0172. The public reporting burden for this collection is estimated to average 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total burden hour estimate for this form is 16,751 hours. The systems of record notice for this collection is: OPM SORN CENTRAL–1–Civil Service Retirement and Insurance Records.

List of Subjects in 5 CFR Part 843

Air traffic controllers, Disability benefits, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

For the reasons stated in the preamble, the Office of Personnel Management proposes to amend 5 CFR part 843 as follows:

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

■ 1. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; 843.309 also issued under 5 U.S.C. 8442; 843.406 also issued under 5 U.S.C. 8441.

Subpart C—Current and Former Spouse Benefits

■ 2. Revise appendix A to subpart C of part 843 to read as follows:

Appendix A to Subpart C of Part 843—Present Value Conversion Factors for Earlier Commencing Date of Annuities of Current and Former Spouses of Deceased Separated Employees

With at least 10 but less than 20 years of creditable service—

Age of separated employee at birthday before death	Multiplier
26	.1081
27	.1146
28	.1215
29	.1289
30	.1367
31	.1451
32	.1539
33	.1634
34	.1735
35	.1840
36	.1954
37	.2071
38	.2196
39	.2326
40	.2460
41	.2611
42	.2772
43	.2939
44	.3124
45	.3314
46	.3525
47	.3743
48	.3978
49	.4230
50	.4500
51	.4792
52	.5106
53	.5442
54	.5804
55	.6190
56	.6614
57	.7070
58	.7565
59	.8100
60	.8680
61	.9312

With at least 20, but less than 30 years of creditable service—

Age of separated employee at birthday before death	Multiplier
36	.2248
37	.2383
38	.2528
39	.2679
40	.2835
41	.3009
42	.3195
43	.3389
44	.3601
45	.3821
46	.4064
47	.4316
48	.4587
49	.4878
50	.5190

Age of separated employee at birthday before death	Multiplier	Age of separated employee at birthday before death	Multiplier	Age of separated employee at birthday before death	Multiplier
51	.5526	55	.7137	59	.9332
52	.5887	56	.7623		
53	.6274	57	.8149		
54	.6691	58	.8717		

With at least 30 years of creditable service—

Age of separated employee at birthday before death	Multiplier by separated employee's year of birth	
	After 1966	From 1950 through 1966
46	.4989	.5332
47	.5300	.5665
48	.5634	.6021
49	.5991	.6403
50	.6374	.6813
51	.6786	.7253
52	.7228	.7725
53	.7703	.8232
54	.8213	.8778
55	.8763	.9365
56	.9357	1.0000

[FR Doc. 2023–14983 Filed 7–13–23; 8:45 am]

BILLING CODE 6325–38–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1650; Project Identifier MCAI–2022–00210–T]

RIN 2120–AA64

Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: The FAA is revising a notice of proposed rulemaking (NPRM) that would have applied to certain Airbus Canada Limited Partnership Model BD–500–1A11 airplanes. This action revises the NPRM by changing the applicability. The FAA is proposing this airworthiness directive (AD) to address the unsafe condition on these products. Since these actions would impose an additional burden over those in the NPRM, the FAA is requesting comments on this SNPRM.

DATES: The FAA must receive comments on this SNPRM by August 28, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1650; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, this SNPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Transport Canada material that is proposed for incorporation by reference in this SNPRM, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca;* website *tc.canada.ca/en/aviation.*
- For Airbus Canada Limited Partnership material that is proposed for incorporation by reference in this SNPRM, contact Airbus Canada Limited Partnership, 13100 Henri-Fabre Boulevard, Mirabel, Québec, J7N 3C6, Canada; telephone 450–476–7676; email *a220_crc@abc.airbus*; website *a220world.airbus.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2022–1650.

FOR FURTHER INFORMATION CONTACT: Steven Dzierzynski, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1650; Project Identifier MCAI–2022–00210–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

substantive verbal contact received about this SNPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this SNPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this SNPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this SNPRM. Submissions containing CBI should be sent to Steven Dzierzynski, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Canada Limited Partnership Model BD–500–1A11 airplanes. The NPRM published in the **Federal Register** on December 20, 2022 (87 FR 77763). The NPRM was prompted by AD CF–2022–04, dated February 14, 2022, issued by Transport Canada, which is the aviation authority for Canada (Transport Canada AD CF–2022–04). Transport Canada AD CF–2022–04 states that the nose radome lightning diverter strips on certain aircraft were painted in production; paint on the diverter strips can compromise the nose radome lightning protection. Reduced effectiveness of the diverter strips can lead to the puncture of the nose radome by lightning and potential arc attachment to antennas, structures, and other equipment in the area of the nose radome. The unsafe condition, if not addressed, could result in damage to the localizer or glideslope antennas, and consequent loss of instrument landing system localizer inputs or deviation information.

In the NPRM, the FAA proposed to require inspecting for paint on the diverter strips on the nose radome, and replacing the nose radome if necessary, as specified in a Transport Canada AD CF–2022–04.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1650.

Actions Since the NPRM Was Issued

Since the FAA issued the NPRM, the FAA determined that the applicability of the proposed AD should be revised. The FAA has determined that the affected nose radomes may be installed as rotable spares on airplanes outside of the applicability of the NPRM, thereby subjecting those airplanes to the identified unsafe condition. Therefore, this proposed AD has been expanded to apply to airplanes equipped with nose radomes having specific part numbers and serial numbers. The FAA is proposing this AD to address the unsafe condition on these products.

Comments

The FAA received comments from one commenter, Delta Air Lines (Delta). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request for Change to Applicability

Delta requested the proposed applicability, which references the applicability specified in Transport Canada AD CF–2022–04 that is based on the airplane serial numbers, to be changed to the part numbers and serial numbers of the nose radome listed in Airbus Canada Limited Partnership A220 Service Bulletin BD500–538009, Issue 002, dated June 2, 2022. Delta stated the nose radome is a rotable component and can be installed on any Model BD–500–1A11 airplanes.

The FAA agrees with the request for the reason provided. The FAA has revised the applicability in this proposed AD to specify airplanes equipped with the specific part numbers and serial numbers of the nose radome.

Request To Add Exception To Allow Use of Certain Service Information, Along With Painting of the Nose Radome Prior to Installation

Delta requested an exception be added to allow accomplishing Airbus Canada Limited Partnership A220 Service Bulletin BD500–538009, Issue 002, dated June 2, 2022, as an acceptable means of compliance with the requirements of this proposed AD in lieu of Transport Canada AD CF–2022–04, with the exception that the painting of the nose radome may be accomplished prior to installation. Delta pointed out that Airbus Canada Limited Partnership A220 Service Bulletin BD500–538009, Issue 002, dated June 2, 2022, contains the correct Aircraft Structural Repair Publication (ASRP) reference for painting of the nose radome as opposed to Airbus Canada Limited Partnership A220 Service Bulletin BD500–538009, Issue 001, dated April 8, 2022. In addition, Delta asserted that nose radomes are painted in the shop prior to installation on the line, and that painting the nose radome after installation, as detailed in Airbus Canada Limited Partnership A220 Service Bulletin BD500–538009, Issue 002, dated June 2, 2022, does not accommodate the regular maintenance procedure of the aircraft in service. Delta further asserted that the work instructions of Airbus Canada Limited Partnership A220 Service Bulletin BD500–538009, Issue 002, dated June 2, 2022, comply with the intent of Transport Canada AD CF–2022–04, since the discrepant nose radome is removed and an airworthy replacement is installed.

The FAA partially agrees. The FAA disagrees with revising this proposed AD to add Airbus Canada Limited Partnership A220 Service Bulletin BD500–538009, Issue 002, dated June 2, 2022, as an acceptable method of compliance, because paragraph (h)(2) of this proposed AD already provides it as an acceptable method of compliance. However, the FAA agrees that painting of the nose radome may be accomplished prior to installation. The painting of the nose radome after installation as detailed in Airbus Canada Limited Partnership A220 Service Bulletin BD500–538009, Issue 002, dated June 2, 2022, does not accommodate the regular maintenance procedure of the aircraft in service. The work instructions of Airbus Canada Limited Partnership A220 Service Bulletin BD500–538009, Issue 002, dated June 2, 2022, meet the intent of Transport Canada AD CF–2022–04, since the discrepant nose radome is removed and an airworthy replacement is installed. Transport Canada and Airbus Canada Partnership Limited have no objections to painting the nose radome prior to installation. The FAA has added paragraph (h)(2) to this proposed AD to allow painting of the nose radome before installation.

Request for Definition Clarification

Delta requested paragraph (j) of the proposed AD be revised to clearly define ''refer to'' and ''in accordance with.'' Delta suggested adding the following wording to paragraph (j) of this proposed AD (paragraph (k) of this proposed AD): ''While performing corrective actions per A220 Service Bulletin BD500–538009, Issue 002, dated June 2, 2022, the words ''refer to'' are used and the operator has a

procedure accepted by the FAA the accepted alternative procedure can be used. When the words ''in accordance with'' are used then the given procedure must be followed.'' Delta reasoned that Airbus Canada Limited Partnership A220 Service Bulletin BD500–538009, Issue 002, dated June 2, 2022, lists the maintenance procedures to accomplish the work instructions as ''refer to.'' Since Delta has accomplished the repair per the service bulletin, the verbiage ''refer to'' has been followed allowing flexibility in the procedure to remove, install, and paint the nose radomes utilizing other FAA approved methods.

The FAA agrees to clarify. This proposed AD allows the use of Airbus Canada Limited Partnership A220 Service Bulletin BD500–538009, Issue 002, dated June 2, 2022, in lieu of Transport Canada AD CF–2022–04. The Procedure section of the Accomplishment Instructions of Airbus Canada Limited Partnership A220 Service Bulletin BD500–538009, Issue 002, dated June 2, 2022, is Required for Compliance (RC) and must be done to comply with this proposed AD, if the operator chooses to use that service bulletin. If a step is marked RC and a procedure or document must be followed to accomplish a task in a service bulletin, the appropriate terminology to cite the procedure or document is ''in accordance with.'' However, if a step is marked RC and a procedure or document may be followed to accomplish an action (*e.g.,* the design approval holder's procedure or document may be used, but an FAA-accepted procedure could also be used), the appropriate terminology to use to cite the procedure or document is ''refer to . . . as an accepted procedure.'' Therefore, if the actions are cited as ''refer to,'' there is flexibility in the procedure to remove, install, and paint utilizing other FAA-approved methods. The FAA has not changed this proposed AD as a result of this comment.

Request for Repair Engineering Orders (REOs) To Be an Acceptable Method of Compliance

Delta requested that any REOs issued by Airbus Canada Limited Partnership that are approved by a design approval organization (DAO) be allowed as an acceptable method of compliance for paragraphs (h) and (j) of the proposed AD (paragraphs (h) and (k) of this proposed AD). Delta contended that the replacement of the nose radome or the replacement or repair of the painted over diverter strips address the unsafe condition of the proposed AD. Further, Delta asserted that the replacement procedure utilized to replace the nose radome, or the replacement or repair procedure utilized to repair a diverter strip is not critical to resolve the unsafe condition. Delta pointed out that the unsafe condition is resolved when the nose radome with painted over diverter strips is removed from service regardless of the procedure.

The FAA disagrees with giving automatic approvals for any REO issued as a method of compliance within this proposed AD. REOs are normally operator specific. The FAA does not consider it appropriate to include various provisions in an AD applicable only to individual airplane serial numbers or to a single operator's unique use of an affected airplane. Once the final rule is published, any person may request approval of an alternative method of compliance (AMOC) to use a REO under the provisions of paragraph (k)(1) of this proposed AD. This proposed AD has not been revised in this regard.

Request for Clarification To Allow Use of Additional Nose Radome Assemblies

Delta requested that the proposed AD be clarified to allow any effective nose radome per the A220 Illustrated Parts Data Publication (IPDP) BD500–A–J53–81–80–01AAA–941A or BD500–A–J53–81–80–02AAA–941A to be installed as an acceptable unit during accomplishment of the actions required by this proposed AD. Delta asserted that acceptable replacement units are not detailed in Transport Canada AD CF–2022–04 or Airbus Canada Limited Partnership A220 Service Bulletin BD500–538009, Issue 002, dated June 2, 2022; however, the service bulletin lists P/N C01204101–009 as a spare. Delta stated that any other nose radome listed in the IPDP provides the same level of safety.

The FAA agrees that IPDP BD500–A–J53–81–80–01AAA–941A and BD500–A–J53–81–80–02AAA–941A provide a more complete list of replacement nose radome assemblies that may be used. The FAA added paragraph (h)(2) to this proposed AD to allow use of nose radome assemblies P/N C01204101–003, P/N C01204101–005, P/N C01204101–007, P/N C01204101–009, and P/N C01204101–011.

Request for Credit Using Future Revisions of Certain Service Information

Delta requested credit for compliance with the requirements of the proposed AD to be granted if accomplished using Airbus Canada Limited Partnership A220 Service Bulletin BD500–538009, Issue 002, dated June 2, 2022, or future revisions.

The FAA disagrees with providing credit for Airbus Canada Limited Partnership A220 Service Bulletin BD500–538009, Issue 002, dated June 2, 2022. Paragraph (h)(2) of this proposed AD already allows the use of Airbus Canada Limited Partnership A220 Service Bulletin BD500–538009, Issue 002, dated June 2, 2022, therefore, providing credit in this proposed AD is not necessary.

The FAA also disagrees with granting credit for accomplishing the required actions using future revisions of Airbus Canada Limited Partnership A220 Service Bulletin BD500–538009, because the FAA may not refer to any document that does not yet exist in an AD. To allow operators to use later revisions of the referenced document (issued after publication of the AD), either the FAA must revise the AD to reference specific later revisions, or operators must request approval to use later revisions as an AMOC with the AD under the provisions of paragraph (k)(1) of this proposed AD. This proposed AD has not been revised in this regard.

Related Service Information Under 1 CFR Part 51

Transport Canada AD CF–2022–04 specifies procedures for inspecting for paint on the lightning diverter strips on the nose radome, and replacing the nose radome if the lightning diverter strips are painted.

The FAA also reviewed Airbus Canada Limited Partnership A220 Service Bulletin BD500–538009, Issue 002, dated June 2, 2022. This service information specifies procedures for inspecting for paint on the lightning diverter strips on the nose radome, and replacing and painting the nose radome if the lightning diverter strips are painted.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA is issuing this SNPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Certain changes described above expand the scope of the NPRM. As a

result, it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Proposed AD Requirements in This SNPRM

This proposed AD would require accomplishing the actions specified in Transport Canada AD CF–2022–04 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate Transport Canada AD CF–2022–04 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with Transport Canada AD CF–2022–04 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information required by Transport Canada AD CF–2022–04 for compliance will be available at *regulations.gov* under Docket No. FAA–2022–1650 after the FAA final rule is published.

Differences Between This SNPRM and the MCAI

The applicability of Transport Canada AD CF–2022–04 applies to specific serial numbered airplanes. The applicability of this SNPRM applies to airplanes having a nose radome with specific part number and serial number.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 7 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
6 work-hours × $85 per hour = $510	$0 *	$510	$3,570

* The FAA has received no definitive data on which to base the parts cost estimate for the nose radome replacement.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Docket No. FAA–2022–1650; Project Identifier MCAI–2022–00210–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 28, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Canada Limited Partnership Model BD–500–1A11 airplanes, certificated in any category, with a nose radome having part number (P/N) C01204101–007 or P/N C01204101–009 and a serial number (S/N) S456997, S/N S570556, S/N S626945, S/N S866894, S/N T099675, S/N T471773, or S/N T595935.

(d) Subject

Air Transport Association (ATA) of America Code: 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report that the nose radome lightning diverter strips on certain aircraft were painted in production; paint on the diverter strips can compromise the nose radome lightning protection. The FAA is issuing this AD to address reduced effectiveness of the diverter strips, which can lead to the puncture of the nose radome by lightning and potential arc attachment to antennas, structures, and other equipment in the area of the nose radome. The unsafe condition, if not addressed, could result in damage to the localizer or glideslope antennas, and consequent loss of instrument landing system localizer inputs or deviation information.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Transport Canada AD CF–2022–04, dated February 14, 2022 (Transport Canada AD CF–2022–04).

(h) Exception to Transport Canada AD CF–2022–04

(1) Where Transport Canada AD CF–2022–04 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where Transport Canada AD CF–2022–04 specifies removing and installing a nose radome using certain aircraft maintenance publication data modules, this AD also allows accomplishing those actions in accordance with Airbus Canada Limited Partnership A220 Service Bulletin BD500–538009, Issue 002, dated June 2, 2022, with the exception that the painting of the nose radome can be accomplished prior to installation, and that the following nose radome assembly part numbers may be used: P/N C01204101–003, P/N C01204101–005, P/N C01204101–007, P/N C01204101–009, and P/N C01204101–011.

(i) Parts Installation Limitation

As of the effective date of this AD, no person may install, on any airplane, a nose radome having P/N C01204101–003, P/N C01204101–005, P/N C01204101–007, P/N C01204101–009, or P/N C01204101–011, unless it has been inspected in accordance with paragraph (g) of this AD.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Canada Limited Partnership A220 Service Bulletin BD500–538009, Issue 001, dated April 8, 2022.

(k) Additional AD Provisions

The following provisions also apply to this AD:

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

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

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

(l) Additional Information

(1) For more information about this AD, contact Steven Dzierzynski, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

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

(m) Material Incorporated by Reference

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

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

(i) Airbus Canada Limited Partnership A220 Service Bulletin BD500–538009, Issue 002, dated June 2, 2022.

(ii) Transport Canada AD CF–2022–04, dated February 14, 2022.

(3) For Transport Canada AD CF–2022–04, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca;* website *tc.canada.ca/en/aviation*.

(4) For Airbus Canada Limited Partnership material incorporated by reference in this AD, contact Airbus Canada Limited Partnership, 13100 Henri-Fabre Boulevard, Mirabel, Québec, J7N 3C6, Canada; telephone 450–476–7676; email *a220_crc@abc.airbus*; website *a220world.airbus.com*.

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

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

Issued on July 8, 2023.

Michael Linegang,

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

[FR Doc. 2023–14880 Filed 7–13–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1490; Project Identifier MCAI–2022–01624–E]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–21–13, which applies to certain Rolls-Royce Deutschland Ltd. & Co KG (RRD) Model Trent 1000 engines. AD 2021–21–13 requires the operator to revise the airworthiness limitation section (ALS) of their existing approved aircraft maintenance program (AMP) by incorporating the revised tasks of the applicable time limits manual (TLM) for each affected model turbofan engine. Since the FAA issued AD 2021–21–13, the manufacturer has revised the TLM, introducing new and more restrictive instructions. This proposed AD would require revisions to the ALS of the operator's existing approved AMP, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by August 28, 2023.

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

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

p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1490; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA service information identified in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu*; website: *easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu*. It is also available at *regulations.gov* under Docket No. FAA–2023–1490.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1490; Project Identifier MCAI–2022–01624–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–21–13, Amendment 39–21773 (86 FR 64066, November 17, 2021) (AD 2021–21–13), for certain RRD Model Trent 1000 engines. AD 2021–21–13 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued EASA AD 2020–0242, dated November 5, 2020 (EASA AD 2020–0242), to address an unsafe condition identified as the manufacturer revising the engine TLM life limits of certain critical rotating parts and direct accumulation counting data files.

AD 2021–21–13 requires the operator to revise the ALS of their existing approved AMP by incorporating the revised tasks of the applicable TLM for each affected model turbofan engine, as specified in EASA AD 2020–0242. The FAA issued AD 2021–21–13 to prevent the failure of critical rotating parts, which could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

Actions Since AD 2021–21–13 Was Issued

Since the FAA issued AD 2021–21–13, EASA superseded EASA AD 2020–0242 and issued EASA AD 2022–0259, dated December 20, 2022 (EASA AD 2022–0259) (referred to after this as the MCAI). The MCAI states that the manufacturer published a revised TLM introducing new or more restrictive tasks and limitations. These new or more restrictive tasks and limitations include updating declared lives of certain critical parts, updating direct accumulation counting data files, and updated inspections.

The FAA is proposing this AD to prevent the failure of critical rotating parts. This condition, if not addressed, could result in failure of critical rotating parts, which could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA–2023–1490.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0259, which specifies instructions for accomplishing the actions specified in the applicable TLM, including performing maintenance tasks, replacing life-limited parts, and revising the existing approved maintenance or inspection program, as applicable, by incorporating the limitations, tasks, and associated thresholds and intervals described in the TLM. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain none of the requirements of AD 2021–21–13. This proposed AD would require accomplishing the actions specified in the MCAI described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and the MCAI.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA

ADs. The FAA has since coordinated with other manufacturers and CAAs to use this process. As a result, the FAA proposes to incorporate by reference EASA AD 2022–0259 in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0259 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0259. Service information required by the EASA AD for compliance will be available at regulations.gov by searching for and locating Docket No. FAA–2023–1490 after the FAA final rule is published.

Differences Between This Proposed AD and the MCAI

Where EASA AD 2022–0259 defines the AMP as the Aircraft Maintenance Programme which contains the tasks on the basis of which the scheduled maintenance is conducted to ensure the continuing airworthiness of each operated engine, this proposed AD defines the AMP as the Aircraft Maintenance Program which contains the tasks of which the operator or the owner ensures the continuing airworthiness of each operated airplane.

Where paragraph (3) of EASA AD 2022–0259 specifies revising the approved Aircraft Maintenance Programme within 12 months after the effective date of EASA AD 2022–0259, this proposed AD would require revising the ALS of the existing approved maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 28 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise the ALS	1 work-hours × $85 per hour = $85	$0	$85	$2,380

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive AD 2021–21–13, Amendment 39–21773 (86 FR 64066, November 17, 2021); and

■ b. Adding the following new airworthiness directive:

Rolls-Royce Deutschland Ltd & Co KG: Docket No. FAA–2023–1490; Project Identifier MCAI–2022–01624–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 28, 2023.

(b) Affected ADs

This AD replaces AD 2021–21–13, Amendment 39–21773 (86 FR 64066, November 17, 2021).

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) Model Trent 1000–A, Trent 1000–AE, Trent 1000–C, Trent 1000–CE, Trent 1000–D, Trent 1000–E, Trent 1000–G, and Trent 1000–H engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7200, Engine (Turbine/Turboprop).

(e) Unsafe Condition

This AD was prompted by the manufacturer revising the engine Time Limits Manual life limits of certain critical rotating parts. The FAA is issuing this AD to prevent the failure of critical rotating parts. The unsafe condition, if not addressed, could result in failure of critical rotating parts, which could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation

Safety Agency (EASA) AD 2022–0259, dated December 20, 2022 (EASA AD 2022–0259).

(h) Exceptions to EASA AD 2022–0259

(1) Where EASA AD 2022–0259 defines the AMP as the Aircraft Maintenance Programme which contains the tasks on the basis of which the scheduled maintenance is conducted to ensure the continuing airworthiness of each operated engine, this proposed AD defines the AMP as the Aircraft Maintenance Program which contains the tasks of which the operator or the owner ensures the continuing airworthiness of each operated airplane.

(2) Where EASA AD 2022–0259 refers to its effective date, this AD requires using the effective date of this AD.

(3) This AD does not require compliance with paragraph (1) of EASA AD 2022–0259.

(4) This AD does not require compliance with paragraph (2) of EASA AD 2022–0259.

(5) Where paragraph (3) of EASA AD 2022–0259 specifies revising the approved Aircraft Maintenance Programme within 12 months after the effective date of EASA AD 2022–0259, this proposed AD would require revising the airworthiness limitations section of the existing approved maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(6) This AD does not adopt the ''Remarks'' paragraph of EASA AD 2022–0259.

(i) Provisions for Alternative Actions and Intervals

After performing the actions required by paragraph (g) of this AD, no alternative actions and associated thresholds and intervals, including life limits, are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0259.

(j) Alternative Methods of Compliance (AMOCs)

The Manager, AIR–520, Continued Operational Safety Branch FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k) of this AD and email to: *ANE-AD-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Additional Information

For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency AD 2022–0259, dated December 20, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0259, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on July 8, 2023.

Michael Linegang,

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

[FR Doc. 2023–14837 Filed 7–13–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1311; Project Identifier MCAI–2022–00624–E]

RIN 2120–AA64

Airworthiness Directives; Safran Helicopter Engines, S.A. (Type Certificate Previously Held by Turbomeca, S.A.) Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: The FAA is revising a notice of proposed rulemaking (NPRM) that would have applied to all Safran Helicopter Engines, S.A. (Safran) (type certificate previously held by Turbomeca, S.A.) Model Arriel 2D and Arriel 2E engines. This action revises the NPRM by proposing to require updating the airworthiness limitation section (ALS) of the existing engine maintenance manual (EMM) or instructions for continued airworthiness (ICA) and the existing approved maintenance or inspection program, as applicable, by incorporating the actions and associated thresholds and intervals, including life limits, as specified in a European Union Aviation Safety Agency (EASA) airworthiness directive (AD), which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products. Since these actions would revise the required actions proposed in the NPRM, the agency is requesting comments on this SNPRM.

DATES: The FAA must receive comments on this SNPRM by August 28, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1311; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, this SNPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified that is proposed for IBR in this SNPRM, contact EASA, KonradAdenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2022–1311.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Kevin Clark, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7088; email: *kevin.m.clark@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send

your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1311; Project Identifier MCAI–2022–00624–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may again revise this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this SNPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this SNPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this SNPRM. Submissions containing CBI should be sent to Kevin Clark, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to all Safran Model Arriel 2D and Arriel 2E engines. The NPRM published in the **Federal Register** on October 31, 2022 (87 FR 65535). The NPRM proposed to supersede AD 2021–08–02 (86 FR 26651, May 17, 2021) (AD 2021–08–02). The NPRM was prompted by EASA AD 2022–0083, dated May 11, 2022 (EASA AD 2022–0083), issued by EASA, which is the Technical Agent for the Member States of the European Union (referred to after this as the MCAI), which supersedes EASA AD 2018–0273, dated December 13, 2018 (EASA AD 2018–0273). The MCAI states that the manufacturer published a revised ALS introducing new and more restrictive maintenance tasks and airworthiness limitations. These new or more restrictive maintenance tasks and airworthiness limitations include initial and repetitive inspections for clogging of the power turbine air pressurization pipe.

AD 2021–08–02 requires replacing certain critical parts before reaching their published in-service life limits, performing scheduled maintenance tasks before reaching their published periodicity, and performing unscheduled maintenance tasks when the engine meets certain conditions. As a terminating action, AD 2021–08–02 requires operators to revise the ALS of their existing approved maintenance or inspection program by incorporating the revised airworthiness limitations and maintenance tasks.

In the NPRM, the FAA proposed to supersede AD 2021–08–02 and require revisioning the ALS of the operator's existing approved maintenance or inspection program, as applicable, to incorporate new and more restrtictive airworthiness limitations. These new or more restrictive airworthiness limitations and maintenance tasks include initial and repetitive inspections for clogging of the power turbine air pressurization pipe. The FAA proposed this AD to prevent failure of the engine. This unsafe condition, if not addressed, could result in uncontained release of a critical part, damage to the engine, and damage to the helicopter. See EASA AD 2022–0083 for additional background information.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1311.

Actions Since the NPRM Was Issued

Since the FAA issued the NPRM, the FAA discovered an inaccurate reference to a certain paragraph of EASA AD 2022–0083 in paragraph (g) of the NPRM and determined that a reduced compliance time of 90 days is necessary. This SNPRM was prompted by the FAA's determination that the revised airworthiness limitations and new maintenance procedures are necessary and the need to correct an inaccurate paragraph reference. The FAA is proposing this AD to address the unsafe condition on these products.

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0083, which specifies instructions for accomplishing the actions specified in the applicable ALS, including performing maintenance tasks, replacing life-limited parts, and revising the existing approved AMP by incorporating the limitations, tasks, and associated thresholds and intervals described in the ALS.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this SNPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design. Certain changes described above expand the scope of the NPRM. As a result, it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Proposed AD Requirements in This SNPRM

This proposed AD would retain none of the requirements of AD 2021–08–02. This proposed AD would require revising the ALS of the existing EMM or instructions for continued airworthiness and the existing approved maintenance or inspection program, as applicable, to incorporate the actions specified in paragraph (1) of the MCAI, described previously, except as discussed under ''Differences Between this SNPRM and the MCAI.'' The owner/operator (pilot) holding at least a private pilot certificate may revise the ALS of the existing EMM or ICA and the existing approved maintenance or inspection program, as applicable for the engine, and must enter compliance with the applicable paragraphs of this proposed AD into the engine maintenance records in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439. This action could be performed equally well by a pilot or a mechanic. This is an exception to the FAA's standard maintenance regulations.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and CAAs to use this process. As a result, the FAA proposes to incorporate by reference EASA AD 2022–0083 in the FAA final rule. Service information required by the EASA AD for compliance will be available at *regulations.gov* under Docket No. FAA–2022–1311 after the FAA final rule is published.

Differences Between This SNPRM and the MCAI

EASA AD 2022–0083 applies to Arriel 2D, 2E, 2H, 2L2, and 2N model turboshaft engines, whereas this proposed AD would only apply to Arriel 2D and Arriel 2E model turboshaft engines. Arriel 2H, 2L2, and 2N engines are not U.S. type certificated.

Paragraph (1) of EASA AD 2022–0083 specifies to replace each component before exceeding the applicable life limit and, within the thresholds and intervals, accomplishing all applicable maintenance tasks after its effective date. This proposed AD would instead require revising the ALS of the existing EMM or ICA and the existing approved maintenance or inspection program, as applicable, by incorporating the requirements specified in paragraph (1) of EASA AD 2022–0083 within 90 days after the effective date of this AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 426 engines installed on helicopters of U.S. Registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise the ALS of the existing EMM or ICA and the existing approved maintenance or inspection program.	1 work-hours × $85 per hour = $85	$0	$85	$36,210

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2021–08–02, Amendment 39–21496 (86 FR 26651, May 17, 2021); and

■ b. Adding the following new airworthiness directive:

Safran Helicopter Engines, S.A. (Type Certificate Previously Held by Turbomeca, S.A.): Docket No. FAA–2022–1311; Project Identifier MCAI–2022–00624–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 28, 2023.

(b) Affected ADs

This AD replaces AD 2021–08–02, Amendment 39–21496 (86 FR 26651, May 17, 2021) (AD 2021–08–02).

(c) Applicability

This AD applies to Safran Helicopter Engines, S.A. (type certificate previously held by Turbomeca, S.A.) Model Arriel 2D and Arriel 2E engines.

(d) Subject

Joint Aircraft Service Component (JASC) Code 7250, Turbine section.

(e) Unsafe Condition

This AD was prompted by the manufacturer revising the airworthiness limitations section (ALS) of the existing engine maintenance manual (EMM) to introduce new or more restrictive tasks and limitations for certain life-limited parts. The FAA is issuing this AD to prevent failure of life-limited parts. The unsafe condition, if not addressed, could result in uncontained release of a critical part, damage to the engine, and damage to the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Within 90 days after the effective date of this AD, revise the ALS of the existing EMM or instructions for continued airworthiness and the existing approved maintenance or inspection program, as applicable, by incorporating the actions

specified in paragraph (1) of European Union Aviation Safety Agency (EASA) AD 2022–0083, dated May 11, 2022 (EASA AD 2022–0083).

(2) The owner/operator (pilot) holding at least a private pilot certificate may perform the action required by paragraph (g)(1) of this AD for your engine and must enter compliance with the applicable paragraphs of this AD into the engine maintenance records in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(h) Provisions for Alternative Actions and Intervals

After the actions required by paragraph (g) of this AD have been done, no alternative actions and associated thresholds and intervals, including life limits, are allowed unless they are approved as specified in the provisions of the ''Ref Publication'' section of EASA AD 2022–0083.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Additional Information

For more information about this AD, contact Kevin Clark, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7088; email: *kevin.m.clark@faa.gov*.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency AD 2022–0083, dated May 11, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0083, contact EASA, KonradAdenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on July 6, 2023.

Michael Linegang,

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

[FR Doc. 2023–14843 Filed 7–13–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1414; Project Identifier MCAI–2023–00438–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 airplanes. This proposed AD was prompted by a report the axis index washers on the forward and rear main landing gear door hinges were found inverted in production. This proposed AD would require a one-time detailed inspection of the axis index washers for correct installation, and, depending on findings, replacement of the axis index washers, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 28, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1414; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this material on the EASA website: *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–1414.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7317; email: *dat.v.le@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1414; Project Identifier MCAI–2023–00438–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and

actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7317; email: *dat.v.le@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0051, dated March 10, 2023 (EASA AD 2023–0051) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A350–941 airplanes. The MCAI states that the forward (#1) and rear (#3) main landing gear door (MLGD) hinge axis index washers were found inverted in production (index washer for forward fitting installed at rear fitting and vice versa). This condition, if not detected and corrected, could lead to reduced structural integrity of the MLGD hinge fittings, possibly resulting in the loss of an MLGD during flight, and consequent injury to persons on the ground.

The FAA is proposing this AD to address the unsafe condition on these products. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1414.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0051 specifies procedures for a one-time detailed inspection of the MLGD forward and rear hinges for incorrectly installed axis index washers and, depending on findings, replacement of the axis index washers.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2023–0051 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0051 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0051 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0051 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0051. Service information required by EASA AD 2023–0051 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1414 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 23 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2.25 work-hours × $85 per hour = $192	$0	$192	$4,416

The FAA estimates the following costs to do any necessary on-condition action that would be required based on the results of any required actions. The FAA has no data to determine the number of airplanes that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
8.25 work-hours × $85 per hour = $702	$10 per door	$712

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2023–1414; Project Identifier MCAI–2023–00438–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 28, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2023–0051, dated March 10, 2023 (EASA AD 2023–0051).

(d) Subject

Air Transport Association (ATA) of America Code: 52, Doors.

(e) Unsafe Condition

This AD was prompted by a report the axis index washers on the forward and rear main landing gear door (MLGD) hinges were found inverted in production. The FAA is issuing this AD to address incorrectly installed washers. The unsafe condition, if not addressed, could result in reduced structural integrity of the MLGD hinge fittings, possibly resulting in a loss of an MLGD during flight, and consequent injury to persons on the ground.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0051.

(h) Exceptions to EASA AD 2023–0051

(1) Where the applicability and Groups definitions of EASA AD 2023–0051 refer to serial numbers, replace the text ''the SB'' with ''Airbus Service Bulletin A350–52–P048, dated November 24, 2022.''

(2) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0051.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2023–0051 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

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

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

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

(k) Additional Information

For more information about this AD, contact Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7317; email: *dat.v.le@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0051, dated March 10, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0051, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this EASA AD on the EASA website: *ad.easa.europa.eu.*

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to:

www.archives.gov/federal-register/cfr/ibr-locations.html.

Issued on July 8, 2023.

Michael Linegang,

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

[FR Doc. 2023–14851 Filed 7–13–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1492; Project Identifier MCAI–2023–00195–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2022–18–09, which applies to certain Airbus SAS Model A319–111, –112, –113, –114, –115, –131, –132, and –133; A320–211, –212, –214, –216, –231, –232, –233, –251N, and –271N; and A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, and –253N airplanes. AD 2022–18–09 continues to require the actions in AD 2019–26–01 and AD 2021–23–15, and adds airplanes to the applicability. Since the FAA issued AD 2022–18–09, it was determined that additional airplanes and galleys are subject to the unsafe condition, and a compliance time for certain airplanes should be extended. This proposed AD would continue to require the actions in AD 2022–18–09 and would require expanding the applicability, obtaining and following additional instructions for certain modified airplanes, and extending the compliance time for certain airplanes, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 28, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1492; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For the AD identified in this NPRM, you may contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–1492.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3667; email *timothy.p.dowling@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1492; Project Identifier MCAI–2023–00195–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3667; email *timothy.p.dowling@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2022–18–09, Amendment 39–22160 (87 FR 56576, September 15, 2022) (AD 2022–18–09), for certain Airbus SAS Model A319–111, –112, –113, –114, –115, –131, –132, and –133; A320–211, –212, –214, –216, –231, –232, –233, –251N, and –271N, and A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, and –253N airplanes. AD 2022–18–09 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2022–0026, dated February 16, 2022, to correct an unsafe condition.

AD 2022–18–09 continues to require the actions that were required by AD 2019–26–11, Amendment 39–21022 (85 FR 6755, February 6, 2020) (AD 2019–26–11) and AD 2021–23–15, Amendment 39–21813 (86 FR 68894, December 6, 2021) (AD 2021–23–15), and adds airplanes to the applicability. The FAA issued AD 2022–18–09 to address potential failure of the galley door and release of waste bins during a rejected take-off or an emergency landing, and potential container detachment from the galley under

certain forward loading conditions, possibly resulting in damage to the airplane and injury to occupants.

Actions Since AD 2022–18–09 Was Issued

Since the FAA issued AD 2022–18–09, EASA superseded EASA AD 2022–0026, dated February 16, 2022, and issued EASA AD 2023–0029, dated February 1, 2023 (EASA AD 2023–0029) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus A318–111, A318–112, A318–121, A318–122, A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A319–151N, A319–153N, A319–171N, A320–211, A320–212, A320–214, A320–215, A320–216, A320–231, A320–232, A320–233, A320–251N, A320–252N, A320–253N, A320–271N, A320–272N, A320–273N, A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, A321–232, A321–251N, A321–252N, A321–253N, A321–271N and A321–272N airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability. The MCAI states that during a full-scale qualification test of Galley G5, the door of the waste compartment opened before the required load was reached. This event was determined to be the result of galley global deflection. This condition, if not corrected, could lead to failure of the galley door and release of waste bins during a rejected take-off or an emergency landing, possibly resulting in damage to the airplane and injury to occupants.

To address this potential unsafe condition, EASA issued AD 2018–0255 (which corresponds to FAA AD 2019–26–11), requiring a modification to the waste compartment door by installing a door catch bracket and a new striker.

After that AD was issued, container/galley end stop bumpers were found damaged in service, which could lead to container detachment from the galley under certain forward loading conditions, possibly resulting in injury to airplane occupants. EASA issued AD 2019–0106 (which corresponds to FAA AD 2021–23–15) to require modification of the affected galleys by replacing affected bumpers with serviceable bumpers.

After those ADs were issued, it was determined that additional airplanes may be subject to the unsafe condition, and EASA issued AD 2022–0026 (which corresponds to FAA AD 2022–18–09) and superseded EASA ADs 2018–0255 and 2019–0106 (FAA AD 2022–18–09 superseded FAA ADs 2019–26–11 and 2021–23–15).

Consequently, based on comments from operators and information from the galley manufacturer, EASA determined that additional actions are needed for galleys that were modified using non-Airbus-approved modifications, that additional airplanes are subject to the unsafe condition, and that the compliance time for Group 5 airplanes should be extended.

The FAA is proposing this AD to address the unsafe condition on these products. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1492.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2022–18–09, this proposed AD would retain all of the requirements of AD 2022–18–09. Those requirements are referenced in AD 2022–18–09, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0029 specifies procedures for modifying the affected galleys by replacing the affected bumpers with serviceable bumpers; for modifying the waste compartment door of each affected galley by installing a door catch bracket and a new striker, and for re-identifying the affected galleys. For airplanes equipped with galleys that were modified using non-Airbus-approved methods, EASA AD 2023–0029 specifies procedures for obtaining and accomplishing additional instructions. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2023–0029 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0029 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0029 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0029 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0029. Service information required by EASA AD 2023–0029 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1492 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,507 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2022–18–09	Up to 59 work-hours × $85 per hour = Up to $5,105	$0	Up to $5,105	Up to $5,476,380.

The FAA has received no definitive data on which to base the cost estimates for the obtaining and following additional instructions action specified in this proposed AD.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2022–18–09, Amendment 39–22160 (87 FR 56576, September 15, 2022); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2023–1492; Project Identifier MCAI–2023–00195–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 28, 2023.

(b) Affected ADs

This AD replaces AD 2022–18–09, Amendment 39–22160 (87 FR 56576, September 15, 2022) (AD 2022–18–09).

(c) Applicability

This AD applies to the Airbus SAS airplanes specified in paragraphs (c)(1) through (3) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2023–0029, dated February 1, 2023 (EASA AD 2023–0029), except where the Applicability of EASA AD 2023–0029 refers to certain galleys, replace the text ''if equipped with a galley,'' with ''if delivered with a galley.''

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

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

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

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

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by a report that during re-engineering of galley G5, a 9G forward full scale qualification test was performed, and the door of the waste compartment opened before the required load was reached, and by reports of finding container/galley end stop bumpers damaged in service. This AD was also prompted by the determination that additional airplanes and galleys are subject to the unsafe condition, and a compliance time for certain airplanes should be extended. The FAA is issuing this AD to address potential failure of the galley door and release of waste bins during a rejected take-off or an emergency landing, and potential container detachment from the galley under certain forward loading conditions, possibly resulting in damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0029.

(h) Exceptions to EASA AD 2023–0029

(1) Where EASA AD 2023–0029 specifies a compliance time of ''within 12 months after 11 December 2018 [the effective date of EASA AD 2018–0255], ''this AD requires using ''within 12 months after January 10, 2022 (the effective date of AD 2021–23–15), or within 6 months after the effective date of this AD, whichever occurs later.''

(2) Where EASA AD 2023–0029 refers to May 29, 2019 (the effective date of EASA AD 2019–0106), this AD requires using March 12, 2020 (the effective date of AD 2019–26–11).

(3) Where EASA AD 2023–0029 specifies a compliance time of ''within 12 months after 02 March 2022 [the effective date of EASA AD 2022–0026],'' this AD requires using ''within 12 months after October 20, 2022 (the effective date of AD 2022–18–09), or within 6 months after the effective date of this AD, whichever occurs later.''

(4) Where EASA AD 2023–0029 refers to its effective date, this AD requires using the effective date of this AD.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0029.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(ii) AMOCs approved previously for AD 2022–18–09 are approved as AMOCs for the corresponding provisions of EASA AD 2023–0029 that are required by paragraph (g) of this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's

EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

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

(j) Additional Information

For more information about this AD, contact Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3667; email *timothy.p.dowling@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0029, dated February 1, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0029, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on July 8, 2023.

Michael Linegang,

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

[FR Doc. 2023–14878 Filed 7–13–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1412; Project Identifier MCAI–2022–01588–E]

RIN 2120–AA64

Airworthiness Directives; Austro Engine GmbH Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Austro Engine GmbH Model E4 and E4P engines. This proposed AD was prompted by reports of piston failures and the determination that certain batches of pistons were manufactured with a dimensional deviation in the piston pin bore and piston diameter. This proposed AD would require repetitive engine oil analysis for aluminum content outside the acceptable limits and, if necessary, replacement of the pistons, piston rings, con-rods assembly, and crankcase or, as an alternative, replacement of the engine core. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by August 28, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1412; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Austro Engine GmbH, Rudolf-Diesel-Strasse 11, A–2700 Weiner Neustadt, Austria; phone: +43 2622 23000; website: *austroengine.at*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7146; email: *barbara.caufield@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1412; Project Identifier MCAI–2022–01588–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI

should be sent to Barbara Caufield, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0240R1, dated December 15, 2022 (referred to after this as the MCAI), to address an unsafe condition on Austro Engine GmbH Model E4 and E4P engines. The MCAI states that a manufacturer investigation into reports of piston failures determined that certain batches of pistons were manufactured with a dimensional deviation in the piston pin bore and in the piston diameter, which could cause piston failure, with consequent loss of oil, loss of engine power, and reduced control of the airplane. To address the unsafe condition, EASA issued EASA AD 2022–0240, dated December 6, 2022, to specify repetitive oil analyses and replacement of the pistons, piston rings, con-rods assembly, and crankcase, or as an alternative, replacement of the engine core. EASA AD 2022–0240 also prohibited release to service of an airplane until receipt of the results for each oil analysis.

Since EASA AD 2022–0240 was issued, the manufacturer determined that aluminum levels outside of the acceptable limits would be found during the first oil analysis, and are unlikely to be found during subsequent oil analyses. As a result, EASA revised EASA AD 2022–0240 and issued the MCAI to allow release to service of airplanes for a limited number of flight hours immediately after the second and subsequent oil samples are taken for analyses.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1412.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Austro Engine GmbH Mandatory Service Bulletin MSB–E4–039/1, Revision 1, dated April 24, 2023, which specifies procedures for oil analysis and replacement of the pistons, piston rings, con-rods assembly, crankcase, and engine core.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information described above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require initial and repetitive engine oil analysis for aluminum content outside the acceptable limits and, if necessary, replacement of the pistons, piston rings, con-rods assembly, and crankcase, or as an alternative, replacement of the engine core.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 357 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Oil Analysis	.25 work-hours × $85 per hour = $21.25	$0	$21.25	$7,586.25

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace engine core	50 work-hours × $85 per hour = $4,250	$15,524	$19,774
Replace pistons, piston rings, and con-rods assembly	60 work-hours × $85 per hour = $5,100	2,216	7,316
Replace pistons, piston rings, con-rods assembly, and crankcase.	70 work-hours × $85 per hour = $5,950	4,141	10,091

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Austro Engine GmbH: Docket No. FAA–2023–1412; Project Identifier MCAI–2022–01588–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 28, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Austro Engine GmbH Model E4 and E4P engines with a serial number listed in Tables 1, 2, 3, and 4 of Austro Engine GMBH Mandatory Service Bulletin MSB–E4–039/1, Revision 1, dated April 24, 2023 (MSB–E4–039/1).

(d) Subject

Joint Aircraft System Component (JASC) Codes 8530, Reciprocating Engine Cylinder Section; 8550, Reciprocating Engine Oil System.

(e) Unsafe Condition

This AD was prompted by reports of piston failures and the determination that certain batches of pistons were manufactured with a dimensional deviation in the piston pin bore and piston diameter. The FAA is issuing this AD to prevent piston failure. The unsafe condition, if not addressed, could result in loss of oil, loss of engine power, and reduced control of the airplane.

(f) Compliance

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

(g) Required Actions

(1) For all affected engines, within the applicable compliance times specified in Table 1 to paragraph (g)(1) of this AD, perform an oil analysis in accordance with paragraph 2., Technical Details, Engine Oil Analysis of MSB–E4–039/1, and do not return the engine to service until the results of the oil analysis have been determined.

TABLE 1 TO PARAGRAPH (g)(1)—OIL ANALYSIS FOR ALL AFFECTED ENGINES

Engine group	Compliance time	Interval
Group 1 and Group 3	Within 15 flight hours (FHs) from the effective date of this AD.	Before exceeding 50 FHs since last oil analysis.
Group 2 and Group 4	Within 25 FHs from the effective date of this AD.	Before exceeding 100 FHs since last oil analysis.

(2) Thereafter, repeat the oil analysis required by paragraph (g)(1) of this AD before exceeding the applicable interval specified in Table 1 to paragraph (g)(1) of this AD.

(3) Following each repetitive oil analysis, the engine may be returned to service for no more than the applicable interval specified in Table 1 to paragraph (g)(1) of this AD, until receipt of the oil analysis result.

(4) If the result of any oil analysis required by paragraph (g)(1) of this AD indicates the aluminum content of the oil is greater than the limit specified in paragraph 2., Technical Details, Engine Oil Analysis, Table 5—Oil check analysis—Aluminum PPM allowable of MSB–E4–039/1, before further flight, replace the pistons, piston rings, con-rods assembly, and crankcase, or replace the engine core in accordance with paragraph 2., Technical Details, Engine core replacement; or Pistons, piston rings, crankcase and con-rod assy replacement; as applicable, of MSB–E4–039/1.

(5) For Group 3 and Group 4 engines, within the applicable compliance times specified in Table 2 to paragraph (g)(5) of this AD, replace the pistons, piston rings, and con-rods assembly, or replace the engine core in accordance with paragraph 2., Technical Details, Engine core replacement; or Pistons, piston rings and con-rod assy replacement, as applicable, of MSB–E4–039/1.

TABLE 2 TO PARAGRAPH (g)(5)—REPLACEMENT FOR GROUPS 3 AND 4 ENGINES

Engine group	Compliance time
Group 3	Before exceeding 900 FHs since new, or within 15 FHs after the effective date of this AD, whichever occurs later.
Group 4	Before exceeding 1,000 FHs since new, or within 25 FHs after the effective date of this AD, whichever occurs later.

Note 1 to paragraph (g)(5): FHs since new indicated in Table 2 to paragraph (g)(5) of this AD are FHs accumulated by the engine since first installation on an airplane or since last overhaul as of the effective date of this AD.

(h) Terminating Action

(1) Replacement of the pistons, piston rings, con-rods assembly, and crankcase, or replacement of the engine core, as specified in paragraph (g)(4) of this AD, constitutes terminating action for the repetitive oil analysis required by paragraph (g)(2) of this AD.

(2) Replacement of the pistons, piston rings, and con-rods assembly, or replacement of the engine core, as specified in paragraph (g)(5) of this AD, constitutes terminating

action for the repetitive oil analysis required by paragraph (g)(2) of this AD.

(i) Definitions

(1) For the purpose of this AD, Group 1 engines are engines having a serial number (S/N) listed in Table 1 of MSB–E4–039/1.

(2) For the purpose of this AD, Group 2 engines are engines having an S/N listed in Table 2 of MSB–E4–039/1.

(3) For the purpose of this AD, Group 3 engines are engines having an S/N listed in Table 3 of MSB–E4–039/1.

(4) For the purpose of this AD, Group 4 engines are engines having an S/N listed in Table 4 of MSB–E4–039/1.

(j) Credit for Previous Actions

You may take credit for the actions required by paragraph (g)(1), (4), or (5) of this AD, if you performed those actions before the effective date of this AD using Austro Engine Mandatory Service Bulletin MSB–E4–039/0, dated October 24, 2022.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (l)(2) of this AD and email to: *ANE-AD-AMOC@faa.gov*.

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

(l) Additional Information

(1) Refer to European Union Aviation Safety Agency (EASA) AD 2022–0240R1, dated December 15, 2022, for related information. This EASA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1412.

(2) For more information about this AD, contact Barbara Caufield, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7146; email: *barbara.caufield@faa.gov*.

(m) Material Incorporated by Reference

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

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

(i) Austro Engine GMBH Mandatory Service Bulletin MSB–E4–039/1, Revision 1, dated April 24, 2023.

(ii) [Reserved]

(3) For service information identified in this AD, contact Austro Engine GmbH, Rudolf-Diesel-Strasse 11, A–2700 Weiner Neustadt, Austria; phone: +43 2622 23000; website: *austroengine.at*.

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on July 7, 2023.

Michael Linegang,

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

[FR Doc. 2023–14751 Filed 7–13–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1493; Project Identifier MCAI–2022–01105–T]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–2A12 airplanes. This proposed AD was prompted by a report that some of the multi-function spoiler (MFS) anti-rotation plates failed in-service due to a thin wall design. This proposed AD would require replacing the MFS anti-rotation plates, inspecting the MFS anti-rotation plates for cracking and hinge bolts for evidence of rotation, accomplishing applicable corrective actions, and performing a functional test of the multi-function spoiler control surfaces. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 28, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1493; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Yaser Osman, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1493; Project Identifier MCAI–2022–01105–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Yaser Osman, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2022–47R1, dated October 11, 2022 (Transport Canada AD CF–2022–47R1) (also referred to after this as the MCAI), to correct an unsafe condition on certain Bombardier, Inc., Model BD–700–2A12 airplanes. The MCAI states that a report was received that some of the MFS anti-rotation plates failed in-service due to a thin wall design. The MFS anti-rotation plates were designed with overlapping tolerances on the inside and outside diameters, which allows for an extremely thin wall thickness once machined.

The FAA is proposing this AD to address MFS anti-rotation plate failures. The unsafe condition, if not addressed, could result in wear and failure of the inboard and outboard spoiler hinge pins possibly resulting in a hinge no longer supporting the load, or unintended asymmetrical spoiler deployment, leading to reduced controllability of the airplane, or loss of control of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1493.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bombardier Service Bulletin 700–27–7504, Revision 01, dated July 11, 2022. This service information specifies procedures for replacing the left and right MFS No. 1, MFS No. 2, and MFS No. 3 anti-rotation plate part number (P/N) G05770140–103 and P/N G05770160–101 with P/N G05770140–105. In addition, one of the procedural steps is to inspect the MFS anti-rotation plates for cracking and the hinge bolt for any evidence of rotation, and repair or replacement. This service information also specifies procedures for performing a functional test (stop-to-stop check) of the multi-function spoiler control-surfaces.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information described above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described. This proposed AD would also prohibit the installation of affected parts.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 42 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
3 work-hours × $85 per hour = $255	$2,000	$2,255	$94,710

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

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

(3) Would not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2023–1493; Project Identifier MCAI–2022–01105–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 28, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–2A12 airplanes, certificated in any category, serial numbers 70006 through 70129 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code: 27, Flight controls.

(e) Unsafe Condition

This AD was prompted by a report that some of the multi-function spoiler (MFS) anti-rotation plates failed in-service due to a thin wall design. The FAA is issuing this AD to address MFS anti-rotation plate failures. The unsafe condition, if not addressed, could result in wear and failure of the inboard and outboard spoiler hinge pins, possibly resulting in a hinge no longer supporting the load, or unintended asymmetrical spoiler deployment, leading to reduced controllability of the airplane, or loss of control of the airplane.

(f) Compliance

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

(g) Replacement and Inspection

(1) Within 36 months after the effective date of this AD, replace the left and right MFS No. 1, MFS No. 2, and MFS No. 3 anti-rotation plate part number (P/N) G05770140–103 and P/N G05770160–101 with P/N G05770140–105, including inspecting the MFS anti-rotation plates for any cracking and the hinge bolts for any evidence of rotation, in accordance with the Part 2.B. of the Accomplishment Instructions of Bombardier Service Bulletin 700–27–7504, Revision 01, dated July 11, 2022. If any cracking or evidence of rotation is found, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (i)(1) of this AD.

(2) Before further flight after accomplishing the actions specified in paragraph (g)(1) of this AD: Perform a functional test (stop-to-stop check) of the multi-function spoiler control-surfaces in accordance with the Step 2.C. (3) of the Accomplishment Instructions of Bombardier Service Bulletin 700–27–7504, Revision 01, dated July 11, 2022.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 700–27–7504, dated March 2, 2022.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the New York ACO Branch, mail it to ATTN: Program Manager, Continuing Operational Safety, at the address identified in paragraph (j)(2) of this AD or email to: *9-avs-nyaco-cos@faa.gov.* If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada or Bombardier, Inc.'s Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Additional Information

(1) Refer to Transport Canada AD CF–2022–47R1, dated October 11, 2022, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1493.

(2) For more information about this AD, contact Yaser Osman, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

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

(k) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 700–27–7504, Revision 01, dated July 11, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com.*

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

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

Issued on July 8, 2023.

Michael Linegang,

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

[FR Doc. 2023–14879 Filed 7–13–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0052]

RIN 1625–AA00

Safety Zone; Hurricanes and Tropical Storms in Captain of the Port Zone North Carolina

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 and tropical storms in the Sector North Carolina Captain of the Port (COTP) Zone. This action is necessary to ensure the safety of the waters of the Sector North Carolina COTP Zone. This proposed rulemaking would establish actions to be completed by industry and vessels in the COTP Zone prior to landfall of hurricanes and tropical storms threatening the State of North Carolina.

We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard August 14, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0052 using the Federal Decision-Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Ken Farah, Waterways Management Division, U.S. Coast Guard; telephone 910–772–2221, email *ncmarineevents@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, Purpose, and Legal Basis

North Carolina has the potential to be affected by hurricanes and tropical storms on a yearly basis, especially between the months of June and November. The Sector North Carolina Captain of the Port (COTP) proposes establishing a safety zone to provide for the safety of life and for the protection of port infrastructure and of the environment during such storms. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP of Sector North Carolina is proposing to establish a safety zone to be enforced in case of hurricanes and tropical storms in North Carolina. This action is necessary to ensure the safety of the waters of the COTP North Carolina and it would establish actions to be completed by local industry and vessels in the COTP zone prior to landfall of hurricanes and tropical storms threatening the State of North Carolina. The proposed safety zone would consist of all navigable waters of the United States in the North Carolina COTP Zone, as defined in 33 CFR 3.25–20. Portions of the safety zone may be activated at different times, as conditions dictate. The proposed regulatory text 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 and tropical storms. The scope of the regulation is narrow and will only apply when a hurricane or tropical storm impacts the navigable waters of the Sector North Carolina Captain of the Port Zone. These events are infrequent and of short duration. Regulatory restrictions will be lifted as soon as practicable following the passage of a named storm.

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 safety zone 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 proposed 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 proposed 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 potential effects of this proposed 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 North Carolina 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 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.

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–2023–0052 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

Marine safety, Navigation, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing 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 § 165.562 to read as follows:

§ 165.562 Safety Zone; Hurricanes and Tropical Storms in Captain of the Port Zone North Carolina.

(a) *Regulated Areas.* All navigable waters of the United States within Sector North Carolina COTP Zone as described in 33 CFR 3.25–20, during specified port conditions. Port conditions and safety zone activation may vary for different regions of the regulated area at different times, based on storm conditions and projected track.

(b) *Definitions.*

(1) *Captain of the Port* means the Commander, Coast Guard Sector North Carolina.

(2) *Representative* means any Coast Guard commissioned, warrant, or petty officer or civilian employee who has been authorized to act on the behalf of the Captain of the Port.

(3) *Port Condition WHISKEY* means a condition set by the COTP when National Weather Service (NWS) 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 of Wilmington or Port of Morehead City within 72 hours.

(4) *Port Condition X-RAY* means a condition set by the COTP when NWS 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.

(5) *Port Condition YANKEE* means a condition set by the COTP when NWS 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.

(6) *Port Condition ZULU* means a condition set by the COTP when NWS 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.

(7) *Port Condition RECOVERY* means a condition set by the COTP when NWS weather advisories indicate that sustained gale force winds (39–54 mph/34–47 knots) from a tropical or hurricane force storm are no longer predicted for the designated area. This port condition remains in effect until the regulated areas are deemed safe and reopened to normal operations.

(c) *Regulations.*

(1) *Port Condition WHISKEY.* All vessels must exercise due diligence in preparation for potential storm impacts. Ports and waterfront facilities are encouraged to remove all debris and secure potential flying hazards. All self-propelled oceangoing vessels over 500 gross tons (GT), all oceangoing tank barges and their supporting tugs, and all tank barges over 200 GT wishing to remain in port should seek approval

from the COTP prior to Port Condition X-Ray.

(2) *Port Condition X-RAY.* All vessels and port facilities are encouraged to ensure potential flying debris and hazardous materials are removed or secured. All self-propelled oceangoing vessels over 500 gross tons (GT), all oceangoing tank barges and their supporting tugs, and all tank barges over 200 GT without COTP approval to remain in port must depart prior to the setting of Port Condition Yankee. Vessels with COTP permission to remain in port must implement their approved mooring arrangement.

(3) *Port Condition YANKEE.* Affected ports are closed to all inbound vessel traffic. All self-propelled oceangoing vessels over 500 gross tons (GT), all oceangoing tank barges and their supporting tugs, and all tank barges over 200 GT must have departed designated ports within the Sector North Carolina COTP zone unless they have received COTP approval to remain in port.

(4) *Port Condition ZULU.* Affected ports and waterways are closed to all vessel traffic unless specifically authorized by the COTP or representative. Cargo operations are suspended, including bunkering and lightering. The COTP may grant cargo transfer waivers unless a Cargo of Particular Hazard or Certain Dangerous Cargo is involved.

(5) *Port Condition RECOVERY.* Designated areas are closed to all commercial traffic and recreational vessels 65-feet in length and greater. Based on assessments of channel conditions, navigability concerns, and hazards to navigation, the COTP may permit vessel movements with restrictions. Restrictions may include, but are not limited to, preventing or delaying vessel movements, imposing draft, speed, size, horsepower or daylight restrictions, or directing the use of specific routes. Vessels permitted to transit the regulated area shall comply with the lawful orders or directions given by the COTP or designated representative.

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

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

Dated: June 29, 2023.

Timothy J. List,

Captain, U.S. Coast Guard, Captain of the Port, Sector North Carolina.

[FR Doc. 2023–14945 Filed 7–13–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 419

[CMS–1793–P]

RIN 0938–AV18

Medicare Program; Hospital Outpatient Prospective Payment System: Remedy for the 340B-Acquired Drug Payment Policy for Calendar Years 2018–2022

Correction

In proposed rule document 2023–14623 beginning on page 44078 in the issue of Tuesday, July 11, 2023, make the following correction:

On page 44078, in the first column, in the fourth line of the **DATES** section, ''September 11, 2023'' should read ''September 5, 2023''.

[FR Doc. C1–2023–14623 Filed 7–13–23; 8:45 am]

BILLING CODE 0099–10–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 23–591; MB Docket No. 23–209; RM–11951; FR ID 154744]

Radio Broadcasting Services; Lihue, Hawaii

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by SSR Communications, Inc., proposing to amend the FM Table of Allotments, by allotting Channel 292A at Lihue, Hawaii, as the community's sixth local service. A staff engineering analysis indicates that Channel 292A can be allotted to Lihue, Hawaii, consistent with the minimum distance separation requirements of the Commission's rules, with a site restriction of 2.5 km (1.6 miles) north of the community. The reference coordinates are 22–00–00 NL and 159–21–00 WL.

DATES: Comments must be filed on or before August 28, 2023, and reply comments on or before September 12, 2023.

ADDRESSES: Secretary, Federal Communications Commission, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner and its counsel as follows: MATTHEW K. WESOLOWSKI, CEO, SSR COMMUNICATIONS, INC., 740 HIGHWAY 49 NORTH, SUITE R, FLORA, MS 39071.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2054.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Federal Communications Commission's (Commission) Notice of Proposed Rule Making, MB Docket No. 23–209, adopted July 6, 2023, and released July 7, 2023. The full text of this Commission decision is available online at *https://apps.fcc.gov/ecfs.* The full text of this document can also be downloaded in Word or Portable Document Format (PDF) at *https://www.fcc.gov/edocs.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.202, in paragraph (b), amend the Table of FM Allotments under Hawaii by adding in alphabetical order an entry for ''Lihue'' to read as follows:

§ 73.202 Table of Allotments.

* * * * *

(b) * * *

TABLE 1 TO PARAGRAPH (b)

[U.S. States]

	Channel No.
* * * * *	
Hawaii	
Lihue	292A
* * * * *	

[FR Doc. 2023–15009 Filed 7–13–23; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 88, No. 134
Friday, July 14, 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

Rural Business Cooperative Service

[Docket #: RBS–23–BUSINESS–0014]

Notice of Funding Opportunity for Rural Energy for America Program Technical Assistance Grant Program for Fiscal Year 2023

AGENCY: Rural Business Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business Cooperative Service (RBCS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), announces that it is accepting applications under the Rural Energy for America (REAP) Technical Assistance Grant (TAG) Program for fiscal year (FY) 2023. These grant funds will be made to qualified type of Applicants to provide technical assistance to Agricultural Producers and Rural Small Businesses applying to REAP, with priority for Applicants assisting distressed/disadvantaged communities, Applicants pursuing projects using underutilized technologies, and Applicants pursuing projects under $20,000. This Program has $21,250,000 available for FY 2023 utilizing funding provided under the Inflation Reduction Act of 2022. All Applicants are responsible for any expenses incurred in developing their applications.

DATES: Completed applications for grants must be submitted according to the following deadlines:

Paper submissions. Paper submissions must be received by the Agency no later than 4:00 p.m. local time on August 15, 2023, in the USDA RD State Office (RDSO) of the State where the project is located to be eligible for funding under this grant opportunity. A list of the RDSO can be found at *https://www.rd.usda.gov/about-rd/state-offices.*

Electronic submissions. Electronic submissions via *https://www.Grants.gov* or to a RDSO State Energy Coordinator via email must be received no later than 11:59 p.m. Eastern Time on August 15, 2023. The RDSO State Energy Coordinator for the applicable State can be found at: *https://www.rd.usda.gov/contact-us/state-energy-coordinators.*

ADDRESSES: This funding announcement will be announced on *www.Grants.gov.*

For applicants who wish to apply for multiple states, separate applications must be filed in each corresponding RDSO where the project is located. Applicants intending to apply in multiple states are encouraged to contact all RDSOs where they intend to apply for instructions in completing an application prior to the submission deadline date. Applicants may also request paper application packages from their respective RDSO.

Entities wishing to apply for assistance may download the application documents and requirements provided in this notice from *https://www.Grants.gov.* Application information for electronic submissions may be found at *http://www.Grants.gov.*

FOR FURTHER INFORMATION CONTACT: Jonathan Burns at *jonathan.burns@usda.gov,* Business Loan and Grant Analyst, Direct Programs Branch, RBCS, USDA, (774) 678–7238.

For further information on submitting program applications under this notice, please contact the RDSO in the state where the Applicant's headquarters is located. A list of RDSO 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 (RBCS).

Funding Opportunity Title: Rural Energy for America (REAP) Technical Assistance Grant (TAG) Program.

Announcement Type: Notice of Funding of Opportunity (NOFO).

Funding Opportunity Number: RD–BCP–23–TAG–REAP.

Assistance Listing: 10.868.

Dates: The deadline for paper submission applications to be received in the RDSO is no later than 4:00 p.m. local time on August 15, 2023. The deadline for electronic submissions is no later than 11:59 p.m. Eastern Time on August 15, 2023. Late or incomplete Applications will not be eligible for funding.

A. Program Description

1. *Purpose of the Program.* The purpose of the REAP TAG Program is to enable applicants to provide technical assistance to Agricultural Producers and Rural Small Businesses applying to REAP, with priority for Applicants assisting distressed or disadvantaged communities and for Applicants pursuing projects using underutilized technologies or seeking grants under $20,000. To meet this purpose, the Agency will make grants to eligible entities to provide services to assist potential REAP Applicants in submitting Complete Applications.

2. *Statutory and Regulatory Authority.* The REAP TAG Program is authorized under the Inflation Reduction Act of 2022 (Pub. L. 117–169, ''IRA''), Title II, Subtitle C, Section 22002, and will be administered by RBCS.

3. *Definitions.* The definitions and abbreviations applicable to this notice are published at 7 CFR 4280.103.

For purposes of this Notice only, underutilized renewable energy technologies (underutilized technologies) are defined as those technologies that make up less than 20 percent of the total grant dollars obligated at the end of the fiscal year, two (2) years previous to the current year. For example, FY 2021 award data will be utilized to determine which technologies are underutilized technologies for the FY 2023 competition. The eligible underutilized technologies will be fixed at the time of award for the duration of the period of performance.

For awareness, the number of employees calculation used to determine the size of a business concern in the definition of Small Business is being updated to 24 months versus 12 months, to align with recent changes made by the Small Business Administration.

4. *Application of Awards.* The Agency will review, evaluate, and score applications as indicated in this notice. Awards under the REAP TAG Program will be made on a competitive basis using specific selection criteria contained in Section E.1. of this notice. The Agency advises all interested parties that the Applicant bears the full

burden in preparing and submitting an application in response to this notice.

B. Federal Award Information

Type of Awards: Grants.

Fiscal Year Funds: FY 2023.

Available Funds: The FY 2023 total funding amount is $21,250,000. RBCS may, at its discretion, increase the total level of funding available in this funding round, or in any category in this funding round, from any available source provided the awards meet the requirements of the statute which made the funding available to the Agency.

All remaining unobligated funds at the end of FY 2023 will be used for the Underutilized Technologies Fund established in the **Federal Register** notice 88 FR 19239, Notice of Solicitation of Applications (NOSA) for the Rural Energy for America Program for Fiscal Years 2023 and 2024, published on March 31, 2023.

Award Amounts: A grant award will not exceed $500,000 to a single applicant. RDSOs may select a single or multiple Applicants that are awarded a REAP TAG grant. No award amount of less than $100,000 will be made.

Anticipated Award Date: Awards will be made before September 30, 2023.

Performance Period: The grant period is at the discretion of the Applicant but in any event no more than three (3) years. Applicants should be aware that additional funding opportunity announcements may be made in future years.

Renewal or Supplemental Awards: Applicants may apply for funding in future funding cycles. No unfunded applications will carry over to the next funding cycle. Applicants must re-apply for an additional grant, and receipt of past REAP TAG Program awards does not guarantee receipt of future awards.

Type of Assistance Instrument: Grant agreement.

C. Eligibility Information

1. *Eligible Applicants.* Eligible Applicants must meet the eligibility requirements, as applicable, specified in paragraphs (a) through (c) of this section.

(a) Eligible Applicants are:

(1) A unit of State, Tribal, or local government;

(2) A land-grant college or university, or other Institution of Higher Education;

(3) An electric cooperative;

(4) A Public Power Entity;

(5) An Investor-owned utility;

(6) A Council, as defined under the Resource Conservation and Development Program, at 16 U.S.C. 3451.

(7) A Not-for-profit entity;

(8) A For-profit entity;

(9) A Sole proprietor business;

(10) Other business entities (organized pursuant to Federal, State, or Tribal law).

(b) The Applicant must have sufficient capacity to perform the activities proposed in the application to ensure success. The Agency will make this assessment based on the information provided in the application.

(c) The Applicant must have the legal authority necessary to apply for and carry out the purpose of the grant.

2. *Cost Sharing or Matching.* There are no cost sharing or matching requirements associated with this grant.

3. *Other.* All submitted applications must meet the eligibility requirements in this notice. Applications will not be considered for funding if they do not provide sufficient information to determine eligibility or are missing required elements.

(a) *Eligible Activities.* Includes recruitment of Renewable Energy or energy efficiency projects, identification of electrical engineering services, preparation of REAP applications for Agency financial assistance, as well as preparing reports and assessments necessary to request financial assistance. Contracted services are allowable. All activities must be directly related to providing technical assistance to Agricultural Producers or Rural Small Businesses to apply for assistance under REAP. Eligible activities include but are not limited to:

(1) Assisting Agricultural Producers or Rural Small Businesses to apply for assistance under REAP for Energy Efficiency Improvements, or Renewable Energy Systems.

(2) Providing information on how to improve the energy efficiency of the operations and to use Renewable Energy technologies and resources in their operations.

(3) Conducting and promoting Energy Assessments and audits as defined in 7 CFR 4280.103.

(4) Preparing a technical report in accordance with 7 CFR 4280.110(g).

(5) Assisting with filing for System Award Management (SAM) and Unique Entity Identifier (UEI) registrations.

(6) Assisting with completing a REAP grant application in accordance with 7 CFR 4280.116.

(7) Assisting with planning construction and development in accordance with 7 CFR 4280.125.

(8) Assisting with completion of environmental reports and/or documentation required for submittal of applications.

(b) *Ineligible activities.* Includes, but are not limited to:

(1) Projects where funding is not targeted directly to assisting Agricultural Producers or Rural Small Businesses.

(2) Projects which propose to provide Energy Audits or Renewable Energy Development Assistance for residential purposes.

(c) *Eligible Project Costs.* Those costs incurred after the date a complete Application is received by the Agency and that are directly related to technical assistance to Agricultural Producers or Rural Small Businesses to apply for assistance under REAP, which include but are not limited to:

(1) Salaries;

(2) Travel expenses;

(3) Office supplies (*e.g.,* paper, pens, file folders); and

(4) Expenses charged as a direct cost or as an indirect cost of up to a maximum of 5 percent for administering the grant.

(d) *Ineligible Project Costs.* Includes, but are not limited to:

(1) Payment for any construction-related activities;

(2) Purchase or lease of equipment;

(3) Payment of any judgment or debt owed to the United States;

(4) Any goods or services provided by a Person or entity who has a conflict of interest as provided in 7 CFR 4280.106;

(5) Any costs of preparing the application package for funding under this notice;

(6) Funding of political or lobbying activities; and

(7) Payment or waiver of student tuition.

(e) *Do Not Pay.* The Agency will check the Do Not Pay portal to determine if the applicant has been debarred or suspended at the time of application and also prior to funding any grant award.

D. Application and Submission Information

1. *Address to Request Application Package.* Entities wishing to apply for assistance through the REAP TAG Program should contact the RDSO provided in the **ADDRESSES** section of this notice to obtain copies of the application package. Application information is also available at *https://www.grants.gov/.*

2. *Content and Form of Application Submission.* An application must contain all the required elements outlined in paragraphs (a) through (h) of this section. Each application must address the applicable scoring criteria presented in Section E.1. of this notice for the type of funding being requested.

(a) Form SF–424, Application for Federal Assistance (For Non-Construction).

(b) Form SF 424A, Budget Information—Non-Construction Programs.

(c) Form RD 400–4, Assurance Agreement.

(d) Form RD 400–1, Equal Opportunity Agreement.

(e) Certification that the Applicant is a legal entity in good standing (as applicable) and operating in accordance with the laws of the State(s) or Tribe where the Applicant has a place of business.

(f) The Applicant must identify whether the Applicant has a known relationship or association with an Agency employee. If there is a known relationship, the Applicant must identify each Agency employee with whom the Applicant has a known relationship.

(g) A proposed scope of work to include the items listed in paragraphs (1) to (10) of this section. The proposed scope of work must be typed, single-spaced, in 11-point font, not to exceed 25 8.5 x 11″ pages.

(1) A brief summary, including a project title, describing the proposed project;

(2) Goals of the proposed project;

(3) Geographic scope or service area of the proposed project and the method and rationale used to select the service area;

(4) Identification of the specific needs for the service area and the target audience to be served. List or describe the types of technical assistance and proposed services to be provided. State the number of Agricultural Producers and/or Rural Small Businesses to be served and identified, including name and contact information, if available, as well as the method and rationale used to select the Agricultural Producers and/or Rural Small Businesses;

(5) Timeline describing the proposed tasks to be accomplished and the schedule for implementation of each task. Include whether organizational staff, consultants, or contractors will be used to perform each task. If a project is located in multiple States, resources must be sufficient to complete all projects;

(6) Marketing strategies to include a discussion on how the Applicant will be marketing and providing outreach activities to the proposed service area ensuring that Agricultural Producers and/or Rural Small Businesses are served;

(7) Applicant's experience as follows:

(i) The Applicant's experience in completing similar activities, such as Renewable Energy Site Assessments, Energy Audits, and Renewable Energy Technical Assistance provided directly to Agricultural Producers and Rural Small Businesses, including the number of similar projects the Applicant has performed and the number of years the Applicant has been performing a similar service. Include personnel on staff or to be contracted to provide the service and their experience with similar projects.

(ii) The amount of experience in administering similar activities as applicable to the purpose of the proposed project. Provide commentary if the Applicant has any existing programs that can demonstrate the achievement of energy savings or energy generation with Agricultural Producers and/or Rural Small Businesses the Applicant has served. If the Applicant has received one or more accolades within the last 5 years in recognition of its Renewable Energy, energy savings, or energy-based technical assistance, please describe the achievement(s).

(8) Latest financial information to show the Applicant's financial viability to carry out the proposed work. A current audit report is preferred; however, Applicants not subject to 2 CFR 200, subpart F may submit a balance sheet, income statement, and statement of cash flows in lieu of an audit report.

(9) Itemized budget including contracted services and itemized staff salaries and benefits; and estimated breakdown of costs (direct and indirect) including those to be funded by the Applicant as well as other sources. Sufficient detail should be provided to permit the approval official to determine reasonableness, applicability, and allowability.

(10) Summarize the Applicant's capacity to perform the proposed technical assistance activities including a summary of all other programs and activities the Applicant will also perform during the proposed project performance period.

(h) Documentation on each of the scoring criteria listed in Section E.1. of this notice. Documentation in support of scoring criteria must be typed, single-spaced, in an 11-point font, not to exceed 25 8.5 x 11″ pages. Acceptable file types include .doc, .docx, .pdf, .jpg, .jpeg, .png, .gif, .xls, .xlsx, .txt, .ppt, and .pptx. If the Applicant would like to submit another file type, please contact the RDSO first for approval.

3. *System for Award Management and 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 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) Applicant must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

(d) Applicants must provide a valid UEI in its application, unless determined exempt under 2 CFR 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 Dates and Times.*

(a) *Application for Technical Assistance.* Prior to official submission of applications, Applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to August 10, 2023. Agency contact information can be found in **FOR FURTHER INFORMATION CONTACT** section of this notice.

(b) *Application Deadline Date.*

Paper submissions. Paper submissions must be received by the Agency no later than 4:00 p.m. local time on August 15, 2023, in the RDSO of the State where the project is located to be eligible for funding under this grant opportunity. A list of the RDSOs can be found at *https://www.rd.usda.gov/about-rd/state-offices.*

Electronic submissions. Electronic submissions via *https://www.Grants.gov* or to a RDSO State Energy Coordinator via email must be received no later than 11:59 p.m. Eastern Time on August 15, 2023. The State Energy Coordinator in the applicable State to be eligible for funding under this grant opportunity contact list can be found at: *https://www.rd.usda.gov/contact-us/state-energy-coordinators.*

(c) *Applications Received After Deadline Date.* If completed applications are not received by the August 15, 2023, deadline, the application will neither be reviewed nor considered for funding under any circumstances. The Agency will not

solicit or consider new scoring or eligibility information that is submitted after the application deadline. RBCS reserves the right to ask Applicants for clarifying information and additional verification of assertions in the application.

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 an Applicant's State has a SPOC, Applicants 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, you may submit your application directly to the Agency. Applications from Federally recognized Indian Tribes are not subject to this requirement.

6. *Funding Restrictions.* Applications must be for eligible purposes as defined above.

7. *Other Submission Requirements.*

(a) Paper applications must be mailed, shipped or sent overnight, or hand carried.

(b) Applicants may apply to one or multiple RDSO(s) to perform work on behalf of Applicants from that/those jurisdiction(s).

E. Application Review Information

1. *Criteria.* All eligible and Complete Applications will be evaluated and scored based on the selection criteria and weights outlined in this section. Failure to address any one of the criteria by the application deadline will result in the application being determined ineligible, and the application will not be considered for funding. Documentation in support of scoring criteria must be typed, single-spaced, in an 11-point font, not to exceed 25 8.5 x 11″ pages.

(a) *Experience.* A maximum of 20 points will be awarded for this criterion. Applicants should provide a narrative description of their organizational and aggregate staff experience at implementing successful technical assistance programs. Applicants should note prior projects or experience related to energy efficiency, Renewable Energy Systems, federal funding, and technical assistance provision.

(1) More than 10 years of successful implementation, 20 points will be awarded;

(2) More than 5 years to less than 10 years of successful implementation, 15 points will be awarded;

(3) More than 3 to less than 5 years of successful implementation, 10 points will be awarded;

(4) More than 1 to less than 3 years of successful implementation, 5 points will be awarded; or

(5) Applicants with less than 1 year of experience, 0 points will be awarded.

(b) *Soundness of approach.* A maximum of 30 total points will be awarded for this criterion. For each criterion listed below a maximum of 15 points will be awarded for each. Applicants should address each component with a brief narrative response.

(1) Work plan clearly articulates a well thought out approach to accomplishing objectives & clearly identifies who will be served by the project and demonstrates knowledge of and experience working with those served; (Small businesses and Agricultural Producers)—0 to 15 points will be awarded; and

(2) Goals & objectives are clearly defined, tied to the need as defined in the work plan, and are measurable in terms of new applications generated- 0 to 15 points will be awarded.

(c) *Recruitment of Priority REAP Projects.* 20 points will be awarded for this criterion. Applicants should provide a narrative addressing which of the following priority REAP project(s) will be targeted and how those project(s) will be targeted. Exactly 20 points will be awarded for satisfactory targeting of one or more of these project types as follows:

(1) Projects requesting $20,000 or less in REAP funds.

(2) Projects in disadvantaged or distressed communities as defined in Section F.1.ii.(b) of the NOSA for the REAP Program that published in the **Federal Register** on March 31, 2023 (*https://www.govinfo.gov/content/pkg/FR-2023-03-31/pdf/2023-06376.pdf*). A map of disadvantaged or distressed communities can be found at *https://ruraldevelopment.maps.arcgis.com/apps/webappviewer/index.html?id=4acf083be4c44bb7864d90f97de0c788.*

(3) Projects seeking funding for Underutilized Technologies, as defined in Section A.3 of this notice.

(d) *Performance measures.* A maximum of 10 points will be awarded for this criterion. Applicants can receive up to 10 points based on the proposed performance measures to evaluate the progress and impact of the proposed project. Performance measures should be based on the applicant's proposed scope of work as described in SectionD.2(g) of this notice and must include a description for how the results of the technical assistance will be measured and the benchmarks to be used for measuring effectiveness. Indicators to be used should be specific and quantifiable.

(e) *State Director discretionary points.* The State Director may award up to 20 discretionary points to address geographic distribution of funds, ensure selection of Priority REAP Projects as described in Section E.1(d) of this notice that meet the needs of the respective state or region, or if selecting the application helps further a Presidential initiative or a Secretary of Agriculture priority.

2. *Review and Selection Process.* The RDSOs will review applications to determine if applications are eligible for assistance based on the eligibility requirements in Section C of this notice. Applicants meeting those eligibility requirements will be scored based on the criteria in Section E.1. of this notice. Only those meeting the minimum score of 40 points will be considered for funding. The total maximum points that an Applicant may receive is 100 points. Applications will be evaluated based only on required information submitted by the Applicant in the application. All applications that are complete and eligible will be scored and ranked competitively against all other applications received in a particular state by that RDSO. The Agency reserves the right to offer the Applicant less than the grant funding requested and to choose a lower scoring application but only if the same applicant has already been awarded a grant pursuant to this Notice for an application in a different RDSO.

If an application is withdrawn by the Applicant, it can be resubmitted and will be evaluated as a new application, provided the application is resubmitted before the submission deadline.

Funding of projects is subject to the Applicant's satisfactory submission of the additional items required by Section F and the USDA RD Letter of Conditions.

F. Federal Award Administration Information

1. *Federal Award Notices.* Successful Applicants will receive notification for funding from the RDSO. Applicants must comply with all applicable statutes and regulations before the grant award can be approved.

2. *Administrative and National Policy Requirements.*

In addition, all recipients of Federal financial assistance are required to report information about executive compensation (see, 2 CFR part 170 (*https://www.ecfr.gov/current/title-2/part-170*). The Applicant will be required to have the necessary processes and systems in place to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282) and reporting requirements (see, 2 CFR 170.200(b) (*https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-170/subpart-B/section-170.200*), unless the recipient is exempt under 2 CFR 170.110(b) (*https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-170/subpart-A/section-170.110*).

The following additional requirements apply to Applicants selected for this program:

(a) Form RD 1940–1, ''Request for Obligation of Funds.''

(b) Form RD 1942–46, ''Letter of Intent to Meet Conditions.''

(c) Form SF–LLL, ''Disclosure of Lobbying Activities,'' if applicable.

(d) Form SF 270, ''Request for Advance or Reimbursement.''

(e) Form RD 400–4, ''Assurance Agreement'' must be completed by the Applicant.

(f) Grantees must collect and maintain data provided by REAP grant applicant on race, sex, and national origin. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity'' (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

(g) The Applicant must comply with title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, Americans with Disabilities Act (ADA), section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Executive Order 12250, Executive Order 13166 Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E.

3. *Grant Disbursement.* The Agency will disburse grants either by advance or reimbursement. Request for Advance or Reimbursement, Form SF–270, must be completed by the grantee and submitted to the Agency, no more often than monthly to request either advance or reimbursement of funds.

4. *Reporting.*

(a) *Project Performance/Reporting.* After grant approval and through grant completion, awardees will be required to provide the following, as indicated in the Financial Assistance Agreement:

(1) Federal Financial Report, Form SF–425, and a project performance report will be required on a semiannual basis (due 30 working days after end of the semiannual period). For the purposes of this grant, semiannual periods end on March 31st and September 30th. The project performance reports shall include the elements prescribed in the Financial Assistance Agreement, including, as appropriate, but not limited to:

(i) A description of the activities that the funds reflected in the financial status report were used for including the number of recipients (Agricultural Producers and Rural Small Businesses) assisted, and the type of assistance provided, a list of recipients with each recipient's North American Industry Classification System (NAICS) code, the location of each recipient, and Renewable Energy technology that would be used or Energy Efficiency Improvement if the projects were implemented. Also provide the number of and identify the recipients who submitted REAP grant applications and the recipients receiving REAP grant awards (noting those with distressed or disadvantaged community status and underutilized technology status).

(ii) A comparison of actual accomplishments to the objectives for that period;

(iii) Reasons why established objectives were not met, if applicable;

(iv) Problems, delays, or adverse conditions which will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of objectives during established time periods. This disclosure shall be accomplished by a Statement of the action taken or planned to resolve the situation;

(v) Objectives and timetables established for the next reporting period;

(vi) A demographic summary of the of the agricultural producers and business owners receiving the technical assistance.

(2) A final project and financial status report within 90 days after the expiration or termination of the grant.

(3) Outcome project performance report. One year after project completion, awardees must provide a project performance report describing their outcomes as related to REAP TAG Program goals as identified in your Financial Assistance Agreement. The final report will also address the following:

(i) The most challenging or unexpected aspects of this grant.

(ii) What advice you would give to other organizations applying for this grant.

(iii) The strengths and limitations of this grant.

(iv) If you had the opportunity, what would you have done differently?

(iv) Are there any post-grant plans for this Project?

The report is due 60 days after the first full year following the year in which the expansion project was completed.

5. *Signage.* The Awardee is encouraged to display USDA standard infrastructure investment signage, available for download from the Agency, during construction of the Project. Expenditures for such signage shall be a permitted eligible cost of the Project.

G. Federal Awarding Agency Contact(s)—For general questions about this announcement, please contact your RDSO as provided in the **ADDRESSES** section of this notice or the program website at: *https://www.rd.usda.gov/reap*

H. Other Information

1. *Paperwork Reduction Act.* In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with the program, as covered in this notice, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0503–0028.

2. *National Environmental Policy Act.* All Applicants under this notice are subject to the requirements of 7 CFR 1970, available at: *https://rd.usda.gov/resources/environmental-studies/environmental-guidance.* However, awards for technical assistance and training under this notice are classified as a Categorical Exclusion according to 7 CFR 1970.53(b), and usually do not require any additional documentation. RBCS 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 RBCS with this determination.

3. *Federal Funding Accountability and Transparency Act.* All Applicants, in accordance with 2 CFR 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.

4. *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.

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

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, Agency, or staff office 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; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

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

Karama Neal,

Administrator, Rural Business Cooperative Service, USDA Rural Development.

[FR Doc. 2023–14832 Filed 7–13–23; 8:45 am]

BILLING CODE 3410–XY–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Massachusetts Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. 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 Massachusetts Advisory Committee (Committee) to the U.S. Commission on Civil Rights will meet via Zoom to review and vote on the committee's report on civil asset forfeiture.

DATES: Tuesday, July 18, 2023; 2 p.m. ET

ADDRESSES: The meeting will be held via Zoom.

Meeting Link (Audio/Visual): https://tinyurl.com/3h9sabrp; password: USCCR–MA.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll-Free; Meeting ID: 161 801 4381#.

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez, Designated Federal Official at *bdelaviez@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the meeting 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 Evelyn Bohor at *ebohor@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 Barbara Delaviez at *bdelaviez@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–312–353–8311.

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, Massachusetts 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 *ebohor@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Discuss and Vote on Civil Asset Forfeiture Report
III. Public Comment
IV. Next Steps
V. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the committee's charter end date.

Dated: July 10, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–14895 Filed 7–13–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–817]

Prestressed Concrete Steel Wire Strand From Ukraine: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Intent To Rescind, in Part; 2020–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on prestressed concrete steel wire strand (PC strand) from Ukraine. We preliminarily determine that PJSC Stalkanat (Stalkanat) did not make sales of subject merchandise at less than normal value during the period of review (POR) November 19, 2020, through May 31, 2022. Interested parties are invited to comment on these preliminary results.

DATES: Applicable July 14, 2023.

FOR FURTHER INFORMATION CONTACT: Laura Griffith, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6430.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2022, Commerce initiated an administrative review of the antidumping duty order [1] on PC strand from Ukraine covering the above-referenced POR.[2] On February 10, 2023, Commerce extended the deadline for issuing the preliminary results of this review to June 30, 2023.[3] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4]

Scope of the Order

The products covered by this *Order* are prestressed concrete steel wire strand, produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand. For a full description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Preliminary Results of Successor-in-Interest Analysis and Intent To Rescind Administrative Review, in Part

Commerce initiated this administrative review with respect to PJSC Stalkanat (Stalkanat) and PJSC PA Stalkanat-Silur (Stalkanat-Silur), the entity that participated in the original investigation. Stalkanat reported that it legally separated from Stalkanat-Silur and, subsequently, took over the business activities of Stalkanat-Silur in Odessa, Ukraine on January 1, 2022. We have analyzed record information regarding the management, manufacturing facilities, customers, and suppliers of Stalkanat-Silur and Stalkanat, and preliminarily determine that Stalkanat's operations are not materially dissimilar to those of Stalkanat-Silur prior to its legal separation. Thus, we preliminarily find that Stalkanat is the successor-in-interest to Stalkanat-Silur. *See* the Preliminary Decision Memorandum for further information. Accordingly, we are preliminarily rescinding the administrative review of Stalkanat-Silur.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). We calculated export prices for Stalkanat in accordance with section 772 of the Act. For a full description of the methodology underlying our decisions, *see* the Preliminary Decision Memorandum. *See* the appendix to this notice for a complete list of topics discussed in the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, the Preliminary Decision Memorandum may be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Preliminary Results of the Review

Commerce preliminarily determines that the following estimated weighted-average dumping margin exists during the period November 19, 2020, through May 31, 2022:

Producer and/or exporter	Weighted-average dumping margin (percent)
PJSC Stalkanat	0.00

Disclosure and Public Comment

Commerce intends to disclose to interested parties the calculations performed for these preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may comment on the preliminary results of this review by submitting case briefs to Commerce no later than 30 days after the date of publication of these preliminary results of review in the **Federal Register**.[5] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing the applicable case briefs.[6] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[7] Note that Commerce has temporarily modified certain portions of its requirements for serving documents containing business proprietary information, until further notice.[8]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. An electronically-filed hearing request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in the case briefs, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act, unless otherwise extended.

Assessment Rates

Upon issuance of the final results of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate

[1] *See Prestressed Concrete Steel Wire Strand from Indonesia, Italy, Malaysia, South Africa, Spain, Tunisia, and Ukraine: Antidumping Duty Orders,* 86 FR 29998 (June 4, 2021) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 48459 (August 9, 2022) (*Initiation*).

[3] *See* Memorandum, ''Extension of Deadline for Preliminary Results of 2020–2022 Antidumping Duty Administrative Review,'' dated February 10, 2023.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review: Prestressed Concrete Steel Wire Strand from Ukraine; 2020–2022,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See* 19 CFR 351.309(c)(1)(ii).

[6] *See* 19 CFR 351.309(d).

[7] *See* 19 CFR 351.309(c) and (d); *see also* 19 CFR 351.303 (for general filing requirements).

[8] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

entries associated with the U.S. sales covered by this review.[9] If Stalkanat's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate importer-specific assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).

Where an importer-specific *ad valorem* assessment rate is not zero or *de minimis,* we will instruct CBP to collect the appropriate duties at the time of liquidation. Where either Stalkanat's *ad valorem* weighted-average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis,*[10] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

If Commerce calculates margins above *de minimis* in the final results of this review, we intend to instruct CBP to take into account the ''provisional measures deposit cap,'' in accordance with 19 CFR 351.212(d).

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR, produced by Stalkanat, for which it did not know that the merchandise it sold was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[11]

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).

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise associated with the U.S. sales covered by the final results of this review and for future deposits of estimated duties, where applicable.[12]

[9] *See* 19 CFR 351.212(b).

[10] *See* 19 CFR 351.106(c)(2).

[11] For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[12] *See* section 751(a)(2)(C) of the Act.

Cash Deposit Requirements

The following cash deposit requirements will be in effect for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the final results of this administrative review in the **Federal Register**, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Stalkanat will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent, and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which the company was reviewed; (3) if the exporter is not a firm covered in this review or a previous segment of this proceeding, but the producer is, then the cash deposit rate will be the rate established in the most recently completed segment for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 19.30 percent, the all-others rate established in the less-than-fair-value investigation.[13]

These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(1) and 777(i)(l) of the Act and 19 CFR 351.221(b)(4).

[13] *See Prestressed Concrete Steel Wire Strand from Ukraine: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Negative Determination of Critical Circumstances,* 86 FR 18498 (April 9, 2021).

Dated: June 30, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2023–14984 Filed 7–13–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–146]

Certain Freight Rail Couplers and Parts Thereof From the People's Republic of China: Countervailing Duty Order

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

SUMMARY: Based on affirmative final determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC), Commerce is issuing a countervailing duty (CVD) order on certain freight rail couplers and parts thereof (freight rail couplers) from the People's Republic of China (China).

DATES: Applicable July 14, 2023.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova or Paul Gill, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1280 or (202) 482–5673, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 705(d) of the Tariff Act of 1930, as amended (the Act), on May 19, 2023, Commerce published its affirmative final determination in the CVD investigation of freight rail couplers from China.[1] On July 3, 2023, the ITC notified Commerce of its final affirmative determination that an industry in the United States is

[1] *See Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, in Part,* 88 FR 32184 (May 19, 2023) (*Final Determination*).

materially injured by reason of subsidized imports of freight rail couplers from China, within the meaning of section 705(b)(1)(A)(i) of the Act.[2]

Scope of the Order

The products covered by this order are freight rail couplers from China. For a complete description of the scope of the order, *see* the appendix to this notice.

Countervailing Duty Order

On July 3, 2023, in accordance with section 705(d) of the Act, the ITC notified Commerce of its final determination that an industry in the United States is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act by reason of imports of freight rail couplers from China.[3] Therefore, Commerce is issuing this CVD order in accordance with sections 705(c)(2) and 706 of the Act. Because the ITC determined that imports of freight rail couplers from China are materially injuring a U.S. industry, unliquidated entries of such merchandise from China entered, or withdrawn from warehouse, for consumption are subject to the assessment of countervailing duties.

Therefore, in accordance with section 706(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, countervailing duties on all relevant entries of freight rail couplers from China. Countervailing duties will be assessed on unliquidated entries of freight rail couplers from China which are entered, or withdrawn from warehouse, for consumption on or after March 3, 2023, the date of publication of the *Preliminary Determination,*[4] but will not be assessed on entries occurring after the expiration of the provisional measures period and before publication of the ITC's final affirmative injury determination, as further described in the ''Provisional Measures'' section below.

Suspension of Liquidation and Cash Deposits

In accordance with section 706 of the Act, Commerce will instruct CBP to continue to suspend liquidation of all relevant entries of freight rail couplers from China. These instructions suspending liquidation will remain in effect until further notice.

Commerce also intends, pursuant to section 706(a)(1) of the Act, to instruct CBP to require cash deposits equal to the amounts as indicated below. Accordingly, effective on the date of publication of the ITC's final affirmative injury determination in the **Federal Register**, CBP will require, at the same time as importers would deposit estimated normal customs duties on the subject merchandise, a cash deposit for each entry of subject merchandise equal to the subsidy rates listed below.[5] The all-others rate applies to all producers or exporters not specifically listed below, as appropriate.

Company	Subsidy rate (percent *ad valorem*)
Chongqing Changzheng Heavy Industry Co., Ltd	265.99
Chongqing Tongyao Transportation Equipment Co.	265.99
CRRC Qiqihar Co., Ltd	265.99
NanJing Zhongsheng Rolling Stock Components Co. Ltd	265.99
Ningbo Minghui Metal Technology Co., Ltd	265.99
Qingdao Lianshan Casting Co., Ltd	265.99
Qingdao Sanheshan Precision Casting Co., Ltd	265.99
Shaanxi Haiduo Railway Technology Development Co., Ltd	265.99
Shanghai Voith Xiagujin Chuang Coupler Technology Co., Ltd	265.99
All Others	265.99

Provisional Measures

Section 703(d) of the Act states that suspension of liquidation instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months. Commerce published its *Preliminary Determination* on March 3, 2023.[6] Therefore, the provisional measures period, beginning on the date of publication of the *Preliminary Determination,* ended on June 30, 2023. Pursuant to section 707(b) of the Act, the collection of cash deposits at the rates listed above will begin on the date of publication of the ITC's final affirmative injury determinations.

Therefore, in accordance with section 703(d) of the Act, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of freight rail couplers from China entered, or withdrawn from warehouse, for consumption after June 30, 2023, the date on which the provisional measures expired, through July 6, 2023, the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**.[7] Suspension of liquidation will resume on the date of publication of the ITC's final affirmative injury determination in the **Federal Register**.

Critical Circumstances

With regard to the ITC's negative critical circumstances determination on imports of freight rail couplers from China,[8] Commerce intends to instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated countervailing duties with respect to entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after December 3, 2022 (*i.e.,* 90 days prior to the date of the publication of the *Preliminary Determination*), but before March 3, 2023 (*i.e.,* the date of publication of the *Preliminary Determination*).

Establishment of the Annual Inquiry Service List

On September 20, 2021, Commerce published the *Final Rule* in the **Federal**

[2] *See* ITC's Letter, ''Notification of ITC Final Determinations,'' dated July 3, 2023 (ITC Notification).

[3] *Id.*

[4] *See Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Preliminary Affirmative Critical Circumstances Determination,* 88 FR 13425 (March 3, 2023) (*Preliminary Determination*).

[5] *See* section 706(a)(3) of the Act.

[6] *See Preliminary Determination.*

[7] *See Certain Freight Rail Couplers and Parts Thereof from China,* 88 FR 43398 (July 7, 2023).

[8] *Id.*

Register.[9] On September 27, 2021, Commerce also published the *Procedural Guidance* in the **Federal Register**.[10] 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.[11]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** after November 4, 2021, Commerce will create an annual inquiry service list segment in Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), available at *https://access.trade.gov/,* within five business days of publication of the notice of the order. Each annual inquiry service list will be saved in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.'' [12]

Interested parties who wish to be added to the annual inquiry service list for an order must submit an entry of appearance to the annual inquiry service list segment for the order in ACCESS within 30 days after the date of publication of the order. For ease of administration, Commerce requests that law firms with more than one attorney representing interested parties in an order designate a lead attorney to be included on the annual inquiry service list. Commerce will finalize the annual inquiry service list within five business days thereafter. As mentioned in the *Procedural Guidance,* the new annual inquiry service list will be in place until the following year, when the *Opportunity Notice* for the anniversary month of the order is published.

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.'' [13] Accordingly, as stated above, the petitioner and the Government of China should submit their initial entry of appearance after publication of this notice in order to appear in the first annual inquiry service list for this order. Pursuant to 19 CFR 351.225(n)(3), the petitioner and the Government of China will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioner and the Government of China 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.

Notification to Interested Parties

This notice constitutes the CVD order with respect to freight rail couplers from China pursuant to section 706(a) of the Act. Interested parties can find a list of duty orders currently in effect at *https://enforcement.trade.gov/stats/iastats1.html*.

This CVD order is published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: July 7, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The merchandise covered by the order is certain freight railcar couplers (also known as ''fits'' or ''assemblies'') and parts thereof. Freight railcar couplers are composed of two main parts, namely knuckles and coupler bodies but may also include other items (*e.g.,* coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors). The parts of couplers that are covered by the order include: (1) E coupler bodies, (2) E/F coupler bodies, (3) F coupler bodies, (4) E knuckles, and (5) F knuckles, as set forth by the Association of American Railroads (AAR). The freight rail coupler parts (*i.e.,* knuckles and coupler bodies) are included within the scope of the order when imported separately. Coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors are covered merchandise when imported in an assembly but are not covered by the scope when imported separately.

Subject freight railcar couplers and parts are included within the scope whether finished or unfinished, whether imported individually or with other subject or nonsubject parts, whether assembled or unassembled, whether mounted or unmounted, or if joined with nonsubject merchandise, such as other nonsubject parts or a completed railcar. Finishing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, machining, and assembly of various parts. When a subject coupler or subject parts are mounted on or to other nonsubject merchandise, such as a railcar, only the coupler or subject parts are covered by the scope.

The finished products covered by the scope of the order meet or exceed the AAR specifications of M–211, ''Foundry and Product Approval Requirements for the Manufacture of Couplers, Coupler Yokes, Knuckles, Follower Blocks, and Coupler Parts'' and/or AAR M–215 ''Coupling Systems,'' or other equivalent domestic or international standards (including any revisions to the standard(s)).

The country of origin for subject couplers and parts thereof, whether fully assembled, unfinished or finished, or attached to a railcar, is the country where the subject coupler parts were cast or forged. Subject merchandise includes coupler parts as defined above that have been further processed or further assembled, including those coupler parts attached to a railcar in third countries. Further processing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, painting, coating, priming, machining, and assembly of various parts. The inclusion, attachment, joining, or assembly of nonsubject parts with subject parts or couplers either in the country of manufacture of the in-scope product or in a third country does not remove the subject parts or couplers from the scope.

The couplers that are the subject to the order are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number 8607.30.1000. Unfinished subject merchandise may also enter under HTSUS statistical reporting number 7326.90.8688. Subject merchandise attached to finished railcars may also enter under HTSUS statistical reporting numbers 8606.10.0000, 8606.30.0000, 8606.91.0000, 8606.92.0000, 8606.99.0130, 8606.99.0160, or under subheading 9803.00.50. Subject merchandise

[9] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[10] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[11] *Id.*

[12] This segment will be 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.

[13] *See Final Rule,* 86 FR at 52335.

may also be imported under HTSUS statistical reporting number 7325.99.5000. These HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the order is dispositive.

[FR Doc. 2023–14891 Filed 7–13–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–145]

Certain Freight Rail Couplers and Parts Thereof From the People's Republic of China: Antidumping Duty Order

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

SUMMARY: Based on affirmative final determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC), Commerce is issuing an antidumping duty order on certain freight rail couplers and parts thereof (freight rail couplers) from the People's Republic of China (China).

DATES: Applicable July 14, 2023.

FOR FURTHER INFORMATION CONTACT: Drew Jackson or Zachary Shaykin, 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) 482–4406 or (202) 482–2638, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i) of the Tariff Act of 1930, as amended (the Act), On May 30, 2023, Commerce published in the **Federal Register** its affirmative final determination in the less-than-fair-value (LTFV) investigation of freight rail couplers from China.[1] On July 3, 2023, the ITC notified Commerce of its final determination, pursuant to section 735(d) of the Act, that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of LTFV imports freight rail couplers from China, and that critical circumstances do not exist with respect to dumped imports of freight rail couplers from China.[2]

Scope of the Order

The products covered by this order are freight rail couplers from China. For a complete description of the scope of this order, *see* the appendix to this notice.

Antidumping Duty Order

On July 3, 2023, in accordance with section 735(d) of the Act, the ITC notified Commerce of its final determination that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(1) of the Act by reason of imports of freight rail couplers from China.[3] Therefore, Commerce is issuing this antidumping duty order in accordance with sections 735(c)(2) and 736 of the Act. Because the ITC determined that imports of freight rail couplers from China are materially injuring a U.S. industry, unliquidated entries of such merchandise from China, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of freight rail couplers from China. Antidumping duties will be assessed on unliquidated entries of freight rail couplers from China, or withdrawn from warehouse, for consumption, on or after March 13, 2023, the date of publication of the *Preliminary Determination* in the **Federal Register**.[4]

Continuation of Suspension of Liquidation

In accordance with section 736 of the Act, Commerce will instruct CBP to continue to suspend liquidation on all relevant entries of freight rail couplers from China. These instructions suspending liquidation will remain in effect until further notice.

Commerce will also instruct CBP to require cash deposits equal to the estimated weighted-average dumping margins indicated in the tables below. Accordingly, effective on the date of publication in the **Federal Register** of the notice of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on subject merchandise, a cash deposit equal to the rates listed below. Commerce determined that all exporters of Chinese freight rail couplers are part of the China-wide entity.[5] Accordingly, the China-wide entity rate listed below applies to all exporters.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)	Estimated weighted-average dumping margin adjusted for export subsidy offset(s) (percent) [6]
China-Wide Entity	169.90	139.49

Critical Circumstances

With respect to the ITC's negative critical circumstances determination on imports of freight rail couplers, Commerce intends to instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated antidumping duties with respect to entries of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after December 13, 2022 (*i.e.,* 90 days prior to the date of the publication of the *Preliminary Determination*), but before March 13, 2023 (*i.e.,* the date of publication of the *Preliminary Determination*).

Establishment of the Annual Inquiry Service Lists

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the

[1] *See Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China: Final Affirmative Determination of Sales at Less-Than-Fair Value and Final Affirmative Determination of Critical Circumstances,* 88 FR 34485 (May 30, 2023) (*Final Determination*).

[2] *See* ITC's Letter, Notification of ITC Final Determinations, dated July 3, 2023.

[3] *Id.*

[4] *See Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances,* 88 FR 15372 (March 13, 2023) (*Preliminary Determination*).

[5] *See Final Determination.*

[6] The estimated weighted-average dumping margin listed in the *Preliminary Determination* did not reflect an adjustment for export subsidies found in the companion countervailing duty investigation of freight rail couplers from China. Commerce will instruct CBP to refund the difference between the unadjusted estimated weighted-average dumping margin collected as cash deposits (*i.e.,* 169.90 percent) after the publication of the *Preliminary Determination* and the estimated weighted-average dumping margin adjusted for export subsidy offset(s) (*i.e.,* 139.49).

Federal Register.[7] On September 27, 2021, Commerce also published the notice titled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[8] 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.[9]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** after November 4, 2021, Commerce will create an annual inquiry service list segment in Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), available at *https://access.trade.gov,* within five business days of publication of the notice of the order. Each annual inquiry service list will be saved in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.'' [10]

Interested parties who wish to be added to the annual inquiry service list for an order must submit an entry of appearance to the annual inquiry service list segment for the order in ACCESS within 30 days after the date of publication of the order. For ease of administration, Commerce requests that law firms with more than one attorney representing interested parties in an order designate a lead attorney to be included on the annual inquiry service list. Commerce will finalize the annual inquiry service list within five business days thereafter. As mentioned in the *Procedural Guidance,* the new annual inquiry service list will be in place until the following year, when the *Opportunity Notice* for the anniversary month of the order is published.

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.'' [11] Accordingly, as stated above, the petitioners and foreign governments should submit their initial entry of appearance after publication of this notice in order to appear in the first annual inquiry service list for those orders for which they qualify as an interested party. 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.

Notification to Interested Parties

This notice constitutes the antidumping duty order with respect to freight rail couplers from China pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *https://enforcement.trade.gov/stats/iastats1.html.*

This antidumping duty order is published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: July 7, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The scope of this order covers certain freight railcar couplers (also known as ''fits'' or ''assemblies'') and parts thereof. Freight railcar couplers are composed of two main parts, namely knuckles and coupler bodies but may also include other items (*e.g.,* coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors). The parts of couplers that are covered by the order include: (1) E coupler bodies, (2) E/F coupler bodies, (3) F coupler bodies, (4) E knuckles, and (5) F knuckles, as set forth by the Association of American Railroads (AAR). The freight rail coupler parts (*i.e.,* knuckles and coupler bodies) are included within the scope of the order when imported separately. Coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors are covered merchandise when imported in an assembly but are not covered by the scope when imported separately.

Subject freight railcar couplers and parts are included within the scope whether finished or unfinished, whether imported individually or with other subject or nonsubject parts, whether assembled or unassembled, whether mounted or unmounted, or if joined with nonsubject merchandise, such as other nonsubject parts or a completed railcar. Finishing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, machining, and assembly of various parts. When a subject coupler or subject parts are mounted on or to other nonsubject merchandise, such as a railcar, only the coupler or subject parts are covered by the scope.

The finished products covered by the scope of this order meet or exceed the AAR specifications of M–211, ''Foundry and Product Approval Requirements for the Manufacture of Couplers, Coupler Yokes, Knuckles, Follower Blocks, and Coupler Parts'' and/or AAR M–215 ''Coupling Systems,'' or other equivalent domestic or international standards (including any revisions to the standard(s)).

The country of origin for subject couplers and parts thereof, whether fully assembled, unfinished or finished, or attached to a railcar, is the country where the subject coupler parts were cast or forged. Subject merchandise includes coupler parts as defined above that have been further processed or further assembled, including those coupler parts attached to a railcar in third countries. Further processing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, painting, coating, priming, machining, and assembly of various parts. The inclusion, attachment, joining, or assembly of nonsubject parts with subject parts or couplers either in the country of manufacture of the in-scope product or in a third country does not remove the subject parts or couplers from the scope.

[7] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[8] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[9] *Id.*

[10] This segment will be 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.

[11] *See Final Rule,* 86 FR at 52335.

The couplers that are the subject of this order are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number 8607.30.1000. Unfinished subject merchandise may also enter under HTSUS statistical reporting number 7326.90.8688. Subject merchandise attached to finished railcars may also enter under HTSUS statistical reporting numbers 8606.10.0000, 8606.30.0000, 8606.91.0000, 8606.92.0000, 8606.99.0130, 8606.99.0160, or under subheading 9803.00.50. Subject merchandise may also be imported under HTSUS statistical reporting number 7325.99.5000. These HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of this order is dispositive.

[FR Doc. 2023–14892 Filed 7–13–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–889]

Dioctyl Terephthalate From the Republic of Korea: Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review

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

SUMMARY: In response to a request for a changed circumstances review (CCR), the U.S. Department of Commerce (Commerce) is initiating a CCR of the antidumping duty (AD) order on dioctyl terephthalate (DOTP) from the Republic of Korea (Korea). Additionally, Commerce preliminarily determines that Aekyung Chemical Co., Ltd. (AKC) is the successor-in-interest to Aekyung Petrochemical Co., Ltd. (AKP). Interested parties are invited to comment on these preliminary results.

DATES: Applicable July 14, 2023.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4243.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 2017, Commerce published the AD order on DOTP from Korea in the **Federal Register**.[1] On December 6, 2022, AKC requested that Commerce conduct an expedited CCR of the *Order,* in accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.216(d), and 19 CFR 351.221(c)(3)(ii) to determine that AKC is the successor-in-interest to AKP and is entitled to the cash deposit rate currently in effect for AKP.[2] On January 5, 2023, Commerce issued a request for supplemental information to AKC, which we determined was necessary for the CCR request to be considered complete.[3] On May 24, 2023, AKC resubmitted its initial CCR request with complete responses to Commerce's request for supplemental information included,[4] at which point Commerce considered the complete CCR request to be submitted in proper form.

AKC explained that it requested a CCR because AKP changed its name pursuant to a merger agreement, in which the companies formerly known as Aekyung Chemical Co., Ltd., and AK ChemTech Co., Ltd., were merged into AKP, under the new company name, AKC.[5] The legal entity formerly known as AKP continues to exist under the name of AKC.[6] However, due to the merger, the legal entities formerly known as Aekyung Chemical Co., Ltd., and AK ChemTech Co., Ltd., ceased to exist effective November 1, 2021. Pursuant to the merger agreement, all assets, liabilities, rights, and obligations as well as any intangible rights of proprietary nature (including but not limited to licenses and permits, employment and contractual relationships, and litigations) of the former Aekyung Chemical Co., Ltd., and AK ChemTech Co., Ltd., were transferred to and assumed by post-merger AKC.[7] AKC explained further that prior to the merger, neither the former Aekyung Chemical Co., Ltd., nor AK ChemTech Co., Ltd., had any involvement in the production, sale, or distribution of DOTP.[8] In addition, after the merger, the operations of DOTP conducted by AKP prior to the merger continued to be performed by the company under the new legal name, AKC.[9] As a result, AKC explained that the merger did not affect the management or internal organization structure of the DOTP business, production, supplier relationships, or customer base.[10]

We received no comments from interested parties concerning this request.

Scope of the Order

The merchandise covered by this *Order* is DOTP, regardless of form. For a complete description of the scope of the *Order*, *see* the Preliminary Decision Memorandum.[11]

Initiation of CCR

Pursuant to section 751(b)(1) of the Act, and 19 CFR 351.216, Commerce will conduct a CCR of an order upon receipt of information or a review request from an interested party for a review of an AD order which shows changed circumstances sufficient to warrant a review of the order. The information submitted by AKC supporting its claim to be the successor-in-interest to AKP demonstrates changed circumstances sufficient to warrant such a review.[12] Therefore, in accordance with section 751(b)(1)(A) of the Act and 19 CFR 351.216(d) and (e), we are initiating a CCR based upon the information contained in AKC's CCR Request.

Preliminary Results of Review

Section 351.221(c)(3)(ii) of Commerce's regulations permits Commerce to combine the notice of initiation of a CCR and the notice of preliminary results if Commerce concludes that expedited action is warranted.[13] In this instance, because the record contains information necessary to make a preliminary finding, we find that expedited action is

[1] *See Dioctyl Terephthalate from the Republic of Korea: Antidumping Duty Order,* 82 FR 39409 (August 18, 2017) (*Order*).

[2] *See* AKC's Letter, ''Request for Changed Circumstances Review and Successor-in-Interest Determination,'' dated December 6, 2022 (Initial CCR Request).

[3] *See* Commerce's Letter, ''Request for Additional Information,'' dated January 3, 2023.

[4] *See* AKC's Letter, ''Response to the Department's January 5 Request for Additional Information,'' dated May 23, 2023, inclusive of Volume I (Resubmission of the Initial CCR Request) and Volume II (Response to Request for Supplementary Information) (Complete CCR Request).

[5] *See* Complete CCR Request at Volume I, Attachments 1, ''Merger Agreement,'' and 2, ''Notice of Merger.''

[6] The business registration number and corporation registration number assigned to AKP continue to be assigned to AKC after the merger. The business registration certificates for pre-merger AKP and post-merger AKC are provided in Attachment 3 of AKC's Initial CCR request and Volume I of AKC's Complete CCR Request.

[7] *See* Complete CCR Request at Volume I at 3.

[8] *Id.*

[9] *Id.*

[10] *Id.* at 3–4.

[11] *See* Memorandum, ''Decision Memorandum for Initiation and Preliminary Results of Changed Circumstances Review: Dioctyl Terephthalate from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[12] *See* 19 CFR 351.216(d).

[13] *See* 19 CFR 351.221(c)(3)(ii); *see also Certain Pasta from Italy: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 80 FR 33480, 33480–41 (June 12, 2015) (*Pasta from Italy Preliminary Results*), unchanged in *Certain Pasta from Italy: Final Results of Changed Circumstances Review,* 80 FR 48807 (August 14, 2015) (*Pasta from Italy Final Results*).

warranted and have combined the notice of initiation and the notice of preliminary results.[14]

In this CCR, pursuant to section 751(b) of the Act, Commerce conducted a successor-in-interest analysis. In making a successor-in-interest determination, Commerce examines several factors, including, but not limited to, changes in the following: (1) ownership and management; (2) production facilities; (3) supplier relationships; and (4) customer base.[15] While no single factor or combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, generally, Commerce will consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor.[16] Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, Commerce may assign the new company the cash deposit rate of its predecessor.[17]

In accordance with 19 CFR 351.216, we preliminarily determine that AKC is the successor-in-interest to AKP. Record evidence, as submitted by AKC, indicates that AKC operates as essentially the same business entity as AKP with respect to the subject merchandise.[18]

For the complete successor-in-interest analysis, *see* the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum is available at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Public Comment

In accordance with 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 14 days after the date of publication of this notice.[19] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the case briefs, in accordance with 19 CFR 351.309(d). Parties who submit case or rebuttal briefs are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[20]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request *via* ACCESS within 14 days of publication of this notice.[21] Hearing 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. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing, in accordance with 19 CFR 351.310(d).

All submissions are to be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) available to registered users at *https://access.trade.gov.* An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.[22] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[23]

Final Results of Review

Should our final results remain unchanged from these preliminary results, we will instruct U.S. Customs and Border Protection to assign entries of subject merchandise produced or exported by AKC the AD cash deposit rate applicable to AKP.

Consistent with 19 CFR 351.216(e), we will issue the final results of this CCR no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding.

Notification to Interested Parties

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216(b), 351.221(b) and 351.221(c)(3).

Dated: July 7, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2023–14934 Filed 7–13–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

United States-Mexico-Canada Agreement (USMCA), Article 10.12: Binational Panel Review: Notice of Request for Panel Review

AGENCY: United States Section, USMCA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of USMCA request for panel review.

SUMMARY: A Request for Panel Review was filed on behalf of Grupo Acerero S.A. de C.V. with the United States Section of the USMCA Secretariat on July 6, 2023, pursuant to USMCA Article 10.12. Panel Review is requested of the U.S. International Trade Administration's Final Results in the

[14] *See, e.g., Pasta from Italy Preliminary Results,* 80 FR at 33480–41, unchanged in *Pasta from Italy Final Results,* 80 FR at 48807.

[15] *See, e.g., Certain Frozen Warmwater Shrimp from India: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 81 FR 75376 (October 31, 2016) (*Shrimp from India Preliminary Results*), unchanged in *Certain Frozen Warmwater Shrimp from India: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 81 FR 90774 (December 15, 2016) (*Shrimp from India Final Results*).

[16] *See, e.g., Shrimp from India Preliminary Results,* 81 FR at 75377, unchanged in *Shrimp from India Final Results,* 81 FR at 90774.

[17] *Id.; see also Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber from Japan,* 67 FR 58, 59 (January 2, 2002); *Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review,* 75 FR 34688, 34689 (June 18, 2010); and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Preliminary Results of Antidumping Duty Changed Circumstances Review,* 63 FR 14679 (March 26, 1998), unchanged in *Circular Welded Non-Alloy Steel Pipe from Korea; Final Results of Antidumping Duty Changed Circumstances Review,* 63 FR 20572 (April 27, 1998), in which Commerce found that a company which only changed its name and did not change its operations is a successor-in-interest to the company before it changed its name.

[18] *See* AKC's Complete CCR Request.

[19] Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(ii) to alter the time limit for the filing of case briefs.

[20] *See* 19 CFR 351.309(c)(2).

[21] Commerce is exercising its discretion under 19 CFR 351.310(c) to alter the time limit for requesting a hearing.

[22] *See* 19 CFR 351.303(b).

[23] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

2020–2021 Antidumping Administrative Review of Steel Concrete Reinforcing Bar from Mexico, which was published in the **Federal Register** on June 9, 2023. The USMCA Secretariat has assigned case number USA–MEX–2023–10.12–01 to this request.

FOR FURTHER INFORMATION CONTACT: Vidya Desai, United States Secretary, USMCA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, 202–482–5438.

SUPPLEMENTARY INFORMATION: Article 10.12 of Chapter 10 of USMCA provides a dispute settlement mechanism involving trade remedy determinations issued by the Government of the United States, the Government of Canada, and the Government of Mexico. Following a Request for Panel Review, a Binational Panel is composed to review the trade remedy determination being challenged and issue a binding Panel Decision. There are established USMCA *Rules of Procedure for Article 10.12 (Binational Panel Reviews),* which were adopted by the three governments for panels requested pursuant to Article 10.12(2) of USMCA which requires Requests for Panel Review to be published in accordance with Rule 40. For the complete Rules, please see *https://can-mex-usa-sec.org/secretariat/agreement-accord-acuerdo/usmca-aceum-tmec/rules-regles-reglas/article-article-articulo_10_12.aspx?lang=eng.*

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 44 no later than 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is August 7, 2023);

(b) A Party, an investigating authority or other interested person who does not file a Complaint but who intends to participate in the panel review shall file a Notice of Appearance in accordance with Rule 45 no later than 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is August 21, 2023);

(c) The panel review will be limited to the allegations of error of fact or law, including challenges to the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and to the procedural and substantive defenses raised in the panel review.

Dated: July 7, 2023.

Vidya Desai,

U.S. Secretary, USMCA Secretariat.

[FR Doc. 2023–14921 Filed 7–13–23; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970; C–570–971]

Multilayered Wood Flooring From the People's Republic of China: Continuation of Antidumping and Countervailing Duty Orders

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

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) and countervailing duty (CVD) orders on multilayered wood flooring from the People's Republic of China (China) would likely lead to the continuation or recurrence of dumping and countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD and CVD orders.

DATES: Applicable June 23, 2023.

FOR FURTHER INFORMATION CONTACT: Max Goldman (AD) or Jonathan Schueler (CVD), AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW, Washington, DC 20230; telephone: (202) 482–0224 or (202) 482–9175, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 2011, Commerce published in the **Federal Register** the AD and CVD orders on multilayered wood flooring from China.[1] On January 3, 2018, Commerce published a continuation of the *Orders*.[2] On December 1, 2022, the ITC instituted,[3] and Commerce initiated,[4] the second sunset reviews of the *Orders* pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.218(c). As a result of its reviews, Commerce determined that revocation of the *Orders* would likely lead to continuation of recurrence of dumping and countervailable subsidies, and therefore, notified the ITC of the magnitude of the margins of dumping and subsidy rates likely to prevail should these *Orders* be revoked.[5]

On June 23, 2023, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable times.[6]

Scope of the Orders

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s)[7] in combination with a core.[8] The several layers, along with the core, are glued or otherwise bonded together to form a final assembled product. Multilayered wood flooring is often referred to by other terms, *e.g.,* ''engineered wood flooring'' or ''plywood flooring.'' Regardless of the particular terminology, all products that meet the description set forth herein are intended for inclusion within the definition of subject merchandise.

All multilayered wood flooring is included within the definition of subject merchandise, without regard to: dimension (overall thickness, thickness of face ply, thickness of back ply, thickness of core, and thickness of inner plies; width; and length); wood species used for the face, back and inner veneers; core composition; and face grade. Multilayered wood flooring included within the definition of subject merchandise may be unfinished (*i.e.,* without a finally finished surface to protect the face veneer from wear and tear) or ''prefinished'' (*i.e.,* a coating applied to the face veneer, including, but not exclusively, oil or oil-modified

[1] *See Multilayered Wood Flooring from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 76 FR 76690 (December 8, 2011), and *Multilayered Wood Flooring from the People's Republic of China: Countervailing Duty Order,* 76 FR 76693 (December 8, 2011); *see also Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and Countervailing Duty Orders,* 77 FR 5484 (February 3, 2012), wherein the scope of the orders was modified (collectively, *Orders*).

[2] *See Multilayered Wood Flooring from the People's Republic of China: Continuation of Antidumping Duty Orders,* 83 FR 344 (January 3, 2018) (*First Continuation Notice*).

[3] *See Multilayered Wood Flooring from China; Institution of Five-Year Reviews,* 87 FR 73784 (December 1, 2022).

[4] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 73757 (December 1, 2022).

[5] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order,* 88 FR 19923 (April 4, 2023) and *Multilayered Wood Flooring from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order,* 88 FR 20120 (April 5, 2023).

[6] *See Multilayered Wood Flooring from China; Determination,* 88 FR 41128 (June 23, 2023) (*ITC Determination*).

[7] A ''veneer'' is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.

[8] Commerce Interpretive Note: Commerce interprets this language to refer to wood flooring products with a minimum of three layers.

or water-based polyurethanes, ultra-violet light cured polyurethanes, wax, epoxy-ester finishes, moisture-cured urethanes and acid-curing formaldehyde finishes). The veneers may be also soaked in an acrylic-impregnated finish. All multilayered wood flooring is included within the definition of subject merchandise regardless of whether the face (or back) of the product is smooth, wire brushed, distressed by any method or multiple methods, or hand-scraped. In addition, all multilayered wood flooring is included within the definition of subject merchandise regardless of whether or not it is manufactured with any interlocking or connecting mechanism (for example, tongue-and-groove construction or locking joints). All multilayered wood flooring is included within the definition of the subject merchandise regardless of whether the product meets a particular industry or similar standard.

The core of multilayered wood flooring may be composed of a range of materials, including but not limited to hardwood or softwood veneer, particleboard, medium-density fiberboard, high-density fiberboard (HDF), stone and/or plastic composite, or strips of lumber placed edge-to-edge.

Multilayered wood flooring products generally, but not exclusively, may be in the form of a strip, plank, or other geometrical patterns (*e.g.,* circular, hexagonal). All multilayered wood flooring products are included within this definition regardless of the actual or nominal dimensions or form of the product. Specifically excluded from the scope are cork flooring and bamboo flooring, regardless of whether any of the sub-surface layers of either flooring are made from wood. Also excluded is laminate flooring. Laminate flooring consists of a top wear layer sheet not made of wood, a decorative paper layer, a core-layer of HDF, and a stabilizing bottom layer.

Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.0620; 4412.31.0640; 4412.31.0660; 4412.31.2510; 4412.31.2520; 4412.31.2610; 4412.31.2620; 4412.31.3175; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4075; 4412.31.4080; 4412.31.4140; 4412.31.4160; 4412.31.4175; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.5225; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0565; 4412.32.0570; 4412.32.0640; 4412.32.0665; 4412.32.2510; 4412.32.2520; 4412.32.2525; 4412.32.2530; 4412.32.2610; 4412.32.2625; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.3225; 4412.32.5600; 4412.32.5700; 4412.33.0640; 4412.33.0665; 4412.33.0670; 4412.33.2625; 4412.33.2630; 4412.33.3225; 4412.33.3235; 4412.33.3255; 4412.33.3275; 4412.33.3285; 4412.33.5700; 4412.34.2600; 4412.34.3225; 4412.34.3235; 4412.34.3255; 4412.34.3275; 4412.34.3285; 4412.34.5700; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5105; 4412.99.5115; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; 4418.74.2000; 4418.74.9000; 4418.75.4000; 4418.75.7000; 4418.79.0100; and 9801.00.2500.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of these *Orders.* U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of these *Orders* will be June 23, 2023.[9] Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of these *Orders* not later than 30 days prior to the fifth anniversary of the date of the last determination by the ITC.

Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the 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 terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

These five-year sunset reviews and this notice are in accordance with section 751(c) and 751(d)(2) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: July 10, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–14933 Filed 7–13–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Conference on Weights and Measures; 2023 Annual Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The 108th Annual Meeting of the National Conference on Weights and Measures (NCWM) will be held in at the Norfolk Waterside Marriott in Norfolk, Virginia from Sunday, July 30, 2023, through Thursday, August 3, 2023. This notice contains information about significant items on the NCWM Committee agendas but does not include

[9] *See ITC Determination.*

all agenda items. As a result, the items are not consecutively numbered.

DATES: The 2023 NCWM Annual Meeting will be held from Sunday, July 30, 2023, through Thursday, August 3, 2023. The meeting schedule will be available on the NCWM website at *www.ncwm.com.*

ADDRESSES: This meeting will be held at the Norfolk Waterside Marriott, 235 East Main Street, Norfolk, Virginia 23510.

FOR FURTHER INFORMATION CONTACT: Dr. Katrice Lippa, NIST, Office of Weights and Measures, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600. You may also contact Dr. Lippa at (301) 975–3116 or by email at *katrice.lippa@nist.gov*. The meeting is open to the public, but the payment of a registration fee is required. Please see the NCWM website (*www.ncwm.com*) to view the meeting agendas, registration forms, and hotel reservation information.

SUPPLEMENTARY INFORMATION: Publication of this notice on the NCWM's behalf is undertaken as a public service and does not itself constitute an endorsement by the National Institute of Standards and Technology (NIST) of the content of the notice. NIST participates in the NCWM as an NCWM member and pursuant to 15 U.S.C. 272(b)(10) and (c)(4) and in accordance with Federal policy (*e.g.,* OMB Circular A–119 ''Federal Participation in the Development and Use of Voluntary Consensus Standards'').

The NCWM is an organization of weights and measures officials of the states, counties, and cities of the United States, and representatives from the private sector and federal agencies. These meetings bring together government officials and representatives of business, industry, trade associations, and consumer organizations on subjects related to the field of weights and measures technology, administration, and enforcement. NIST hosted the first meeting of the NCWM in 1905. Since then, the conference has provided a model of cooperation between Federal, State, and local governments and the private sector. NIST participates to encourage cooperation between federal agencies and the states in the development of legal metrology requirements. NIST also promotes uniformity in state laws, regulations, and testing procedures used in the regulatory control of commercial weighing and measuring devices, packaged goods, and for other trade and commerce issues.

The NCWM has established multiple Committees, Task Groups, and other working bodies to address legal metrology issues of interest to regulatory officials, industry, consumers, and others. The following are brief descriptions of some of the significant agenda items that will be considered by some of the NCWM Committees at the 2023 NCWM Annual Meeting. Comments will be taken on these and other issues during several public comment sessions. At this stage, the items are proposals.

These notices are intended to make interested parties aware of these development projects and to make them aware that reports on the status of the project will be given at the 2023 NCWM Annual Meeting. The notices are also presented to invite the participation of manufacturers, experts, consumers, users, and others who may be interested in these efforts.

The following are brief descriptions of some of the significant agenda items that will be considered at the 2023 NCWM Annual Meeting. Comments will be taken on these and other recommendations to amend NIST Handbook 44, ''Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices'' (NIST Handbook 44 or NIST HB 44), NIST Handbook 130, ''Uniform Laws and Regulations in the areas of Legal Metrology and Fuel Quality'' (NIST Handbook 130 or NIST HB 130), and NIST Handbook 133 Checking the Net Contents of Packaged Goods (NIST Handbook 133 or NIST HB 133). These NIST Handbooks are regularly adopted by reference or through the administrative procedures of all the states.

NCWM S&T Committee (S&T 2023 Annual Meeting)

The Specifications and Tolerances Committee (S&T Committee) will consider proposed amendments to NIST HB 44. Those items address weighing and measuring devices used in commercial applications, that is, devices that are used to buy from or sell to the public or used for determining the quantity of products or services sold among businesses.

For a detailed technical review of the NCWM S&T Committee agenda items, see the 2023 NIST OWM Analysis at *https://www.nist.gov/pml/owm/publications/owm-technical-analysis*.

The following items are proposals to amend NIST HB 44:

Item Block 4 (B4) Electronically Captured Tickets or Receipts

The S&T Committee will further consider a proposal to allow for the expanded use of electronic captured tickets and receipts by amending NIST HB 44 Sections 1.10. General, 3.30. LMD, 3.31. VTM, 3.32. LPG, 3.34. CLM, 3.37. MFM, 3.38. CDL, 3.39. HGM, 3.35. Milk Meters, and the definition of ''recorded representation'' in Appendix D, Definitions. The Committee amended this carry-over block of items during the 2020 NCWM Interim Meeting based on comments it received expressing a continued need for printed tickets. As a result, the proposal now references NIST HB 44 paragraph G–S.5.6. in various specific codes. At the 2021 NCWM Annual Meeting, the S&T Committee designated this block proposal as Developing for further comment and consideration. At the 2022 NCWM Interim and Annual Meetings, the S&T Committee designated a Developing status for this block of items to provide stakeholders the opportunity for further review and additional comments on the various devices affected by this proposal. At the 2023 NCWM Interim Meeting, the S&T Committee agreed to assign a Voting status for this item.

VTM—Vehicle Tank Meters

VTM–18.1. S.3.1 Diversion of Measured Liquid S.3.1.1. Means for Clearing the Discharge Hose and UR.2.6.

Clearing the Discharge Hose on a multiple-product, single discharge hose. The S&T Committee will further consider this item, which proposes to provide specifications and user requirements for manifold flush systems designed to eliminate product contamination on VTMs used for multiple products. This proposal would add specifications on the design of VTMs under S.3.1.1. ''Means for Clearing the Discharge Hose.'' and add a new user requirement UR.2.6. ''Clearing the Discharge Hose.'' During open hearings of previous NCWM meetings, comments were heard about the design of any system to clear the discharge hose of a product prior to the delivery of a subsequent product which could provide opportunities to fraudulently use this type of system. At the 2021 NCWM Annual Meeting, the Committee agreed to keep this item Developing for further comments and consideration. At the 2022 NCWM Interim Meeting, the Committee agreed to add a new paragraph UR.2.6.2., Minimizing Cross Contamination, to address issues raised about the possibility of cross contamination in receiving tanks with the use of this equipment. The Committee designated a Voting status for this item. At the 2022 NCWM Annual Meeting, this item failed to receive adequate votes to pass and was returned to the S&T Committee.

After further review at the 2023 NCWM Interim Meeting, the S&T Committee designated a Voting status for this item.

WIM—Weigh-In-Motion Systems

WIM–23.1. Remove Tentative Status and Amend Numerous Sections Throughout.

The S&T Committee will consider a proposal to convert the current *Tentative* Code of Section 2.25 Weigh-In-Motion Systems Used for Vehicle Enforcement Screening to *Permanent* and to expand the code to include ''and Enforcement''. This also includes (but is not limited to): (1) the addition of an Accuracy Class ''E'' WIM scale (in addition to Class A) in the specifications (S); (2) the addition of test procedures to address the new Accuracy Class E in the test procedures (N) section for the determination of test speeds, dynamic test loads, and vehicle positions; (3) the designation of more stringent tolerances (T) for Accuracy Class E as compared to those for Accuracy Class A and a designation noting Accuracy Class E tolerances are to be applied to WIM scales used for enforcement purposes; and (4) the addition of a Class E weighing application in the user requirements (UR) for the explicit enforcement of vehicles based on axle, axle group, and gross vehicle weights. Assessments during the 2022 Regional Weights and Measures Association Meetings recommended a Developing status to allow the submitters to address questions raised regarding the application of tolerances and test procedures and allow input regarding the use of the code for enforcement purposes (rather than screening) from those jurisdictions impacted by the proposed change in scope and status as well as input from other scale manufacturers. The submitters submitted a revised proposal to the NCWM following the release of the 2023 NCWM Publication 15. At the 2023 NCWM Interim Meeting, the Committee updated the item to the latest version and the S&T continues to make changes to this item and has assigned it an Informational status.

EVF—Electric Vehicle Fueling Systems

EVF–23.1. S.2.5.1. Money-Value Divisions Digital, S.5.2.(b) EVSE Identification and Marking Information, S.5.3.(d) Abbreviations and Symbols; J, S.8.(a) MMQ, N.1. No Load Test, T.5. No Load Test, N.2. Starting Load Test, T.6. Starting Load, and Appendix D–Definitions; Megajoule (MJ).

The S&T Committee will consider a proposal that will further refine electric vehicle fueling systems code requirements in NIST HB 44, Section 3.40 Electric Vehicle Fueling Systems Code to: (1) remove the ''megajoule'' unit of measurement definition and all references to the term cited in the design specifications; (2) base the computation of the total sales price on a more appropriate quantity interval that does not exceed 0.01 kWh rather than a 0.1 kWh; (3) decrease the permissible sizes of the minimum measured quantity (MMQ) to those that are more appropriate quantities for AC and DC systems deliveries and result in a shorter duration for the light load test procedure; and (4) no longer require an accuracy test and the applicable test tolerances at no load and at starting load. At the 2023 NCWM Interim Meeting, the S&T Committee made further edits to the proposal based on comments received from the NIST-sponsored Electric Vehicle Fueling Equipment subgroup of the U.S. National Working Group on Measuring Systems for Electric Vehicle Fueling and Submetering and agreed to assign a Voting status to this item.

GMA—Grain Moisture Meters 5.56. (A)

GMA–19.1. Table T.2.1. Acceptance and Maintenance Tolerances Air Oven Method for All Grains and Oil Seeds.

The S&T Committee will further consider a proposal that would reduce the tolerances for the air oven reference method in the Grain Moisture Meters Code. The proposed new tolerances would apply to all types of grains and oil seeds. This item is a carry-over proposal from 2019 and would replace the contents of Table T.2.1. with new criteria. Additional inspection data will be collected and reviewed to assess whether or not the proposed changes to the tolerances are appropriate. At the 2022 NCWM Annual Meeting, the Committee recommended a Developing status to allow for consideration of additional data. Data was collected from one State and presented at the 2022 Grain Analyzer Sector Meeting. At the 2023 NCWM Interim Meeting, the S&T Committee assigned a Developing status to this item as additional data is collected.

NCWM L&R Committee (L&R 2023 Annual Meeting)

The Laws and Regulations Committee (L&R Committee) will consider proposed amendments to NIST HB 130.

Item MOS–20.5, Section 2.21 Liquefied Petroleum Gas.—The L&R Committee will further consider a proposal to clarify the existing language for the method of sale of Liquefied Petroleum Gas. This will include changes to the existing language within NIST HB 130 that references a value of ''15.6 °C'' for temperature determinations in metric units.

According to the current industry practice for sales of petroleum products, the reference temperature for sales in metric are based on 15 °C rather than the exact conversion from 60 °F (which is 15.6 °C). This will also add language specifying that a metering system that automatically temperature compensation shall be used for all metered sales with a maximum capacity equal to or greater than 20 gal/min. For metering systems with a maximum capacity less than 20 gal/min, an effective date of January 2030 will be added for all metered sales to be automatic temperature compensated.

Item Block 4—E-Commerce Item OTH 22.1. Uniform Labeling Regulation for Electronic Commerce (referred as e-commerce) Products—The L&R Committee will further consider a proposal that is designated as a ''Voting'' item. This proposal would add a new regulation to NIST HB 130 that pertains to the labeling of products in e-commerce for consumer commodities and non-consumer commodities. This regulation will provide guidance to industry, as well as those states that adopt this regulation for the purpose of inspecting e-commerce websites. This regulation would also lay out terms that shall appear on an e-commerce website including product identity, net quantity, responsible party, unit price, and price information. Online businesses shall have this regulation implemented 18 months after adoption.

Item Block 3 Cannabis—PAL–22.2 Section 10.XX. *Cannabis* and *Cannabis*-Containing Products.[1] The L&R Committee will consider establishing definitions and labeling requirements for *Cannabis and Cannabis*-Containing Products intended for human or animal consumption or application. Also, within this block is B3: MOS–22.2. HB130 Section 1.XX. and Section 2.XX. *Cannabis* and *Cannabis*-Containing Products. The Committee will consider a proposal to amend these two sections to establish a definition and include language for a method of sale for Cannabis. Included within this proposal is a water activity limit of 0.60 (± 0.05) when unprocessed Cannabis is sold or transferred.

The Committee will be provided an update from the NCWM Cannabis Task

[1] In contrast to hemp, marijuana, which is defined as cannabis with a tetrahydrocannabinol (THC) concentration of more than 0.3 percent on a dry weight basis, remains a Schedule I substance under the Controlled Substances Act (CSA). 21 U.S.C. 812(d); 21 CFR 1308.11(d)(23).

Group on Item NET–22.1 NIST HB 133, Section 1.2.6. Deviations Caused by Moisture Loss or Gain and Section 2.3.8. Table 2–3 Moisture Allowances which provides for a 3% moisture allowance for Cannabis plant material containing more than 0.3% total delta-9 THC (Cannabis, Marijuana, or Marihuana) or containing 0.3% less total delta-9 THC (hemp).

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023–14969 Filed 7–13–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advisory Committee on Earthquake Hazards Reduction Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Earthquake Hazards Reduction (ACEHR or Committee) will hold an open meeting on Wednesday, August 2, 2023, from 8:30 a.m. to 5:00 p.m. Eastern Time and Thursday, August 3, 2023, from 8:30 a.m. to 2:00 p.m. Eastern Time. The primary purpose of this meeting is for the Committee to discuss their 2023 Biennial Report on the Effectiveness of the National Earthquake Hazards Reduction Program (NEHRP). The agenda may change to accommodate Committee business. The final agenda will be posted on the NEHRP website at *https://www.nehrp.gov/committees/meetings.htm*.

DATES: The ACEHR will meet on Wednesday, August 2, 2023, from 8:30 a.m. to 5:00 p.m. Eastern Time and Thursday, August 3, 2023, from 8:30 a.m. to 2:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held in Room 3410 at the National Science Foundation (NSF), Hoffman Town Center, 2415 Eisenhower Avenue, Alexandria, Virginia 22314, with an option to participate via web conference. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Tina Faecke, Management and Program Analyst, NEHRP, Engineering Laboratory, NIST. Ms. Faecke's email address is *tina.faecke@nist.gov* and her phone number is (240) 477–9841.

SUPPLEMENTARY INFORMATION:

Authority: 42 U.S.C. 7704(a)(5) and the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. 1001 *et seq.* The Committee is composed of 12 members, appointed by the Director of NIST, who were selected for their established records of distinguished service in their professional community, their knowledge of issues affecting NEHRP, and to reflect the wide diversity of technical disciplines, competencies, and communities involved in earthquake hazards reduction. In addition, the Chairperson of the U.S. Geological Survey Scientific Earthquake Studies Advisory Committee serves as an ex-officio member of the Committee.

Pursuant to the FACA, as amended, 5 U.S.C. 1001 *et seq.,* notice is hereby given that the ACEHR will meet on Wednesday, August 2, 2023, from 8:30 a.m. to 5:00 p.m. Eastern Time and Thursday, August 3, 2023, from 8:30 a.m. to 2:00 p.m. Eastern Time. The meeting will be open to the public and will be held in-person and via web conference. Interested members of the public will be able to participate in the meeting from remote locations. The primary purpose of this meeting is for the Committee to discuss their 2023 Biennial Report on the Effectiveness of NEHRP. The agenda may change to accommodate Committee business. The final agenda will be posted on the NEHRP website at *https://www.nehrp.gov/committees/meetings.htm*.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's business are invited to request a place on the agenda. Approximately fifteen minutes will be reserved for public comments and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received. Questions from the public will not be considered during this period. This meeting will be recorded. Public comments can be provided via email or by web conference attendance. All those wishing to speak must submit their request by email to Tina Faecke at *tina.faecke@nist.gov* by 5:00 p.m. Eastern Time, July 24, 2023. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to participate are invited to submit written statements electronically by email to *tina.faecke@nist.gov*.

Anyone wishing to attend this meeting via web conference must register by 5:00 p.m. Eastern Time, July 24, 2023, to attend. Please submit your full name, the organization you represent (if applicable), email address, and phone number to Tina Faecke at *tina.faecke@nist.gov*. After pre-registering, participants will be provided with instructions on how to join the web conference. Any member of the public wishing to attend this meeting in person must pre-register to be admitted in the NSF building. Please submit your full name, estimated time of arrival, email address, and phone number to Tina Faecke (*tina.faecke@nist.gov*) by 5:00 p.m. Eastern Time, July 24, 2023. Non-U.S. citizens must submit additional information; please contact Tina Faecke. For participants attending in person, please note that federal agencies, including NSF, can only accept a state-issued driver's license or identification card for access to federal facilities if such license or identification card is issued by a state that is compliant with the REAL ID Act of 2005 (Pub. L. 109–13), or by a state that has an extension for REAL ID compliance. NSF currently accepts other forms of federal-issued identification in lieu of a state-issued driver's license. For detailed information please visit *https://new.nsf.gov/about/visit#building*.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023–14963 Filed 7–13–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD143]

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of permit amendments.

SUMMARY: Notice is hereby given that permit amendments have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request via email to *NMFS.Pr1Comments@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan, Ph.D., at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register**

on the dates listed below that requests for a permit or permit amendment had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the activities, go to *https://www.federalregister.gov* and search on the permit number provided in Table 1 below.

TABLE 1—ISSUED PERMIT AMENDMENTS

Permit No.	RTID	Applicant	Previous **Federal Register** notice	Issuance date
21238–01	0648–XG028	Center for Whale Research, 355 Smuggler's Cove Road, Friday Harbor, WA 98250 (Responsible Party: Michael Weiss, Ph.D.).	83 FR 34116, July 19, 2018	June 7, 2023.
21348–01	0648–XG027	NMFS Northwest Fisheries Science Center, 2725 Montlake Boulevard East, Seattle, WA 98112 (Responsible Party: M. Bradley Hanson, Ph.D.).	83 FR 34116, July 19, 2018	June 7, 2023.
21371–01	0648–XF968	NMFS Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543 (Responsible Party: Jon Hare, Ph.D.).	83 FR 34116, July 19, 2018	June 7, 2023.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit amendments was based on a finding that such permits: (1) were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA.

Authority: The requested permits have been issued under the MMPA of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), as applicable.

Dated: July 10, 2023.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–14918 Filed 7–13–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD152]

Fisheries of the Exclusive Economic Zone off Alaska; Request for Information on Research Priorities for the North Pacific Fishery Management Council

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

ACTION: Notification; request for information.

SUMMARY: The North Pacific Fishery Management Council (Council) is requesting information from the public on research priorities for the fisheries of the Exclusive Economic Zone off Alaska for its triennial review. The Council develops research priorities for fisheries, habitats, and other areas necessary for management purposes and reviews those priorities every 3 years. This notice invites the public to submit written comments on the topic generally and in response to specific questions outlined below.

DATES: Comments must be received via the Council's eAgenda meeting portal by 5 p.m. AKT on October 31, 2023 (see **ADDRESSES** for website URL).

ADDRESSES: Please submit written comments to the Council's eAgenda meeting portal at ''Request for Information: Research Priorities Triennial Review'', *https://meetings.npfmc.org/Meeting/Details/2998,* using either the ''Comment Now'' function on the eAgenda page or by using the comment form, *https://forms.gle/PPfkFPQ1JCXJrRSN9,* by the October 31, 2023, deadline.

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Nicole Watson, *nicole.watson@noaa.gov* or by telephone (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires that regional fishery management councils develop ''multi-year research priorities for fisheries, fisheries interactions, habitats, and other areas of research that are necessary for management purposes'' (16 U.S.C. 1852(h)(7)). This includes research to support fishery management plans and associated regulations for fisheries requiring conservation and management to prevent overfishing, rebuild depleted fish stocks, and ensure sustainable fishing practices. Research priorities should be established and updated as necessary. The Council reviews its research priorities every 3 years, and the next triennial review of research priorities is tentatively scheduled for April 2024.

The MSA identifies the intended audience for Council research priorities as the Secretary of Commerce and, the Alaska Fisheries Science Center (AFSC), ''for their consideration in developing research priorities and budgets'' for Alaska. In past years, Council research priorities were provided to the Secretary of Commerce, the AFSC, as well as research and funding entities including universities, research boards, and other management agencies in the region. Additional entities that intersect with the Council management responsibilities may also be included as participation in the development of these research priorities broadens.

In the past, new research priorities were developed and reviewed by the Council's four stock assessment plan teams, the Scientific and Statistical Committee (SSC), and ultimately the Council, with public input provided at those plan team, SSC, and Council meetings. Going forward, the Council would like receive input and suggestions from the public early in the process of developing new research priorities and is now soliciting input from the public through this request for information (RFI).

Opportunities for the public to suggest research priorities will occur through October 31, 2023, using either the online submission form or the ''Comment Now'' option available on the Council's eAgenda meeting portal at ''Request for Information: Research Priorities Triennial Review.'' Initial reviews of the submissions will begin in early November 2023 and are expected to continue through early 2024. The document, ''Proposed Process for Development of NPFMC Research Priorities,'' *https://meetings.npfmc.org/CommentReview/DownloadFile?p=fb8df4b1-60d4-47e8-afbf-cf20690b1d93.pdf&fileName=Research%20Priorities%20Process.pdf,* includes additional information regarding the process for research priority development.

The most recent Council research priorities from the April 2021 Research Priorities Triennial Review can be found here: *https://tinyurl.com/April-2021-Research-Priorities.*

Council research priority terms and category definitions (critical ongoing monitoring, urgent, important, or strategic) can be found here: *https://tinyurl.com/terms-and-category-definitions.*

Request for Information

The scope of public comments is not limited, but questions that may be considered include:

1. Description of suggested research priority for the Council to consider;
2. Description of the fisheries management concern addressed by the suggested research priority;
3. Category of the suggested research priority: critical ongoing monitoring, urgent, important, or strategic;
4. General subject area of suggested research priority: Bering Sea groundfish; Gulf of Alaska groundfish; crab; scallop; halibut; ecosystem related; habitat; local knowledge, traditional knowledge, subsistence; marine birds; marine mammals; bycatch; electronic monitoring; management or policy; or other;
5. Geographical (ecosystem) area that best fits suggested research priority: Bering Sea, Aleutian Islands, Gulf of Alaska, or Arctic; and,
6. Approximate timeline of the suggested research priority.

All new research priority recommendations must be submitted by October 31, 2023, to be considered during this upcoming triennial review. In addition to submitting research priority ideas as part of this request for information, the public will have the opportunity to provide comments to subject area Plan Teams and a subgroup of the Council's SSC. These advisory bodies will meet, tentatively between November 2023 and January 2024, to provide the SSC input on prioritizing specific research needs. Additional opportunities to provide comment on prioritization will occur at the February 2024 SSC meeting and at the April 2024 SSC and Council meetings; however, no new research priority submissions will be accepted during the Plan Team, SSC, and Council meetings. During the April 2024 SSC meeting, a priority list combined across subject areas, consisting of 8 to 12 research priorities, will be developed to present to the Council for the Council's consideration. Once the review is final, the Council will submit its research priorities to the Secretary of Commerce (NOAA) and the AFSC for their consideration in developing research priorities and budgets for the Alaska Region (16 U.S.C. 1852(h)(7)(C)).

Public Comment

Responses to this request are voluntary. Respondents need not reply to all questions. All responses are part of the public record and will be posted on a public website. Therefore, confidential business information, copyrighted information, or personally identifiable information (*e.g.,* name, address) should not be submitted in response to this request. NOAA and the Council will not pay for any information or administrative costs that you may incur in responding to this RFI, or for the use of any information contained in the response. The documents and information submitted in response to this RFI become the property of the U.S. Government and will not be returned.

Dated: July 10, 2023.

Kelly Denit,

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

[FR Doc. 2023–14924 Filed 7–13–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Finding of No Significant Impact and Final Environmental Assessment for the Funding, Procurement, and Operation of NOAA Small Uncrewed Aircraft Systems

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of issuance and availability.

SUMMARY: NOAA's Uncrewed Systems Research Transition Office (UxSRTO) in OAR announces the issuance and availability of a finding of no significant impact (FONSI) and a Final Environmental Assessment (EA) for the Funding, Procurement, and Operation of NOAA Small Uncrewed Aircraft Systems (UAS). The environmental review process led us to conclude that the proposed action will not have a significant effect on the human environment. Therefore, an environmental impact statement will not be prepared.

ADDRESSES: The Final EA and FONSI are available online at *https://orta.research.noaa.gov/wp-content/uploads/2023/06/PEA-for-NOAA-Small-UAS-and-FONSI-Signed-May-2023.pdf.*

FOR FURTHER INFORMATION CONTACT: Bryan Cole, Director, NOAA Uncrewed Systems Research Transition Office Email: *bryan.cole@noaa.gov* or (831) 601–2107.

SUPPLEMENTARY INFORMATION: A draft of the EA was published in the **Federal Register** (88 FR 9872) for a 30-day comment period, from February 15, 2023 to March 17, 2023. No comments were received. The proposed action analyzed in the EA is the funding, procurement, and operation of small UAS platforms in any environment for which NOAA has a mission and potential need for UAS resources to help meet related mission objectives.

For purposes of the assessment, the use of the term ''small UAS'' follows suit with the Federal Aviation Administration's (FAA) definition of ''small unmanned aircraft'' (14 CFR 107.3), which weigh ''less than 55 pounds on takeoff, including everything that is on board or otherwise attached to the aircraft''. The geographic scope of the action area includes the airspace ranging from just above the surface (for launch and recovery), extending upward to an operational altitude of

approximately 400 ft above ground level (AGL) for a majority of applications, but may also include operational altitudes up to as high as 100,000 ft mean sea level (MSL) for a few others.

The analysis in the EA is at a programmatic level, and it evaluates the potential environmental consequences from a broad perspective (*i.e.,* multiple types of small UAS platforms used to supplement, enhance, or replace a variety of existing methods of data collection). The EA specifies procedures for confirming that the impacts of site-specific actions considered pursuant to the proposed action are consistent with predictions for the proposed action.

In all applicable scenarios reviewed, the proposed action would yield no more than negligible impacts to any specific resource, and would not result in significant impacts overall.

The EA and FONSI were prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*) and Council on Environmental Quality implementing regulations (40 CFR parts 1500–1508), as well as NOAA's procedures for compliance with NEPA as specified in the Companion Manual to NOAA Administrative Order 216–6A.

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2023–14951 Filed 7–13–23; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD031]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to City of Cordova Harbor Rebuild Project, Cordova, Alaska

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

ACTION: Notice; proposed incidental harassment authorizations; request for comments on proposed authorizations and possible renewal.

SUMMARY: NMFS has received a request from the City of Cordova (Cordova) for authorization to take marine mammals incidental to the pile driving and removal activities over two years associated with the Cordova Harbor rebuild project in Cordova, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue two incidental harassment authorizations (IHAs) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on possible one-time, one-year renewals for each IHA that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than August 14, 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.wachtendonk@noaa.gov.* Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities* 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: Rachel Wachtendonk, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the 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 February 16, 2023, NMFS received a request from the City of Cordova for two IHAs to take marine mammals incidental to pile driving and removal activities associated with the City of Cordova, Cordova Harbor Rebuild project, in Cordova, Alaska, over the course of two years. Following NMFS' review of the application, The City of Cordova (Cordova) submitted a revised version on April 19, 2023. The application was deemed adequate and complete on May 12, 2023. Cordova's request for the first IHA is for take of marine mammals by Level B harassment and, for a subset of these species, Level A harassment. For the second IHA, Cordova is requesting take of only Steller sea lion (*Eumetopias jubatus*) and harbor seal (*Phocoena* phocoena) by Level A and Level B harassment. Neither Cordova nor NMFS expect serious injury or mortality to result from this activity and, therefore, IHAs are appropriate.

Description of Proposed Activity

Overview

Cordova proposes to replace existing structures in the Cordova Harbor in Cordova, Alaska. The purpose of this project is to remove old structures in the harbor and replace them with new structures which would improve the safety of the harbor and allow the harbor to better accommodate the commercial fishing industry. The City of Cordova is located in Orca Inlet within the Prince William Sound. Over the course of 2 years spanning September 2023–April 2024 and September 2024–April 2025, Cordova would use a variety of methods, including vibratory, impact, and down-the-hole (DTH) pile driving to remove existing piles and to install new ones. These methods of pile driving would introduce underwater sounds that may result in take, by Level A and Level B harassment, of marine mammals.

Dates and Duration

Cordova anticipates that the harbor rebuild project would occur over 2 years (phases). The in-water work window would last from September 2023 to April 2024 (Phase I) and September 2024 to April 2025 (Phase II), although pile driving/removal activities are only anticipated to take 433 hours over 170 days in Phase I and 148 hours over 88 days in Phase II. All in-water pile driving would be completed during daylight hours. The Phase I IHA would be valid from August 31, 2023 to August 30, 2024, and the Phase II IHA would be valid from August 31, 2024 to August 30, 2025.

Specific Geographic Region

The City of Cordova harbor is located southeast of Spike Island and west of downtown Cordova within the Orca Inlet in Prince William Sound, approximately 241 kilometers (km) (150 miles (mi)) southeast of Anchorage, Alaska. With a capacity of 711 vessels, the harbor is one of Alaska's largest single basin harbors and houses one of the largest commercial fishing fleets in the country. The timing of this work is planned to not interfere with the commercial fishing season. The depth of the harbor ranges from ~2.5 to 7 meters (m) (8 to 22 feet (ft)) in depth.

The harbor consists of two areas: the South Harbor and the North Harbor (see Figure 2 in the application for a detailed map). Phase I of this project would take place in the South Harbor while Phase II would take place in both North and South Harbor.

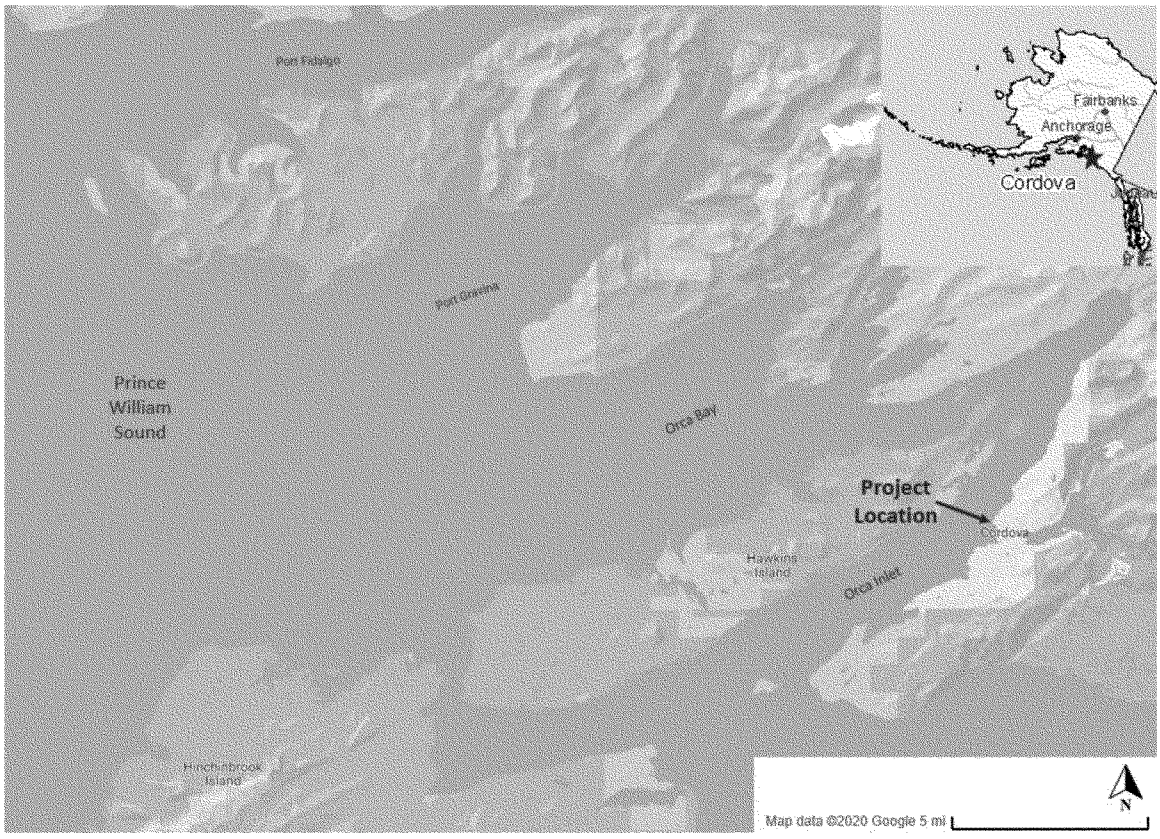

Figure 1 -- Project location

Detailed Description of the Specified Activity

The purpose of this project is to improve Cordova Harbor to offer safe vessel mooring and better accommodate the current and future commercial fishing industry and associated freight to support the local economy. Improvements would include replacing all the floats and gangways and adding a new drive-down floatplane and vessel service facility (drive-down dock) in the South Harbor. This project would not increase the number of slips in the harbor, but would provide safer access to the existing slips. An increase in vessel traffic is not expected as a direct result of the proposed project. This project would also include work that is not expected to result in take. During Phase I this would include the removal of walk floats, gangways, and a seaplane float. Additionally, new floats, gangways, access trestles, electrical service lighting, potable water service, fire suppression lines, and safety equipment would be installed in the South Harbor. During Phase II, the work not expected to result in take would be the installation of a bulkhead above the high tide line, a five-ton hydraulic crane, and a new boat launch ramp lane.

Installation of bulkheads in the North (Phase II) and South (Phase I) Harbor would involve gravel fill to be placed behind the bulkheads. 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 H-piles and sheet piles, 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. Dredging in the South Harbor during Phase I would involve the removal of 7,646 cubic meters (10,000 cubic yards) above the high tide line and therefore would not result in the take of marine mammals and it is not discussed further. During Phase II, approximately 16,820 cubic meters (22,000 cubic yards) of material would be removed below the high tide line by dredging in the North Harbor. A combination of the dredge soil and imported gravel would be used to fill in behind the bulkheads in both the North and South Harbor. 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 Cordova's planned dredging to result in the take of marine mammals and it is not discussed further.

Phase I would involve the removal of existing piles, the installation and removal of temporary piles, and the installation of permanent piles in the South Harbor. During Phase I 130 timber (12 inch (in) diameter; 0.3 meters (m)) and 61 old steel (12 in diameter; 0.3 m) piles would be removed. Once the existing piles are removed, 155 16-in (0.4 m), 70 18-in (0.5 m), and 30 30-in (0.8 m) permanent steel piles would be installed. The installation and removal of 61 temporary 24-in (0.6 m) steel pipe piles would be completed to support permanent pile installation. Vibratory hammers, impact hammers, and DTH drilling would be used for the installation and removal of all piles (Table 1). Piles would be removed by dead-pull or vibratory methods. The installation and removal of temporary piles would be conducted using vibratory hammers. All permanent piles

would be initially installed with a vibratory hammer. After vibratory driving, if needed, piles would be impacted into the bedrock with an impact hammer. For some piles, a DTH drill would be needed to drive piles the final few inches of embedment.

Phase II would involve the removal of existing piles, the installation and removal of temporary piles, and the installation of permanent piles in the North and South Harbor. During Phase II 268 12-in (0.3 m) timber piles would be removed. Then, 24 24-in (0.6 m) steel piles, 80 steel H-piles, and 80 steel sheet piles would be installed. The installation and removal of 31 temporary 24-in (0.6 m) steel pipe piles would be completed to support permanent pile installation. As in Phase I, vibratory hammers, impact hammers, and DTH drilling would be used for the installation and removal of all piles (Table 2). Piles would be removed by dead-pull or vibratory methods. The installation and removal of temporary piles would be conducted using vibratory hammers. All permanent piles would be initially installed with a vibratory hammer. After vibratory driving, if needed, piles would be impacted into the bedrock with an impact hammer. For some piles, a DTH drill would be needed to drive piles the final few inches of embedment.

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Table 1 --Summary of Pile Removal and Installation Activities for Phase I

	In-water pile driving							In-air pile driving			
	Perm Pile Removal		Temp Pile Installation	Temp Pile Removal	Perm Pile Installation			Temp Pile Installation	Temp Pile Removal	Perm Pile Installation	
Diameter of Piles (inches)	12	12	24	24	16	18	30	24	24	18	16 x 89
Pile Type	Timber	Steel	Steel	Steel	Steel	Steel	Steel	Steel	Steel	Steel	Steel H
Total Number of Piles	130	61	61	61	155	70	30	70	70	70	140
Vibratory Pile Driving											
Total Quantity	130	61	61	61	155	70	30	70	70	70	140
Max No. Piles Vibrated Per Day	25	25	6	10	10	10	6	6	10	6	10
Vibratory Time Per Pile (minutes)	10	10	10	10	15	20	30	10	10	10	15
Vibratory Time Per Pile (hours)	4.2	4.2	1.0	1.7	2.5	3.3	3.0	1.0	1.7	1.0	2.5
Number of Days	5.2	2.4	10.2	6.1	15.5	7.0	5.0	11.7	7.0	11.7	14.0
Total Vibratory Time (hours)	21.7	10.2	10.2	10.2	38.8	23.3	15.0	11.7	11.7	11.7	35
Impact Pile Driving											
Total Quantity	-	-	-	-	73	35	20	-	-	35	70
Max No. Piles Impacted Per Day	-	-	-	-	6	6	6	-	-	4	6
Number Strikes Per Pile	-	-	-	-	240	240	360	-	-	180	150
Impact Time Per Pile (minutes)	-	-	-	-	20	20	20	-	-	20	20
Impact Time Per Pile (hours)	-	-	-	-	2.0	2.0	2.0	-	-	1.3	2.0
Number of Days	-	-	-	-	12.2	5.8	3.3	-	-	8.8	11.7
Total Impact Time (hours)	-	-	-	-	24.3	11.7	7.0	-	-	12	23
DTH Pile Driving											
Total Quantity	-	-	-	-	50	20	16	-	-	18	35
Max No. Piles Installed Per Day	-	-	-	-	4	4	4	-	-	4	5
Number Strikes Per Pile	-	-	-	-	54,000	54,000	54,000	-	-	2,700	40,500
Number Strikes Per Second	-	-	-	-	10	10	10	-	-	10	10
Total Drilling Time Per Pile (minutes)	-	-	-	-	90	90	90	-	-	60	80
Actual Drilling Time Per Pile (minutes)	-	-	-	-	75	75	75	-	-	45	60
Time Per Day (hours)	-	-	-	-	5	5	5	-	-	3	5
Number of Days	-	-	-	-	12.5	5.0	4.0	-	-	4.5	7.0
Total DTH Drilling Time (hours)	-	-	-	-	62.5	25.0	20.0	-	-	13.5	35

Table 2 --Summary of Pile Removal and Installation Activities for Phase II

	In-water pile driving						
				Perm Pile Installation			
	Perm Pile Removal	Temp Pile Installation	Temp Pile Removal	24 Steel	16 x 89 Steel H	Steel Sheet
Diameter of Piles (inches)	12	24	24	24	16 x 89	
Pile Type	Timber	Steel	Steel	Steel	Steel H	Steel Sheet
Total Number of Piles	268	31	31	24	80	80
Vibratory Pile Driving						
Total Quantity	268	31	31	24	80	80
Max No. Piles Vibrated Per Day	25	6	10	10	4	4
Vibratory Time Per Pile (minutes)	10	10	10	20	15	15
Vibratory Time Per Pile (hours)	4.2	1.0	1.7	3.3	1.0	1.0
Number of Days	10.7	5.2	3.1	2.4	20.0	20.0
Total Vibratory Time (hours)	44.7	5.2	5.2	8.0	20.0	20.0
Impact Pile Driving						
Total Quantity	-	-	-	10	32	32
Max No. Piles Impacted Per Day	-	-	-	4	4	4
Number Strikes Per Pile	-	-	-	20	20	20
Impact Time Per Pile (minutes)	-	-	-	20	20	20
Impact Time Per Pile (hours)	-	-	-	1.3	1.3	1.3
Number of Days	-	-	-	2.4	8.0	8.0
Total Impact Time (hours)	-	-	-	3.0	11.0	11.0
DTH Pile Driving						
Total Quantity	-	-	-	5	16	-
Max No. Piles Installed Per Day	-	-	-	2	3	-
Number Strikes Per Pile	-	-	-	54,000	54,000	-
Number Strikes Per Second	-	-	-	4	4	-
Total Drilling Time Per Pile (minutes)	-	-	-	150	150	-
Actual Drilling Time Per Pile (minutes)	-	-	-	60	60	-
Time Per Day (hours)	-	-	-	2	3	-
Number of Days	-	-	-	2.4	5.3	-
Total DTH Drilling Time (hours)	-	-	-	4.8	16.0	-

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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 3 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. 2021 Alaska Marine Mammal SARs. All values presented in Table 3 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 3—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES [1]

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]
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer whale	Orcinus orca	Alaska Resident	-/-; N	1,920 (N/A, 1,920, 2019)	19	1.3
		Gulf of Alaska/Aleutian Islands/ Bering Sea Transient.	-/-; N	587 (N/A, 587, 2012)	5.9	0.8
		AT1 Transient	-/D; N	7 (N/A, 7, 2019)	0.1	0
Family Phocoenidae (porpoises):						
Dall's porpoise	*Phocoenoides dalli*	Alaska	-/-; N	UND (UND, UND, 2015) [5]	UND	37
Order Carnivora—Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	*Eumetopias jubatus*	Western DPS	E/D; Y	52,932 (N/A, 52,932, 2019)	318	254
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	Prince William Sound	-/-; N	44,756 (N/A, 41,776, 2015)	1253	413

[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: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[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, vessel 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] Population estimate of 13,110 based on surveys from western Prince William Sound, as abundance estimates for the Alaska stock are more than 8 years old and are no longer considered reliable (Muto *et al.,* 2022). This population estimate will be used for small numbers calculations.

As indicated above, all four species (with six managed stocks) in Table 3 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. All species that could potentially occur in the proposed survey areas are included in Table 10 of the IHA application. While northern fur seal, Pacific white-sided dolphin, harbor porpoise, humpback whale, fin whale, minke whale, and gray whale have been documented in Prince William Sound, the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. These species are all considered to be rare (no sightings in recent years) or very rare (no local knowledge of sightings within the project vicinity) within Orca Bay according to the Prince William Sound Science Center in Cordova (Prince William Sound Science Center 2022; Schinella 2022). Given the shallow depths of the waters surrounding Cordova Harbor, it would also be unusual for many of these species to enter the project area. The take of these species has not been requested nor is proposed to be authorized and these species are not considered further in this document.

Killer Whale

Killer whales have been observed in all the world's oceans, but the highest densities occur in colder and more productive waters found at high latitudes (NMFS 2016). They occur along the entire Alaska coast, in British Columbia and Washington inland waterways, and along the outer coasts of Washington, Oregon, and California (NMFS, 2016). The three stocks that are most likely to occur in Prince William Sound are the southern Alaska Resident stock, Gulf of Alaska/Aleutian Islands/ Bering Sea Transient stock, and the AT1 Transient stock (Muto *et al.,* 2022).

There are three distinct ecotypes, or forms, of killer whales recognized: Resident, Transient, and Offshore. The three ecotypes differ morphologically, ecologically, behaviorally, and genetically. Both residents and transients are common in a variety of habitats and all major waterways, including protected bays and inlets. There does not appear to be strong seasonal variation in abundance or distribution of killer whales, but there was substantial variability between years (Dahlheim *et al.,* 2009). Spatial distribution has been shown to vary among the different ecotypes, with resident and, to a lesser extent, transient killer whales more commonly observed along the continental shelf, and offshore killer whales more commonly observed in pelagic waters (Rice *et al.,* 2017).

In the Gulf of Alaska, the offshore killer whale ecotype is found in pelagic

waters off the Aleutian Islands to California and mainly prey on sharks; the resident ecotype (southern Alaska residents) ranges from Kodiak Island to Southeast Alaska and prefer to eat fish; and two different transient populations (Gulf of Alaska transients and AT1 transients) prefer marine mammals are most often found near the Hinchinbrook Entrance and Montague Strait (Myers *et al.,* 2021). A tagging study focused on resident killer whale movements in Prince William Sound found that killer whales' favored use areas were highly-seasonal and pod specific, likely timed with seasonal salmon returns to spawning streams (Olsen *et al.,* 2018).

With the exception of the AT1 Transient stock, the populations that are known to occur in Prince William Sound are not strategic or depleted under the MMPA. Long-term studies of pods belonging to the southern Alaska resident stock in the Gulf of Alaska indicate these populations are increasing at an estimated growth rate of approximately 3.4 percent (Matkin *et al.,* 2014). However, both resident and transient killer whales were significantly impacted by the 1989 Exxon Valdez Oil spill. Prior to the spill, the resident AB pod consisted of 36 members and from 1989 to 1990, 14 whales disappeared from the pod. The AB pod is considered recovering; however, due to slow reproduction rates only 28 individuals were observed in 2005 (Exxon Valdez Oil Spill Trustee Council 2021). The AT1 Transient stock also experienced high mortality following the oil spill, as 11 of the original 22 individuals disappeared between 1989 and 1992. The AT1 stock currently numbers only seven individuals (Muto *et al.,* 2021).

Results from the Olsen *et al.* (2018) satellite tagging surveys in Prince William Sound from 2006 to 2014 revealed several core use areas for resident killer whales based on pod and season. Most resident pods primarily concentrated at the southern end of Prince William Sound in Hinchinbrook Entrance during the summer and Montague Strait in the late summer and fall. The AD16 pod (estimated 9 animals) and AK pod (estimated 19 animals) were the most frequently observed in the northern glacial fjords of the sound (Muto *et al.,* 2022; Olsen *et al.,* 2018).

Additionally, a 27-year photo identification study in Prince William Sound and Kenai Fjords surveyed both populations of transient killer whales. The study found that the AT1 transients had higher site fidelity to the area, while the Gulf of Alaska transients had a higher exchange of individuals (Matkin *et al.,* 2012). Throughout the study, survival estimates for both populations was generally high, but there was significant population reduction in the AT1 transient after the Exxon Valdez oil spill (Matkin *et al.,* 2012). There was no detectable decline in the larger Gulf of Alaska transient population after the oil spill (Matkin *et al.,* 2012).

Communication with the Cordova Harbormaster and Prince William Sound Science Center scientists indicate that killer whales are occasionally observed in the deeper waters of Orca Inlet north of Cordova Harbor (Schinella 2022; Prince William Sound Science Center 2022).

Steller Sea Lion

Steller sea lions were listed as threatened range-wide under the ESA on November 26, 1990 (55 FR 49204). Steller sea lions were subsequently partitioned into the western and eastern Distinct Population Segments (DPSs; western and eastern stocks) in 1997 (62 FR 24345, May 5, 1997). The eastern DPS remained classified as threatened until it was delisted in November 2013. The western DPS (those individuals west of the 144° W longitude or Cape Suckling, Alaska) was upgraded to endangered status following separation of the DPSs, and it remains endangered today. There is regular movement of both DPSs across this 144° W longitude boundary (Jemison *et al.,* 2013) however, due to the distance from this DPS boundary, it is likely that only western DPS Steller sea lions are present in the project area. Therefore, animals potentially affected by the project are assumed to be part of the western DPS. Sea lions from the eastern DPS, are not likely to be affected by the proposed activity and are not discussed further.

Steller sea lions do not follow traditional migration patterns, but will move from offshore rookeries in the summer to more protected haulouts closer to shore in the winter. They use rookeries and haulouts as resting spots as they follow prey movements and take foraging trips for days, usually within a few miles of their rookery or haulout. They are generalist marine predators and opportunistic feeders based on seasonal abundance and location of prey. Steller sea lions forage in nearshore as well as offshore areas, following prey resources. They are highly social and are often observed in large groups while hauled out but alone or in small groups when at sea (NMFS 2022).

Steller sea lions are distributed throughout Prince William Sound, with patterns loosely correlated to aggregations of spawning and migrating prey species, particularly fish and cephalopod species (Womble 2005; Sinclair and Zeppelin 2002; Sinclair *et al.,* 2013). Steller sea lions may be found in and around Orca Inlet throughout the year and are frequently observed inside Cordova Harbor (Schinella 2022; Prince William Sound Science Center 2022). They are drawn to fish processing plants and high forage value areas such as anadromous streams. The Cordova area has several anadromous streams that support salmon species (Alaska Department of Fish and Game [ADF&G] 2022) and six Alaska Department of Environmental Conservation permitted seafood processing plant outfalls that also attract Steller sea lions (ADEC 2022). While the project action area is within designated Steller sea lion critical habitat, there are few essential physical and biological habitat features of critical habitat within in the action area. The nearest rookery to the proposed project is Seal Rocks (approximately 73 km northeast of project) off the coast of Hinchinbrook Island and the nearest major haulouts are Hook Point (36 kilometers northeast of project) and Cape Hinchinbrook (59 km northwest of project; NMFS 2016). However, given the small footprint and shallow depth of water in the project's action area, prey resources and foraging habitats in the action area are expected to be minimal.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the

exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, *Cephalorhynchid, Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways 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.

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. 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 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include vibratory pile removal, impact and vibratory pile installation, and Down-the-Hole (DTH) drilling. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (American National Standards Institute (ANSI) 1986; National Institute for Occupational Safety and Health (NIOSH) 1998; ANSI 2005; NMFS 2018a). Non-impulsive sounds (*e.g.,* aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018a). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.,* 2007).

Three types of hammers would be used on this project: impact, vibratory, and DTH. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002; Carlson *et al.,* 2005).

A DTH hammer is essentially a drill bit that drills through the bedrock using a rotating function like a normal drill, in concert with a hammering mechanism operated by a pneumatic (or

sometimes hydraulic) component integrated into the DTH hammer to increase speed of progress through the substrate (*i.e.,* it is similar to a ''hammer drill'' hand tool). The sounds produced by the DTH method contain both a continuous non-impulsive component from the drilling action and an impulsive component from the hammering effect. Therefore, we treat DTH systems as both impulsive and non-impulsive sound source types simultaneously.

The likely or possible impacts of Cordova's proposed activity on marine mammals involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of equipment and personnel; however, any impacts to marine mammals are expected to be primarily acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile driving and drilling.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving or drilling is the primary means by which marine mammals may be harassed from the Cordova's specified activity. 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). In general, exposure to pile driving or drilling 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 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 or drilling 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. mom 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.,* 2004; 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 decibels (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 an 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; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.,* 2008), there are no empirical data measuring PTS in marine mammals 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 (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Many studies have examined noise-induced hearing loss in marine mammals (see Finneran (2015) and Southall *et al.* (2019) for summaries). For cetaceans, published data on the onset of TTS are limited to the captive bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise (*Phocoena phocoena*), and Yangtze finless porpoise (*Neophocoena asiaeorientalis*), and for pinnipeds in water, measurements of TTS are limited to harbor seals, elephant seals (*Mirounga angustirostris*), and California sea lions (*Zalophus californianus*). These studies examine hearing thresholds measured in marine mammals before and after exposure to intense sounds. The difference between the pre-exposure and post-exposure thresholds can be used to determine the amount of threshold shift at various post-exposure times. The amount and onset of TTS depends on the exposure frequency. Sounds at low frequencies, well below the region of best sensitivity, are less hazardous than those at higher frequencies, near the region of best sensitivity (Finneran and Schlundt, 2013). At low frequencies, onset-TTS exposure levels are higher compared to

those in the region of best sensitivity (*i.e.,* a low frequency noise would need to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (Kastelein *et al.,* 2019a, 2019b). 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) 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).

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart 2007).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). 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). 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. Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

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). 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.

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; 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 (National Research Council (NRC), 2003), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar projects in the area.

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—Although pinnipeds are known to haul out regularly on man-made objects, we believe that incidents of take resulting solely from airborne sound are unlikely due to the sheltered proximity between the proposed project area and these haulout sites (outside of Orca Inlet). According to the Prince William Sound Science Center and the harbor master pinnipeds have not been observed to haul out on the breakwaters outside the harbor or on Spike Island facing the harbor. Therefore, take resulting solely from airborne sound is unlikely for the areas surrounding the harbor. There is a possibility that an animal could surface in-water, but with head out, within the area in which airborne sound exceeds relevant thresholds and thereby be exposed to levels of airborne sound that we associate with harassment. Any such occurrence on days with in-water pile driving activities would likely be accounted for in our estimation of incidental take from underwater sound. On days when pile driving is occurring on land immediately adjacent to the harbor, no take from underwater sound would occur. However, authorization of incidental take resulting from airborne sound for pinnipeds is warranted for days with only upland pile driving activities due to the potential for pinnipeds to be exposed while hauled out within the harbor or while swimming with their heads above the surface. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Marine Mammal Habitat Effects

Cordova's construction activities could have localized, temporary impacts on marine mammal habitat and their prey by increasing in-water sound pressure levels and slightly decreasing water quality. However, its proposed location is within the current harbor footprint and is located in an area that is currently used by numerous commercial fishing and personal vessels. Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During DTH drilling, impact, and vibratory pile driving, elevated levels of underwater noise would ensonify the project area where both fish 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.

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). The sediments of the project site would settle out rapidly when disturbed. Cetaceans are not expected to be close enough to the pile driving areas to experience effects of turbidity, and any pinnipeds could avoid localized areas of turbidity. Therefore, we expect the impact from increased turbidity levels to be discountable to marine mammals and do not discuss it further.

In-Water Construction Effects on Potential Foraging Habitat

The proposed activities would not result in permanent impacts to habitats used directly by marine mammals as the project would not expand mooring capacity in Cordova Harbor, and no increases in vessel traffic in the area are expected as a result of this project. The total seafloor area likely impacted by the project is relatively small compared to the available habitat in Southcentral Alaska. Orca Inlet is included in the designated critical habitat for western Steller sea lions and these sea lions could experience a temporary loss of suitable habitat in the action area for 1 to 5 hours per day over 170 days during Phase I and 1 to 8.5 hours per day over 88 days during Phase II of construction if elevated noise levels associated with in-water construction results in their displacement from the area. However, the project would only impact the essential physical and biological features that make the area critical habitat for western Steller sea lions, such as good water quality, prey availability, or open space for transiting and foraging when the ensonified area extends beyond Cordova Harbor. The area already has elevated noise levels because of busy vessel traffic transiting through the area, and critical habitat impacts would not be permanent nor would it result long-term effects to the local population. No known rookeries or major haulouts would be impacted. Additionally, the total seafloor area affected by pile installation and removal is a small area compared to the vast foraging area available to marine mammals in the area. At best, the impact area provides marginal foraging habitat for marine mammals and fishes. Furthermore, pile driving at the project site would not obstruct movements or migration of marine mammals.

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish 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 of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

Effects on Potential Prey

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton, *etc.*). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick and Mann, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although 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.,* 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 fish from pile driving activities at the project areas would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated.

Construction activities, in the form of increased turbidity, have the potential to adversely affect forage fish in the project area. Forage fish form a significant prey base for many marine mammal species that occur in the project area. Increased turbidity is expected to occur in the immediate vicinity (on the order of 10 ft (3 m) or less) of construction activities. However, suspended sediments and particulates are expected to dissipate quickly within a single tidal cycle. Given the limited area affected and high tidal dilution rates, 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 events and the relatively small areas being affected, pile driving activities associated with the proposed action 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 activity 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 primarily be by Level B harassment, as use of the acoustic sources (*i.e.,* vibratory or impact pile driving and DTH drilling) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for Dall's porpoise and harbor seals, due to the cryptic nature of these species in context of larger predicted auditory injury zones. Auditory injury is unlikely to occur for mid-frequency species and otariids, based on the likelihood of the species in the action area, the ability to monitor the entire smaller shutdown zone, and because of the expected ease of detection for the former groups. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals would be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that would be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can

contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment). Thresholds have also been developed identifying the received level of in-air sound above which exposed pinnipeds would likely be behaviorally harassed.

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. For in-air sounds, NMFS predicts that harbor seals exposed above received levels of 90 dB re 20 μPa (rms) would be behaviorally harassed, and other pinnipeds would be harassed when exposed above 100 dB re 20 μPa (rms). 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.

Cordova's proposed activity includes the use of continuous (vibratory hammer and DTH drilling) and impulsive (DTH drilling and impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) thresholds 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). Cordova's proposed activity includes the use of impulsive (impact pile-driving and DTH drilling) and non-impulsive (vibratory hammer and DTH drilling) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance*.

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset 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.,* impact pile driving, vibratory pile driving and removal, and DTH).

In order to calculate distances to the Level A harassment and Level B harassment thresholds for the methods and piles being used in this project, NMFS used acoustic monitoring data

from other locations to develop source levels for the various pile types, sizes and methods (Table 6). This analysis uses the practical spreading loss model, a standard assumption regarding sound propagation for similar environments, to estimate transmission of sound through water. For this analysis, the transmission loss factor of 15 (4.5 dB per doubling of distance) is used. A weighting adjustment factor of 2.5 or 2, a standard default value for vibratory pile driving and removal or impact driving and DTH respectively, were used to calculate Level A harassment areas.

NMFS recommends treating DTH systems as both impulsive and continuous, non-impulsive sound source types simultaneously. Thus, impulsive thresholds are used to evaluate Level A harassment, and continuous thresholds are used to evaluate Level B harassment. With regards to DTH mono-hammers, NMFS recommends proxy levels for Level A harassment based on available data regarding DTH systems of similar sized piles and holes (Denes *et al.,* 2019; Guan and Miner, 2020; Reyff and Heyvaert, 2019; Reyff, 2020; Heyvaert and Reyff, 2021) (Table 1 and 2 includes number of piles and duration for each phase; Table 6 includes peak pressure, sound pressure, and sound exposure levels for each pile type).

TABLE 6—ESTIMATED UNDERWATER PROXY SOURCE LEVELS FOR PILE INSTALLATION AND REMOVAL

Pile type	Phase	Proxy source levels (dB) at 10 m			Reference
		Peak	RMS	SEL	
Vibratory Pile Driving					
12–24 in timber pile removal	I, II	.....	162	.....	Greenbusch *et al.* (2018), CALTRANS (2020).
12–24 in steel pile removal	I	.....	161	.....	NAVFAC (2013; 2015).
24 in steel template pile install/removal	I, II				
16 in steel pile	I				
18 in steel pile	I				
24 in steel pile	II				
30 in steel pile	I	.....	161.9	.....	Denes *et al.* (2016).
Steel H-pile	II	.....	165	.....	CALTRANS (2015).
Steel sheet pile	II	.....	162	.....	Buehler *et al.* (2015).
Impact Pile Driving					
16 in steel pile	I	192.8	181.1	168.3	Denes *et al.* (2016).
18 in steel pile	I				
24 in steel pile	II				
30 in steel pile	I	210	190	177	NMFS 2023 analysis*.
Steel H-pile	II	200	177	170	CALTRANS (2015).
Steel sheet pile	II	205	190	180	CALTRANS (2015).
DTH Drilling					
16 in steel pile	I	.....	167	159	Heyvaert and Reyff (2021).
18–24 in steel pile	I,II				
30 in steel pile	I	.....	174	164	Denes *et al.* (2019), Reyff and Heyvaert (2019), Reyff (2020).
Steel H-pile	II				

Note: SEL= sound exposure level; RMS = root mean square.

*NMFS used the mean of regionally relevant measurements to determine suitable proxy source values for these pile types. Projects included in the analysis were Navy (2012, 2013) and Miner (2020), following the methodology of Navy (2015).

TABLE 7—ESTIMATED IN-AIR PROXY SOURCE LEVELS FOR PILE INSTALLATION AND REMOVAL

Pile type	Phase	Proxy source levels (dB) at 15 m			Reference
		Peak	RMS	SEL	
Vibratory Pile Driving					
24 in steel template pile install/removal	I	.....	103.2	.....	Laughlin 2010.
18 in steel pile					
Steel H-pile					
Impact Pile Driving					
18 in steel pile	I	.....	101	.....	Ghebreghzabiher *et al.* (2017).
Steel H-pile					

TABLE 7—ESTIMATED IN-AIR PROXY SOURCE LEVELS FOR PILE INSTALLATION AND REMOVAL—Continued

Pile type	Phase	Proxy source levels (dB) at 15 m			Reference
		Peak	RMS	SEL	
DTH Drilling [1]					
18 in steel pile Steel H-pile	I	.....	101	.....	Ghebreghzabiher *et al.* (2017).

Note: SEL = sound exposure level; RMS = root mean square.
[1] We conservatively assume that the proxy value for DTH driving is the same as for impact 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 Cordova's proposed underwater activities. The Level B harassment zones and approximate amount of area ensonified for the proposed underwater activities are shown in Table 8. The Level B harassment zones for the proposed upland pile driving activities that may generate airborne noise are shown in Table 7.

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 used in the User Spreadsheet (*e.g.,* number of piles per day, duration and/or strikes per pile) are presented in Tables 1 and 2. The maximum RMS SPL, SEL, and resulting isopleths are reported in Tables 6, 7, and 8.

TABLE 8—LEVEL A AND LEVEL B HARASSMENT ISOPLETHS FOR PILE DRIVING ACTIVITIES

Pile type	Phase	Distances to Level A and Level B thresholds (m)					Ensonified area[1 2] for Level B (km^2)
		Level A				Level B	
		MF	HF	Phocid	Otariid		
Vibratory Pile Driving							
12–24 in timber pile removal	I, II	1.8	30.5	12.5	0.9	6,309.6	125.
12–24 in steel pile removal	I	1.6	26.1	10.7	0.8	5,411.7	92.
24 in steel template pile install/removal.	I, II	0.9	14.2	5.8	0.4		
16 in steel pile	I	1.1	18.6	7.6	0.5		
18 in steel pile	I	1.4	22.5	9.3	0.7		
24 in steel pile	II						
30 in steel pile	I	1.4	24.1	9.9	0.7	6,213.5	121.2.
steel H-pile	II	1.1	18.7	7.7	0.5	10,000	314.
steel sheet pile	II	0.7	11.8	4.8	0.3	6,310	125.
In-air pile installation/removal	I	.....	.....	.....	.....	68.6 (Phocid)/22.8 (Otariid)	0.01 (Phocid)/0.002 (Otariid).
Impact Pile Driving							
16 in steel pile	I	4.7	158.8	71.4	5.2	255	0.2.
18 in steel pile	I						
24 in steel pile	II						
30 in steel pile	I	23.6	791.3	355.5	25.9	1,000	3.14.
steel H-pile	II	12.1	405.3	182.1	13.3	341.5	0.37.
steel sheet pile	II	56.2	1,881.2	845.2	61.5	1,000	3.14.
In-air pile installation/removal	I	.....	.....	.....	.....	53.2 (Phocid)/16.8 (Otariid)	0.009 (Phocid)/0.0009 (Otariid).

TABLE 8—LEVEL A AND LEVEL B HARASSMENT ISOPLETHS FOR PILE DRIVING ACTIVITIES—Continued

Pile type	Phase	Distances to Level A and Level B thresholds (m)					Ensonified area[1 2] for Level B (km²)
		Level A				Level B	
		MF	HF	Phocid	Otariid		
DTH Drilling							
16 in steel pile	I	32.1	1,075.7	483.3	35.2	13,593.6	580.2.
18–24 in steel pile	I,II						
30 in steel pile	I	61.3	2,052.20	922	67.1	39,810.7	4976.6.
steel H-pile	II						
In-air pile installation/removal	I					53.2 (Phocid)/16.8 (Otariid)	0.009 (Phocid)/0.0009 (Otariid).

[1] Areas were calculated based on areas of a circle with the specified radius from Table 6 and 7 and realized ensonified areas will be smaller due to truncation by land masses.
[2] The ensonified area within Cordova harbor will be no more than 0.19 km.²

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including presence, density, local knowledge, or other relevant information which will inform the take calculations.

Daily occurrence probability of each marine mammal species in the action area is based on consultation with local researchers and marine professionals. Occurrence probability estimates are based on conservative density approximations for each species and factor in historic data of occurrence, seasonality, and group size in Orca Bay, Orca Inlet, and/or Prince William Sound. A summary of proposed take is shown in Table 9. To accurately describe species occurrence near the action area, marine mammals were described as either common (multiple sightings every month, could occur each day), frequent (multiple sightings every year, could occur each month), or infrequent (few sightings every year, could occur each month).

TABLE 9—ESTIMATED OCCURRENCE OF GROUP SIGHTINGS OF MARINE MAMMALS

Species	Frequency	Seasonality	Occurrence	Group size[a]
Steller sea lion:				
(within harbor)	Common	Year-round	1 group per day	[b] 4.1
(outside harbor)	Common	Year-round	2 groups per day	[b] 4.1
Harbor seal:				
(within harbor)	Frequent	Year-round	1 group per day	[c] 3.5
(outside harbor)	Common	Year-round	2 groups per day	[c] 3.5
Killer whale	Infrequent	Year-round	1 group every 10 days	[d] 14
Dall's porpoise	Infrequent	Year-round	1 group every 10 days	[e] 4.3

[a] Group size was averaged from seasonal data (Steller sea lions and harbor seals), pod size (killer whales), and observational data (Dall's porpoise) for more information see application.
[b] Leonard and Wisdom (2020); Sigler *et al.* (2017).
[c] ADF&G (2022a).
[d] Muto *et al.* (2022).
[e] Moran *et al.* (2018).

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

For total underwater take estimate, the daily occurrence probability for a species was multiplied by the estimated group size and by the number of days of each type of pile driving activity. Group size is based on the best available published research for these species and their presence in this area.

Estimated take = Group size × Groups per day × Days of pile driving activity

Take of pinnipeds by Level B harassment due to airborne noise was calculated based on the proportion of area within the harbor likely to be ensonified above the thresholds for harbor seals and other pinnipeds, respectively. The percent of the harbor ensonified was then multiplied by the number of days of pile driving, the group size, and groups per day, as done for underwater take estimates. The total numbers of takes by Level B harassment due to airborne noise proposed for authorization for harbor seal and Steller sea lion are 7 and 0, respectively.

Take by Level A harassment is requested for Steller sea lions and harbor seals given that these species are known to spend extended periods of time within Cordova Harbor and most Level A isopleths are contained within Cordova Harbor. The take by Level A harassment calculations are based on lower daily occurrence estimates for each species than take by Level B harassment calculations based on input from marine professionals in the community about their presence in within the smaller ensonified zone of the harbor (Table 9; Greenwood 2022). Take by Level A harassment is also requested for Dall's porpoise for impact driving of sheet piles and DTH drilling of 30 in and H-piles as it is not practicable to observe and shut down for porpoises throughout the entire Level A zone (1,885 m for impact driving and 2,050 m for DTH drilling). Additionally, Level A harassment isopleths for most hearing groups and pile types were less than 10 m (Table 8) which is the minimum shutdown zone for this project (see Proposed Mitigation). Because the Level A isopleths for those piles are within the minimum 10 m shutdown zone, no takes by Level A harassment are expected to occur from those activities, and therefore the predicted take by Level A harassment were removed from the total take calculations (Table 10).

During Phase II, killer whale and Dall's porpoise are not expected to occur within any harassment zones due

to the relatively shallow water that would be ensonified (south of Spike Island into tidal mud flats) and therefore no take was requested for these species.

TABLE 10—PROPOSED TAKE OF MARINE MAMMALS BY LEVEL A AND LEVEL B HARASSMENT AND PERCENT OF STOCK PROPOSED TO BE TAKEN BY PHASE

Species	Stock/DPS	Proposed authorized take			Stock size [1]	% of stock
		Level A	Level B	Total take		
Phase I						
Steller sea lion	Western DPS	107	788	895	52,932	1.69
Harbor seal	Prince William Sound	154	681	835	44,756	1.87
Killer whale [2]	Alaska Resident	.....	83	83	1,920	4.35
	Gulf of Alaska/Aleutian Islands/Bering Sea Transient.	.....	26	26	587	4.35
Dall's porpoise	Alaska	10	32	42	13,110	0.32
Phase II						
Steller sea lion	Western DPS	98	730	828	52,932	1.56
Harbor seal	Prince William Sound	133	623	756	44,756	1.69

[1] Stock size comes from the most recent SARs except for Dall's porpoise whose stock estimate is based on surveys from western Prince William Sound only, as abundance estimates for the Alaska stock are more than eight years old and no longer considered reliable (Muto et al., 2022).

[2] AT1 transient stock take calculation resulted in 0.3 takes, therefore no takes were requested or are proposed for authorization.

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. 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.

The following mitigation measures are included in the proposed IHAs:

Mitigation Measures

Cordova must follow mitigation measures as specified below:

- Ensure that construction supervisors and crews, the monitoring team, and relevant Cordova staff are trained prior to the start of all pile driving and DTH drilling activity, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work;
  - Employ Protected Species Observers (PSOs) and establish monitoring locations as described in the application and the IHA. The Holder must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions. For all pile driving and removal at least one PSO must be used. The PSO will be stationed as close to the activity as possible;
- The placement of the PSOs during all pile driving and removal and DTH drilling activities will ensure that the entire shutdown zone is visible during pile installation;
- Monitoring must take place from 30 minutes prior to initiation of pile driving or DTH drilling activity (*i.e.,* pre-clearance monitoring) through 30 minutes post-completion of pile driving or DTH drilling 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 11 are clear of marine mammals. Pile driving and DTH drilling may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals;
  - Cordova must use soft start techniques when 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; and
  - If a marine mammal is observed entering or within the shutdown zones indicated in Table 11, pile driving and DTH drilling 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 (Table 11) or 15 minutes have passed without re-detection of the animal;
- As proposed by the applicant, in water activities will take place only

between civil dawn and civil dusk when PSOs can effectively monitor for the presence of marine mammals; during conditions with a Beaufort sea state of 4 or less. Pile driving and DTH drilling may continue for up to 30 minutes after sunset during evening civil twilight, as necessary to secure a pile for safety prior to demobilization during this time. The length of the post-activity monitoring period may be reduced if darkness precludes visibility of the shutdown and monitoring zones.

Shutdown Zones

Cordova will establish shutdown zones for all pile driving and DTH drilling activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones would be based upon the Level A harassment isopleth for each pile size/type and driving method where applicable, as shown in Table 11.

For in-water heavy machinery activities other than pile driving, if a marine mammal comes within 10 m, work will stop and vessels will reduce speed to the minimum level required to maintain steerage and safe working conditions. A 10 m shutdown zone serves to protect marine mammals from physical interactions with project vessels during pile driving and other construction activities, such as barge positioning or drilling. If an activity is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone indicated in Table 11 or 15 minutes have passed without re-detection of the animal. Construction activities must be halted upon observation of a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met entering or within the harassment zone.

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, construction activities including in-water work will continue and the animal's presence within the estimated harassment zone will be documented.

Cordova would also establish shutdown zones for all marine mammals for which take has not been authorized or for which incidental take has been authorized but the authorized number of takes has been met. These zones are equivalent to the Level B harassment zones for each activity. If a marine mammal species not covered under this IHA enters the shutdown zone, all in-water activities will cease until the animal leaves the zone or has not been observed for at least 15 minutes, and NMFS will be notified about species and precautions taken. Pile driving will proceed if the non-IHA species is observed to leave the Level B harassment zone or if 15 minutes have passed since the last observation.

If shutdown and/or clearance procedures would result in an imminent safety concern, as determined by Cordova or its designated officials, the in-water activity will be allowed to continue until the safety concern has been addressed, and the animal will be continuously monitored.

TABLE 11—PROPOSED SHUTDOWN AND MONITORING ZONES

Pile type	Phase	Minimum shutdown zone (m)				Monitoring zone (m)
		MF	HF	Phocid	Otariid	
Barge movements, pile positioning, *etc.*	I, II	10	10	10	10	10.
Vibratory Pile Driving						
12–24 in timber pile removal	I, II	10	35	25	10	6,310.
12–24 in steel pile removal	I	10	35	20	10	5,425.
24 in steel template pile install/removal 16–24 in steel pile.	I, II	10	25	10	10	5,425.
30 in steel pile	I	10	25	10	10	6,225.
Steel H-pile	II	10	35	25	10	10,000.
Steel sheet pile	II	10	25	10	10	6,310.
In air pile install/removal	I	.....	.....	.....	.....	70 (phocids)/25 (otariids).
Impact Pile Driving						
16–24 in steel pile	I	10	185	75	10	255.
30 in steel pile	I	25	800	360	25	1,000.
Steel H-pile	II	25	410	185	25	350.
Steel sheet pile	II	75	1,000	500	75	1,000.
In air pile install	I	.....	.....	.....	.....	55 (phocids)/20 (otariids).
DTH Drilling						
16–24 in pile	I, II	35	1,000	500	40	13,594.
30 in pile	I	75	1,000	500	75	39,811.
Steel H-pile	II	75	1,000	500	75	39,811.
In air pile install	I	.....	.....	.....	.....	55 (phocids)/20 (otariids).

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. Should environmental conditions deteriorate such that the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving would be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

PSOs would monitor the full shutdown zones and the remaining

Level A harassment and the Level B harassment zones to the extent practicable. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project areas outside the shutdown zones and thus prepare for a potential cessation of activity should the animal enter the shutdown zone.

Pre-Activity Monitoring

Prior to the start of daily in-water construction activity, or whenever a break in pile driving or DTH drilling of 30 minutes or longer occurs, PSOs would observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone would 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 11, pile driving activity would be delayed or halted. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones would 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).

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 would be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. Soft-start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Based on our evaluation of the applicant's proposed measures NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the 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 conditions in this section and the IHA. Marine mammal monitoring during pile driving activities would be conducted by PSOs meeting NMFS' following requirements:

- Independent PSOs (*i.e.,* not construction personnel) who have no other assigned tasks during monitoring periods would be used;
  - At least one PSO would have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
  - Other PSOs may substitute education (degree in biological science or related field) or training for experience; and
  - Where a team of three or more PSOs is required, a lead observer or monitoring coordinator would be designated. The lead observer would be required to have prior experience working as a marine mammal observer during construction.

PSOs 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.
- Cordova must employ up to five PSOs depending on the size of the monitoring and shutdown zones. A minimum of two PSOs (including the lead PSO) must be assigned to the active pile driving location to monitor the shutdown zones and as much of the Level B harassment zones as possible.
- Cordova must establish monitoring locations with the best views of monitoring zones as described in the IHA and Application.
- Up to five monitors will be used at a time depending on the size of the monitoring area. PSOs would be deployed in strategic locations around the area of potential effects at all times during in-water pile driving and removal. PSOs will be positioned at locations that provide full views of the impact hammering monitoring zone and the Level A harassment Shutdown Zones. All PSOs would have access to

high-quality binoculars, range finders to monitor distances, and a compass to record bearing to animals as well as radios or cells phones for maintaining contact with work crews.

- During work in the South Harbor, up to three PSOs will be stationed at the following locations: along the South Harbor parking area, on the Breakwater Trail, and at a viewpoint along New England Cannery Road.
- During work in the North Harbor, up to five PSOs will be stationed at the following locations: along the North Harbor parking area, on the Breakwater Trail, at the viewpoint along the shore near Saddle Point, at a viewpoint along Whitshed Road, and on a vessel in Orca Inlet.

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.

Cordova shall conduct briefings between construction supervisors and crews, PSOs, Cordova staff prior to the start of all pile driving activities and when new personnel join the work. These briefings would explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities for each IHA, or 60 days prior to a requested date of issuance from any future IHAs for projects at the same location, whichever comes first. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.,* impact, vibratory, or DTH drilling) and the total equipment duration for vibratory removal for each pile or total 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:
  - Name of PSO who sighted the animal(s) and PSO location and activity at the time of sighting;
  - Time of sighting;
  - Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentifiable), PSO confidence in identification, and the composition of the group if there is a mix of species;
  - Distance and bearing of each marine mammal observed relative to the pile being driven for each sightings (if pile driving was occurring at time of sighting);
  - Estimated number of animals (min/max/best estimate);
  - Estimated number of animals by cohort (adults, juveniles, neonates, group composition, sex class, *etc.*);
  - Animal's closest point of approach and estimated time spent within the harassment zone;
  - Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
  - Number of marine mammals detected within the harassment zones and shutdown zones; by species; and
  - Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensured, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft reports will constitute the final reports. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder must immediately cease the specified activities and report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to the Alaska Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, Cordova must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are

incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in Table 3, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity. Also, because both the number and nature of the estimated takes anticipated to occur are identical in Phase I and Phase II, the analysis below applies to each of the IHAs.

Pile driving and DTH drilling 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 and, for some species, Level A harassment from underwater sounds generated by pile driving. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

No serious injury or mortality would be expected, even in the absence of required mitigation measures, given the nature of the activities. Further, no take by Level A harassment is anticipated for killer whales due to the application of planned mitigation measures, such as shutdown zones that encompass the Level A harassment zones for the species, the rarity of the species near the action area, and the shallow depths of the harbor. The potential for harassment would be minimized through the construction method and the implementation of the planned mitigation measures (see Proposed Mitigation section).

Take by Level A harassment is proposed for three species (Steller sea lion, harbor seal, and Dall's porpoise) as the Level A harassment isopleths exceed the size of the shutdown zones for specific construction scenarios. Additionally, the two pinniped species are common in and around the action area. Therefore, there is the possibility that an animal could enter a Level A harassment zone and remain within that zone for a duration long enough to incur PTS. Level A harassment of these species is therefore proposed for authorization. Any take by Level A harassment is expected to arise from, at most, a small degree of PTS (*i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by impact pile driving such as the low-frequency region below 2 kHz), not severe hearing impairment or impairment within the ranges of greatest hearing sensitivity. Animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS.

Further, the amount of take proposed for authorization by Level A harassment is very low for the marine mammal stocks and species. 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 Level A harassment zones identified in Tables 7 and 8 are based upon an animal exposed to pile driving or DTH drilling of several piles per day (up to 25 piles per day for vibratory removal, 10 piles per day of vibratory installation, 6 piles per day of impact driving, and 4 piles per day of DTH drilling). Given the short duration to impact drive or vibratory install or extract, or use DTH drilling, each pile and break between pile installations (to reset equipment and move piles into place), an animal would have to remain within the area estimated to be ensonified above the Level A harassment threshold for multiple hours. This is highly unlikely given marine mammal movement patterns in the area. If an animal was exposed to accumulated sound energy, the resulting PTS would likely be small (*e.g.,* PTS onset) at lower frequencies where pile driving energy is concentrated, and unlikely to result in impacts to individual fitness, reproduction, or survival.

Additionally, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. However, since the hearing sensitivity of individuals that incur TTS is expected to recover completely within minutes to hours, it is unlikely that the brief hearing impairment would affect the individual's long-term ability to forage and communicate with conspecifics, and would therefore not likely impact reproduction or survival of any individual marine mammal, let alone adversely affect rates of recruitment or survival of the species or stock.

The nature of the pile driving project precludes the likelihood of serious injury or mortality. For all species and stocks, take would occur within a limited, confined area (adjacent to the project site) of the stock's range. Take by Level A and Level B harassment would be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further, the amount of take proposed to be authorized is extremely small when compared to stock abundance.

Behavioral responses of marine mammals to pile driving, pile removals, and DTH drilling in Cordova Harbor and the surrounding Orca Inlet are expected to be mild, short term, and temporary. Marine mammals within the Level B harassment zones may not show any visual cues they are disturbed by activities or they could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given that pile driving, pile removal, and DTH drilling are temporary activities and effects would cease when equipment is not operating, any harassment occurring would be temporary. Additionally, many of the species present in region would only be present temporarily based on seasonal patterns or during transit between other habitats. These species would be exposed to even smaller periods of noise-generating activity, further decreasing the impacts.

Nearly all inland waters of southeast Alaska, including Orca Inlet, are included in the southeast Alaska humpback whale feeding Biologically Important Area (BIA) (Ferguson *et al.,* 2015), though humpback whale distribution in southeast Alaska varies by season and waterway (Dahlheim *et al.,* 2009). Humpback whales are present within Orca Inlet intermittently and in low numbers, however due to the shallow waters around Cordova Harbor, the BIA is not expected to be affected. Therefore, the proposed project is not expected to have significant adverse effects on the foraging of Alaska humpback whale. The same regions are also a part of the Western DPS Steller sea lion ESA critical habitat. While Steller sea lions are common in the project area, there are no essential physical and biological habitat features, such as haulouts or rookeries, within the proposed project area. The nearest haulout and rookery are over 30 km away from the proposed project area. Therefore, the proposed project is not expected to have significant adverse effects on the critical habitat of Wester DPS Steller sea lions. No areas of specific biological importance (*e.g.,* ESA

critical habitat, other BIAs, or other areas) for any other species are known to co-occur with the project area.

In addition, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on each stock's ability to recover. 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 would have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and would therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- Level A harassment would be very small amounts and of low degree;
- Level A harassment takes of only Steller sea lions and harbor seals;
- For all species, the Orca Inlet and the Cordova Harbor is a very small and peripheral part of their range;
- Anticipated takes by Level B harassment are relatively low for all stocks. Level B harassment would be primarily in the form of behavioral disturbance, resulting in avoidance of the project areas around where impact or vibratory pile driving is occurring, with some low-level TTS that may limit the detection of acoustic cues for relatively brief amounts of time in relatively confined footprints of the activities;
- Effects on species that serve as prey for marine mammals from the activities are expected to be short-term and, therefore, any associated impacts on marine mammal feeding are not expected to result in significant or long-term consequences for individuals, or to accrue to adverse impacts on their populations;
- The ensonified areas are very small relative to the overall habitat ranges of all species and stocks, and would not adversely affect ESA-designated critical habitat for any species or any areas of known biological importance;
- The lack of anticipated significant or long-term negative effects to marine mammal habitat; and
- Cordova would implement mitigation measures including soft-starts and shutdown zones to minimize the numbers of marine mammals exposed to injurious levels of sound, and to ensure that take by Level A harassment is, at most, a small degree of PTS.

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, specific to each of the two consecutive years of proposed activity, would 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 amount of take NMFS proposes to authorize, specific to each of the two consecutive years of proposed activity, is below one third of the estimated stock abundance for all species (in fact, take of individuals is less than five percent of the abundance of the affected stocks, see Table 10). This is likely a conservative estimate because we assume all takes are of different individual animals, which is likely not the case. Some individuals may return multiple times in a day, but PSOs would count them as separate takes if they cannot be individually identified.

The most recent estimate for the Alaska stock of Dall's porpoise was 13,110 animals however this number just accounts for a portion of the stock's range. Therefore, the 42 takes of this stock proposed for authorization is believed to be an even smaller portion of the overall stock abundance.

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.

The Alutiiq and Eyak people of Prince William Sound traditionally harvested marine mammals, however the last recorded subsistence harvest in Cordova was in 2014 as part of a regional effort to update the status of subsistence uses in Exxon Valdez Oil Spill communities, during which no marine mammals were harvested in Cordova (Fall and Zimpelman 2016).

In the decades since the Exxon Valdez Oil Spill, there have been declines in the number of households hunting and harvesting larger marine mammals in Prince William Sound. Surveys gathering subsistence data found that 10 percent or fewer households harvest or use harbor seals or sea lions (Poe *et al.,* 2010). Subsistence hunters in Prince William Sound report having to travel farther from their home communities to be successful when harvesting marine mammals (Keating *et al.,* 2020).

The proposed project is not likely to adversely impact the availability of any marine mammal species or stocks that are commonly used for subsistence purposes or to impact subsistence harvest of marine mammals in the region because:

- There is no recent recorded subsistence harvest of marine mammals in the area;
- Construction activities are localized and temporary;
- Mitigation measures will be implemented to minimize disturbance of marine mammals in the action area; and,
- The project will not result in significant changes to availability of subsistence resources.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from Cordova'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 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 the Western DPS of Steller Sea Lions, which are listed under the ESA. The Permits and Conservation Division has requested initiation of Section 7 consultation with the Alaska Region 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 Authorizations

As a result of these preliminary determinations, NMFS proposes to issue two sequential IHAs, each lasting one year, to the City of Cordova for conducting the Cordova Harbor Rebuild Project in Cordova, Alaska, starting in August 2023 for Phase I and August 2024 for Part II, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHAs 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 authorizations, and any other aspect of this notice of proposed IHAs for the proposed construction project. We also request comment on the potential renewals of these proposed IHAs as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for these IHAs or subsequent renewal IHAs.

On a case-by-case basis, NMFS may issue a one-time, one-year renewal for each of the two IHAs following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: July 5, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–14686 Filed 7–13–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD119]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey of the Blake Plateau in the Northwest Atlantic Ocean

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Lamont-Doherty Earth Observatory (L–DEO) to incidentally harass marine mammals during a marine geophysical survey of the Blake Plateau in the northwest Atlantic Ocean.

DATES: This authorization is effective from July 10, 2023 through July 9, 2024.

ADDRESSES: 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/action/incidental-take-authorization-lamont-doherty-earth-observatorys-marine-geophysical-surveys.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources (OPR) NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the 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 November 22, 2022, NMFS received a request from L–DEO for an IHA to take marine mammals incidental to a marine geophysical survey of the Blake Plateau in the northwest Atlantic Ocean. The application was deemed adequate and complete on February 1, 2023. L–DEO's request is for take of 29 marine mammal species by Level B harassment, and for 4 of these species, by Level A harassment. Neither L–DEO nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Activity

Overview

Researchers from the University of Texas Institute of Geophysics (UTIG) and L–DEO, with funding from the National Science Foundation (NSF), plan to conduct research, including high-energy seismic surveys using airguns as the acoustic source, from the research vessel (R/V) *Marcus G. Langseth* (Langseth). The surveys would occur in the Blake Plateau in the northwest Atlantic Ocean during summer or fall 2023. The planned multi-channel seismic (MCS) reflection and Ocean Bottom Seismometers (OBS) seismic refraction surveys would occur within the Exclusive Economic Zone (EEZ) of the United States and Bahamas and in international waters, in depths ranging from >100 to 5,200 meters (m).

To complete this survey, the R/V Langseth would tow a 36-airgun array consisting of a mixture of Bolt airguns ranging from 40 to 360 cubic inches (in^3) (1–9.1 m^3) each on four strings spaced 16 m apart, with a total discharge volume of 6,600 in^3 (167.6 m^3). The airgun array would be towed at 10–12 m deep along the survey lines, while the receiving systems for the different survey segments would consist of a 15 kilometer (km) long solid-state hydrophone streamer and approximately 40 OBS, respectively. The airguns would fire at a shot interval of 50 m (~24 seconds (s)) during multi-channel seismic (MCS) reflection surveys with the hydrophone streamer and at a 200-m (~78 s) interval during Ocean Bottom Seismometer (OBS) seismic refraction surveys. Approximately 6682 kilometers (km) of seismic acquisition are planned: 5730 km of 2D MCS seismic reflection data and 952 km of OBS refraction data.

The study would acquire two-dimensional (2–D) seismic reflection and seismic refraction data to examine the structure and evolution of the rifted margins of the southeastern United States, including the rift dynamics during the formation of the Carolina Trough and Blake Plateau. Additional data would be collected using a multibeam echosounder (MBES), a sub-bottom profiler (SBP), and an Acoustic Doppler Current Profiler (ADCP), which would be operated from R/V Langseth continuously during the seismic surveys, including during transit. No take of marine mammals is expected to result from use of this equipment.

Dates and Duration

The survey is planned to last for approximately 61 days, spread between two operational legs, with 40 days of seismic operations. One leg would include 32 days of MCS seismic operations and 4 days of transit time, whereas the other leg would consist of 8 days of seismic operations with OBSs, 13 days of OBS deployment, and 4 days of transit. R/V Langseth would likely leave from and return to port in Jacksonville, Florida during summer or fall 2023.

Specific Geographic Region

The survey would occur within approximately 27.5–33.5° N, 74–80° W off the coasts of South Carolina to northern Florida in the northwest Atlantic Ocean. The distances to all state waters would be >80 km, and to the coast would be ~90 km off Georgia, ~98 km off Florida, and ~107 km off South Carolina. The region where the survey is planned to occur is depicted in Figure 1; the tracklines could occur anywhere within the polygon shown in Figure 1. Representative survey tracklines are shown, however, some deviation in actual tracklines, including the order of survey operations, could be necessary for reasons such as science drivers, poor data quality, inclement weather, or mechanical issues with the research vessel and/or equipment. The surveys are planned to occur within the EEZs of the United States and Bahamas and in international waters, in depths ranging from >100 to 5,200 m deep.

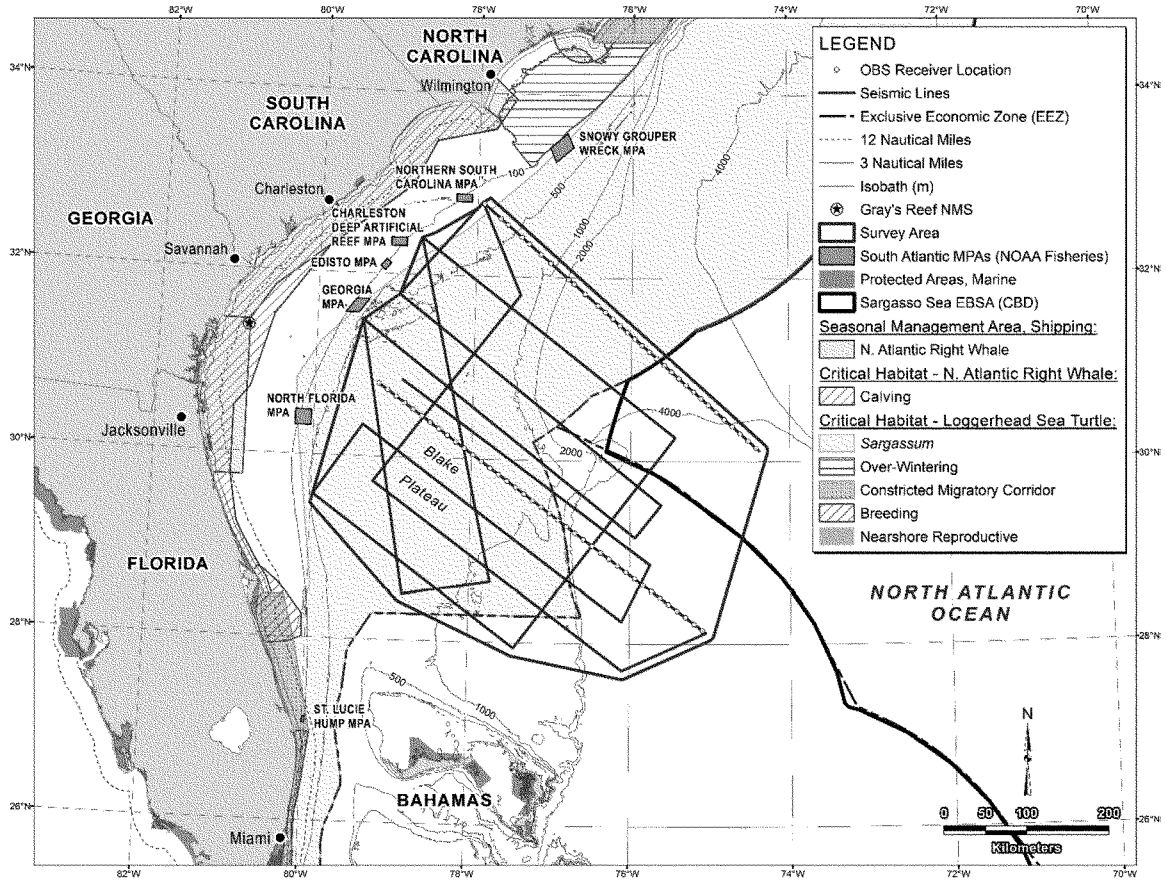

Figure 1—Location of the Blake Plateau Seismic Surveys in the Northwest Atlantic Ocean

Representative survey tracklines are included in the figure; however, the tracklines could occur anywhere within the survey area. MPA = marine protected area; NMS = National Marine Sanctuary. EBSA = Ecologically or Biologically Significant Marine Areas. CBD = Convention on Biological Diversity. N = North.

A detailed description of the planned geophysical survey was provided in the **Federal Register** notice of the proposed IHA (88 FR 37390; June 7, 2023). Since that time, no changes have been made to the planned survey activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specified activity.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to L–DEO was published in the **Federal Register** on June 7, 2023 (88 FR 37390), beginning a 30-day comment period. That notice described, in detail, L–DEO'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 authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments. NMFS received no relevant or substantive public comments.

Changes From the Proposed IHA to Final IHA

Changes were made between publication of the notice of proposed IHA and this notice of final IHA, including correction of typographical errors in the draft IHA and the **Federal Register** notice of proposed IHA. Additionally, language has been added to the reporting requirement clarifying that if no comments are received from NMFS within 30 days of receiving the draft that the report is considered final. Finally, the FRN was updated to note the correct period of time that airgun operations can continue while there is a PAM malfunction (10 hours), as was stated in the draft IHA provided for public review.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of L–DEO's 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*). NMFS refers the reader to the application and to the aforementioned sources for general information regarding the species listed in Table 1.

Table 1 lists all species or stocks for which take is expected and 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 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 stocks managed under the MMPA in this region are assessed in NMFS' U.S. Atlantic and Gulf of Mexico SARs (*e.g.,* Hayes *et al.,* 2019, 2020, 2022). All values presented in Table 1 are the most recent available (including the draft 2022 SARs) at the time of publication and are available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	Modeled abundance [5]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)							
Family Balaenopteridae (rorquals):							
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-/-; N	1,396 (0; 1,380; 2016)	[7] 2,259	22	12.15
Fin whale	*Balaenoptera physalus*	Western North Atlantic	E/D; Y	6,802 (0.24; 5,573; 2016).	[6] 3,587	11	1.8
Sei whale	*Balaenoptera borealis*	Nova Scotia	E/D; Y	6,292 (1.02; 3,098; 2016).	[6] 1,043	6.2	0.8
Minke whale	*Balaenoptera acutorostrata*	Canadian East Coast	-/-; N	21,968 (0.31; 17,002; 2016).	[6] 4,044	170	10.6
Blue whale	*Balaenoptera musculus*	Western North Atlantic	E/D; Y	unk (unk; 402; 1980–2008).	[7] 33	0.8	0
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)							
Family Physeteridae:							
Sperm whale	*Physeter macrocephalus*	North Atlantic	E/D; Y	4,349 (0.28; 3,451; 2016).	[6] 6,576	3.9	0
Family Kogiidae:							
Pygmy sperm whale	*Kogia breviceps*	Western North Atlantic	-/-; N	7,750 (0.38; 5,689; 2016).	[7] 7,980	46	0
Dwarf sperm whale	*Kogia sima*	Western North Atlantic	-/-; N				
Family Ziphiidae (beaked whales):							
Cuvier's beaked Whale	*Ziphius cavirostris*	Western North Atlantic	-/-; N	5,744 (0.36, 4,282, 2016).	[7] 5,588	43	0.2
Blainville's beaked Whale.	*Mesoplodon densirostris*	Western North Atlantic	-/-; N	10,107 (0.27; 8,085; 2016) [4].	[7] 6,526	[4] 81	[4] 0
True's beaked whale	*Mesoplodon mirus*	Western North Atlantic	-/-; N				
Gervais' beaked whale	*Mesoplodon europaeus*	Western North Atlantic	-/-; N				
Family Delphinidae:							
Long-finned pilot whale	*Globicephala melas*	Western North Atlantic	-/-; N	39,215 (0.30; 30,627; 2016).	[7] [8] 23,905	306	9
Short finned pilot whale	*Globicephala macrorhynchus*	Western North Atlantic	-/-; Y	28,924 (0.24; 23,637; 2016).		236	136
Rough-toothed dolphin	*Steno bredanensis*	Western North Atlantic	-/-; N	136 (1.0; 67; 2016)	[7] 1,011	0.7	0
Bottlenose dolphin	*Tursiops truncatus*	Western North Atlantic Offshore.	-/-; N	62,851 (0.23; 51,914, 2016).	[6] 68,739	519	28
Pantropical spotted dolphin.	*Stenella attenuata*	Western North Atlantic	-/-; N	6,593 (0.52; 4,367; 2016).	[7] 1,403	44	0
Atlantic spotted dolphin	*Stenella frontalis*	Western North Atlantic	-/-; N	39,921 (0.27; 32,032; 2016).	[6] 39,352	320	0
Spinner dolphin	*Stenella longirostris*	Western North Atlantic	-/-; N	4,102 (0.99; 2,045; 2016).	[7] 885	21	0
Clymene dolphin	*Stenella clymene*	Western North Atlantic	-/-; N	4,237 (1.03; 2,071; 2016).	[7] 8,576	21	0
Striped dolphin	*Stenella coeruleoalba*	Western North Atlantic	-/-; N	67,036 (0.29; 52,939; 2016).	[7] 54,707	529	0
Fraser's dolphin	*Lagenodelphis hosei*	Western North Atlantic	-/-; N	unk	[7] 658	unk	0
Risso's dolphin	*Grampus griseus*	Western North Atlantic	-/-; N	35,215(0.19; 30,051; 2016).	[6] 24,260	301	34
Common dolphin	*Delphinus delphis*	Western North Atlantic	-/-; N	172,947 (0.21; 145,216; 2016).	[6] 144,036	1,452	390
Melon-headed whale	*Peponocephala electra*	Western North Atlantic	-/-; N	unk	[7] 618	unk	0
Pygmy killer whale	*Feresa attenuate*	Western North Atlantic	-/-; N	unk	[7] 68	unk	0
False killer whale	*Pseudorca crassidens*	Western North Atlantic	-/-; N	1,791 (0.56; 1,154; 2016).	[7] 139	12	0
Killer whale	*Orcinus orca*	Western North Atlantic	-/-; N	unk	[7] 73	unk	0
Family Phocoenidae (porpoises):							

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	Modeled abundance [5]	PBR	Annual M/SI [3]
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	-/-; N	95,543 (0.31; 74,034; 2016).	[6] 55,049	851	164

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal 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; unknown (unk).

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual mortality or serious injury (M/SI) often cannot be determined precisely and is in some cases presented as a minimum value or range.

[4] The values for Mesoplodont beaked whales would also represent Sowerby's beaked whales, which are not expected to occur in the survey area.

[5] Modeled abundance from Roberts *et al.* (2023).

[6] Averaged monthly (May–Oct) abundance.

[7] Only single annual abundance given.

[8] Modeled abundance for pilot whale is grouped together for both short-finned and long-finned pilot whales.

As indicated above, all 29 species in Table 1 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. Species that could potentially occur in the research area but are not likely to be harassed due to the rarity of their occurrence (*i.e.,* are considered extralimital or rare visitors to the waters of the northwest Atlantic Ocean), or because their known migration through the area does not align with the survey dates, were omitted.

A detailed description of the of the species likely to be affected by the geophysical survey, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (88 FR 37390, June 7, 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 (LF) 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 LF 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).

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 L–DEO's survey activities have the potential to result in harassment of marine mammals in the vicinity of the survey area. The notice of proposed IHA (88 FR 37390, June 7, 2023) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from L–DEO on marine mammals and their habitat. That information and analysis is not repeated here; please refer to the notice of

proposed IHA (88 FR 37390, June 7, 2023).

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes authorized through the 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).

Anticipated takes would primarily be Level B harassment, as use of the airgun arrays have the potential to result in disruption of behavioral patterns of marine mammals. There is also some potential for auditory injury (Level A harassment) to result for species of certain hearing groups due to the size of the predicted auditory injury zones for those groups. Auditory injury is less likely to occur for MF species, due to their relative lack of sensitivity to the frequencies at which the primary energy of an airgun signal is found, as well as such species' general lower sensitivity to auditory injury as compared to HF cetaceans. As discussed in further detail below, we do not expect auditory injury for MF cetaceans. The mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable. No mortality is anticipated as a result of these activities. Below we describe how the 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 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.

L–DEO's planned survey includes the use of impulsive seismic sources (*e.g.,* Bolt airguns), and therefore the 160 dB re 1 μPa is applicable for analysis of Level B harassment.

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). L–DEO's planned survey includes the use of impulsive seismic sources (*e.g.,* airguns).

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 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

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT—Continued

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

When the NMFS Technical Guidance (2016a) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a user spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate.

The planned survey would entail the use of a 36-airgun array with a total discharge volume of 6,600 in^3 at a tow depth of 10–12 m. L–DEO's model results are used to determine the 160 dB_{rms} radius for the 36-airgun array in water depth ranging from >100 to 5,200 m. Received sound levels have been predicted by L–DEO's model (Diebold *et al.,* 2010) as a function of distance from the 36-airgun array. Models for the 36-airgun array used a 12-m tow depth. This modeling approach uses ray tracing for the direct wave traveling from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the array), in a constant-velocity half-space (infinite homogeneous ocean layer, unbounded by a seafloor). In addition, propagation measurements of pulses from the 36-airgun array at a tow depth of 6 m have been reported in deep water (~1600 m), intermediate water depth on the slope (~600–1,100 m), and shallow water (~50 m) in the Gulf of Mexico (Tolstoy *et al.,* 2009; Diebold *et al.,* 2010).

For deep and intermediate water cases, the field measurements cannot be used readily to derive the harassment isopleths, as at those sites the calibration hydrophone was located at a roughly constant depth of 350–550 m, which may not intersect all the SPL isopleths at their widest point from the sea surface down to the assumed maximum relevant water depth (~2,000 m) for marine mammals. At short ranges, where the direct arrivals dominate and the effects of seafloor interactions are minimal, the data at the deep sites are suitable for comparison with modeled levels at the depth of the calibration hydrophone. At longer ranges, the comparison with the model—constructed from the maximum SPL through the entire water column at varying distances from the airgun array—is the most relevant.

In deep and intermediate water depths at short ranges, sound levels for direct arrivals recorded by the calibration hydrophone and L–DEO model results for the same array tow depth are in good alignment (see Figures 12 and 14 in Diebold *et al.,* 2010). Consequently, isopleths falling within this domain can be predicted reliably by the L–DEO model, although they may be imperfectly sampled by measurements recorded at a single depth. At greater distances, the calibration data show that seafloor-reflected and sub-seafloor-refracted arrivals dominate, whereas the direct arrivals become weak and/or incoherent (see Figures 11, 12, and 16 in Diebold *et al.,* 2010). Aside from local topography effects, the region around the critical distance is where the observed levels rise closest to the model curve. However, the observed sound levels are found to fall almost entirely below the model curve. Thus, analysis of the Gulf of Mexico calibration measurements demonstrates that although simple, the L–DEO model is a robust tool for conservatively estimating isopleths.

The survey would acquire data with the 36-airgun array at a tow depth of 10–12 m. For deep water (gt;1000 m), we use the deep-water radii obtained from L–DEO model results down to a maximum water depth of 2,000 m for the 36-airgun array. The radii for intermediate water depths (100–1,000 m) are derived from the deep-water ones by applying a correction factor (multiplication) of 1.5, such that observed levels at very near offsets fall below the corrected mitigation curve (see Figure 16 in Diebold *et al.,* 2010).

L–DEO's modeling methodology is described in greater detail in L–DEO's application. The estimated distances to the Level B harassment isopleth for the airgun configuration are shown in Table 4.

TABLE 4—PREDICTED RADIAL DISTANCES FROM THE R/V LANGSETH SEISMIC SOURCE TO ISOPLETH CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

Airgun configuration	Tow depth (m)	Water depth (m)	Predicted distances (in m) to the Level B harassment threshold
4 strings, 36 airguns, 6,600 in^3	12	>1,000 100–1,000	[1] 6,733 [2] 10,100

[1] Distance is based on L–DEO model results.
[2] Distance is based on L–DEO model results with a 1.5 × correction factor between deep and intermediate water depths.

Table 5 presents the modeled PTS isopleths for each cetacean hearing group based on L–DEO modeling incorporated in the companion user spreadsheet (NMFS 2018).

TABLE 5—MODELED RADIAL DISTANCE TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS

	Low frequency	Mid frequency	High frequency
MCS Surveys			
PTS SEL_{cum}	**320.2**	0	1
PTS Peak	38.9	**13.6**	**268.3**
OBS Surveys			
PTS SEL_{cum}	**80**	0	0.3
PTS Peak	38.9	**13.6**	**268.3**

The largest distance (in bold) of the dual criteria (SELcum or Peak) was used to estimate threshold distances and potential takes by Level A harassment.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal hearing groups, were calculated based on modeling performed by L–DEO using the Nucleus software program and the NMFS user spreadsheet, described below. The acoustic thresholds for impulsive sounds (*e.g.,* airguns) contained in the NMFS Technical Guidance were presented as dual metric acoustic thresholds using both SEL_{cum} and peak sound pressure metrics (NMFS 2016a). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group. In recognition of the fact that the requirement to calculate Level A harassment ensonified areas could be more technically challenging to predict due to the duration component and the use of weighting functions in the new SEL_{cum} thresholds, NMFS developed an optional user spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to facilitate the estimation of take numbers.

The SEL_{cum} for the 36-airgun array is derived from calculating the modified farfield signature. The farfield signature is often used as a theoretical representation of the source level. To compute the farfield signature, the source level is estimated at a large distance (right) below the array (*e.g.,* 9 km), and this level is back projected mathematically to a notional distance of 1 m from the array's geometrical center. However, it has been recognized that the source level from the theoretical farfield signature is never physically achieved at the source when the source is an array of multiple airguns separated in space (Tolstoy *et al.,* 2009). Near the source (at short ranges, distances <1 km), the pulses of sound pressure from each individual airgun in the source array do not stack constructively as they do for the theoretical farfield signature. The pulses from the different airguns spread out in time such that the source levels observed or modeled are the result of the summation of pulses from a few airguns, not the full array (Tolstoy *et al.,* 2009). At larger distances, away from the source array center, sound pressure of all the airguns in the array stack coherently, but not within one time sample, resulting in smaller source levels (a few dB) than the source level derived from the far-field signature. Because the far-field signature does not take into account the large array effect near the source and is calculated as a point source, the far-field signature is not an appropriate measure of the sound source level for large arrays. See L–DEO's application for further detail on acoustic modeling.

Auditory injury is unlikely to occur for MF cetaceans, given very small modeled zones of injury for those species (all estimated zones less than 15 m for MF cetaceans), in context of distributed source dynamics. The source level of the array is a theoretical definition assuming a point source and measurement in the far-field of the source (MacGillivray, 2006). As described by Caldwell and Dragoset (2000), an array is not a point source, but one that spans a small area. In the far-field, individual elements in arrays will effectively work as one source because individual pressure peaks will have coalesced into one relatively broad pulse. The array can then be considered a ''point source.'' For distances within the near-field, *i.e.,* approximately two to three times the array dimensions, pressure peaks from individual elements do not arrive simultaneously because the observation point is not

equidistant from each element. The effect is destructive interference of the outputs of each element, so that peak pressures in the near-field will be significantly lower than the output of the largest individual element. Here, the relevant peak isopleth distances would in all cases be expected to be within the near-field of the array where the definition of source level breaks down. Therefore, actual locations within this distance of the array center where the sound level exceeds the relevant peak SPL thresholds would not necessarily exist. In general, Caldwell and Dragoset (2000) suggest that the near-field for airgun arrays is considered to extend out to approximately 250 m.

In order to provide quantitative support for this theoretical argument, we calculated expected maximum distances at which the near-field would transition to the far-field (Table 5). For a specific array one can estimate the distance at which the near-field transitions to the far-field by:

$$D = \frac{L^2}{4\lambda}$$

With the condition that $D >< \lambda$, and where D is the distance, L is the longest dimension of the array, and λ is the wavelength of the signal (Lurton, 2002). Given that λ can be defined by:

$$\lambda = \frac{v}{f}$$

where f is the frequency of the sound signal and v is the speed of the sound in the medium of interest, one can rewrite the equation for D as:

$$D = \frac{fL^2}{4v}$$

and calculate D directly given a particular frequency and known speed of sound (here assumed to be 1,500 m per second in water, although this varies with environmental conditions).

To determine the closest distance to the arrays at which the source level predictions in Table 5 are valid (*i.e.,* maximum extent of the near-field), we calculated D based on an assumed frequency of 1 kHz. A frequency of 1 kHz is commonly used in near-field/far-field calculations for airgun arrays (Zykov and Carr, 2014; MacGillivray, 2006; NSF and USGS, 2011), and based on representative airgun spectrum data and field measurements of an airgun array used on the Langseth, nearly all (greater than 95 percent) of the energy from airgun arrays is below 1 kHz (Tolstoy *et al.,* 2009). Thus, using 1 kHz as the upper cut-off for calculating the maximum extent of the near-field should reasonably represent the near-field extent in field conditions.

If the largest distance to the peak sound pressure level threshold was equal to or less than the longest dimension of the array (*i.e.,* under the array), or within the near-field, then received levels that meet or exceed the threshold in most cases are not expected to occur. This is because within the near-field and within the dimensions of the array, the source levels specified in Appendix A of L–DEO's application are overestimated and not applicable. In fact, until one reaches a distance of approximately three or four times the near-field distance the average intensity of sound at any given distance from the array is still less than that based on calculations that assume a directional point source (Lurton, 2002). The 6,600-in^3 airgun array planned for use during the survey has an approximate diagonal of 28.8 m, resulting in a near-field distance of approximately 138.7 m at 1 kHz (NSF and USGS, 2011). Field measurements of this array indicate that the source behaves like multiple discrete sources, rather than a directional point source, beginning at approximately 400 m (deep site) to 1 km (shallow site) from the center of the array (Tolstoy *et al.,* 2009), distances that are actually greater than four times the calculated 138.7-m near-field distance. Within these distances, the recorded received levels were always lower than would be predicted based on calculations that assume a directional point source, and increasingly so as one moves closer towards the array (Tolstoy *et al.,* 2009). Given this, relying on the calculated distance (138.7 m) as the distance at which we expect to be in the near-field is a conservative approach since even beyond this distance the acoustic modeling still overestimates the actual received level. Within the near-field, in order to explicitly evaluate the likelihood of exceeding any particular acoustic threshold, one would need to consider the exact position of the animal, its relationship to individual array elements, and how the individual acoustic sources propagate and their acoustic fields interact. Given that within the near-field and dimensions of the array source levels would be below those assumed here, we believe exceedance of the peak pressure threshold would only be possible under highly unlikely circumstances.

In consideration of the received sound levels in the near-field as described above, we expect the potential for Level A harassment of MF cetaceans to be de minimis, even before the likely moderating effects of aversion and/or other compensatory behaviors (*e.g.,* Nachtigall *et al.,* 2018) are considered. We do not believe that Level A harassment is a likely outcome for any MF cetacean and are not authorizing any take by Level A harassment for these species.

The Level A and Level B harassment estimates are based on a consideration of the number of marine mammals that could be within the area around the operating airgun array where received levels of sound ≥160 dB re 1 µPa RMS are predicted to occur (see Table 1). The estimated numbers are based on the densities (numbers per unit area) of marine mammals expected to occur in the area in the absence of seismic surveys. To the extent that marine mammals tend to move away from seismic sources before the sound level reaches the criterion level and tend not to approach an operating airgun array, these estimates likely overestimate the numbers actually exposed to the specified level of sound.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016; Roberts *et al.,* 2023) represent the best available information regarding marine mammal densities in the survey area. This density information incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from 8 physiographic and 16 dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). In subsequent years, certain models have been updated based on additional data as well as certain methodological improvements. More information is available online at *https://seamap.env.duke.edu/models/Duke/EC/.* Marine mammal density estimates in the survey area (animals/km^2) were obtained using the most recent model results for all taxa.

Monthly density grids (*e.g.,* rasters) for each species were overlaid with the Survey Area and values from all grid cells that overlapped the Survey Area (plus a 40-km buffer) were averaged to determine monthly mean density values for each species. Monthly mean density values within the survey area were

averaged for each of the two water depth categories (intermediate and deep) for the months May to October. The highest mean monthly density estimates for each species were used to estimate take.

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. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in Level A or Level B harassment, radial distances from the airgun array to the predicted isopleth corresponding to the Level A harassment and Level B harassment thresholds are calculated, as described above. Those radial distances are then used to calculate the area(s) around the airgun array predicted to be ensonified to sound levels that exceed the harassment thresholds. The distance for the 160–dB Level B harassment threshold and PTS (Level A harassment) thresholds (based on L–DEO model results) was used to draw a buffer around the area expected to be ensonified (*i.e.,* the survey area). The ensonified areas were then increased by 25 percent to account for potential delays, which is the equivalent to adding 25 percent to the planned line km to be surveyed. The highest mean monthly density for each species was then multiplied by the daily ensonified areas (increased as described above), and then multiplied by the number of survey days (40) to estimate potential takes (see Appendix B of L–DEO's application for more information).

L–DEO generally assumed that their estimates of marine mammal exposures above harassment thresholds equate to take and requested authorization of those takes. Those estimates in turn form the basis for our take authorization numbers. For the species for which NMFS does not expect there to be a reasonable potential for take by Level A harassment to occur, *i.e.,* MF cetaceans, we have added L–DEO's estimated exposures above Level A harassment thresholds to their estimated exposures above the Level B harassment threshold to produce a total number of incidents of take by Level B harassment that is authorized. Estimated exposures and take numbers for authorization are shown in Table 6. As requested by L–DEO with NMFS concurrence, when zero take was calculated we have authorized one group size of take as a precaution since the species could potentially occur in the survey area.

TABLE 6—ESTIMATED TAKE FOR AUTHORIZATION

Species	Stock	Estimated take		Authorized take		Abundance [3]	Percent of Stock
		Level B	Level A	Level B	Level A		
North Atlantic right whale	Western North Atlantic	0	0	0	0	[4] 338	n/a
Humpback whale	Gulf of Maine	0	0	[1] 2	0	[6] 2,259	<0.1
Fin whale	Western North Atlantic	5	0	5	0	[5] 3,587	0.1
Sei whale	Nova Scotia	28	2	28	2	[5] 1,043	2.9
Minke whale	Canadian East Coast	20	1	20	1	[5] 4,044	0.5
Blue whale	Western North Atlantic	2	0	2	0	[6] 33	6.1
Sperm whale	North Atlantic	706	3	709	0	[5] 6,576	9.3
Kogia spp.		601	50	601	50	[6] 7,980	8.2
Cuvier's beaked whale	Western North Atlantic	365	1	366	0	[6] 5,588	6.5
Mesoplodont beaked whales		154	1	155	0	[6] 6,526	2.4
Pilot whales		1,424	4	1,428	0	[6] 23,905	6
Rough-toothed dolphin	Western North Atlantic	301	1	302	0	[6] 1,011	30
Bottlenose dolphin	Western North Atlantic Offshore	4,445	12	4,457	0	[5] 68,739	6.5
Pantropical spotted dolphin	Western North Atlantic	419	1	420	0	[6] 1,403	30
Atlantic spotted dolphin	Western North Atlantic	1,768	6	1,774	0	[5] 39,352	4.5
Spinner dolphin	Western North Atlantic	149	0	149	0	[6] 885	16.8
Clymene dolphin	Western North Atlantic	0	0	[2] 182	0	[6] 8,576	2.1
Striped dolphin	Western North Atlantic	0	0	[1] 46	0	[6] 54,707	<0.1
Fraser's dolphin	Western North Atlantic	226	1	227	0	[6] 658	34.5
Risso's dolphin	Western North Atlantic	1,277	3	1,280	0	[5] 24,260	5.3
Common dolphin	Western North Atlantic	181	1	182	0	[5] 144,036	0.1
Melon-headed whale	Western North Atlantic	212	1	213	0	[6] 618	34.5
Pygmy killer whale	Western North Atlantic	20	0	20	0	[6] 68	29.4
False killer whale	Western North Atlantic	4	0	[2] 6	0	[6] 139	4.3
Killer whale	Western North Atlantic	6	0	6	0	[6] 73	8.2
Harbor porpoise	Gulf of Maine/Bay of Fundy	0	0	[1] 3	0	[5] 55,049	<0.1

[1] Take increased to mean group size from AMAPPS (Palka *et al.,* 2017 and 2021).
[2] Take increased to mean group size from Ocean Biogeographic Information System (OBIS) (2023).
[3] Modeled abundance (Roberts *et al.,* 2023) used unless noted.
[4] Abundance from draft 2022 U.S, Atlantic and Gulf of Mexico Marine Mammal SARs.
[5] Averaged monthly (May–Oct) abundance.
[6] Only single annual abundance given.

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.

Vessel-Based Visual Mitigation Monitoring

Visual monitoring requires the use of trained observers (herein referred to as visual protected species observers (PSO)) to scan the ocean surface for the presence of marine mammals. The area to be scanned visually includes primarily the shutdown zone (SZ), within which observation of certain marine mammals requires shutdown of the acoustic source, but also a buffer zone and, to the extent possible depending on conditions, the surrounding waters. The buffer zone means an area beyond the SZ to be monitored for the presence of marine mammals that may enter the SZ. During pre-start clearance monitoring (*i.e.,* before ramp-up begins), the buffer zone also acts as an extension of the SZ in that observations of marine mammals within the buffer zone would also prevent airgun operations from beginning (*i.e.,* ramp-up). The buffer zone encompasses the area at and below the sea surface from the edge of the 0–500 m SZ, out to a radius of 1,000 m from the edges of the airgun array (500–1,000 m). This 1,000–m zone (SZ plus buffer) represents the pre-start clearance zone. Visual monitoring of the SZ and adjacent waters is intended to establish and, when visual conditions allow, maintain zones around the sound source that are clear of marine mammals, thereby reducing or eliminating the potential for injury and minimizing the potential for more severe behavioral reactions for animals occurring closer to the vessel. Visual monitoring of the buffer zone is intended to (1) provide additional protection to marine mammals that may be in the vicinity of the vessel during pre-start clearance, and (2) during airgun use, aid in establishing and maintaining the SZ by alerting the visual observer and crew of marine mammals that are outside of, but may approach and enter, the SZ.

L–DEO must use dedicated, trained, and NMFS-approved PSOs. The PSOs must have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements. PSO resumes shall be provided to NMFS for approval.

At least one of the visual and two of the acoustic PSOs (discussed below) aboard the vessel must have a minimum of 90 days at-sea experience working in those roles, respectively, with no more than 18 months elapsed since the conclusion of the at-sea experience. One visual PSO with such experience shall be designated as the lead for the entire protected species observation team. The lead PSO shall serve as primary point of contact for the vessel operator and ensure all PSO requirements per the IHA are met. To the maximum extent practicable, the experienced PSOs should be scheduled to be on duty with those PSOs with appropriate training but who have not yet gained relevant experience.

During survey operations (*e.g.,* any day on which use of the airgun array is planned to occur, and whenever the airgun array is in the water, whether activated or not), a minimum of two visual PSOs must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Visual monitoring of the pre-start clearance zone must begin no less than 30 minutes prior to ramp-up, and monitoring must continue until 1 hour after use of the airgun array ceases or until 30 minutes past sunset. Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

PSOs shall establish and monitor the shutdown and buffer zones. These zones shall be based upon the radial distance from the edges of the airgun array (rather than being based on the center of the array or around the vessel itself). During use of the airgun array (*i.e.,* anytime airguns are active, including ramp-up), detections of marine mammals within the buffer zone (but outside the SZ) shall be communicated to the operator to prepare for the potential shutdown of the airgun array. Visual PSOs will immediately communicate all observations to the on duty acoustic PSO(s), including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination. Any observations of marine mammals by crew members shall be relayed to the PSO team. During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), visual PSOs shall conduct observations when the airgun array is not operating for comparison of sighting rates and behavior with and without use of the airgun array and between acquisition periods, to the maximum extent practicable.

Visual PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least 1 hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (visual and acoustic but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

Passive Acoustic Monitoring

Passive acoustic monitoring (PAM) means the use of trained personnel (sometimes referred to as PAM operators, herein referred to as acoustic PSOs) to operate PAM equipment to acoustically detect the presence of marine mammals. Acoustic monitoring involves acoustically detecting marine mammals regardless of distance from the source, as localization of animals may not always be possible. Acoustic monitoring is intended to further support visual monitoring (during daylight hours) in maintaining an SZ around the sound source that is clear of marine mammals. In cases where visual monitoring is not effective (*e.g.,* due to weather, nighttime), acoustic monitoring may be used to allow certain activities to occur, as further detailed below.

PAM would take place in addition to the visual monitoring program. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Acoustic monitoring can be used in addition to visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring would serve to alert visual PSOs (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals vocalize, but it can be effective either by day or by night, and does not depend on good visibility. It would be monitored in real time so that the visual observers can be advised when cetaceans are detected.

The R/V Langseth will use a towed PAM system, which must be monitored by at a minimum one on duty acoustic PSO beginning at least 30 minutes prior to ramp-up and at all times during use

of the airgun array. Acoustic PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least 1 hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (acoustic and visual but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

Survey activity may continue for 30 minutes when the PAM system malfunctions or is damaged, while the acoustic PSO diagnoses the issue. If the diagnosis indicates that the PAM system must be repaired to solve the problem, operations may continue for an additional 10 hours without acoustic monitoring during daylight hours only under the following conditions:

- Sea state is less than or equal to BSS 4;
- No marine mammals (excluding delphinids) detected solely by PAM in the applicable SZ in the previous 2 hours;
- NMFS is notified via email as soon as practicable with the time and location in which operations began occurring without an active PAM system; and
- Operations with an active airgun array, but without an operating PAM system, do not exceed a cumulative total of 10 hours in any 24-hour period.

Establishment of Shutdown and Pre-Start Clearance Zones

An SZ is a defined area within which occurrence of a marine mammal triggers mitigation action intended to reduce the potential for certain outcomes, *e.g.,* auditory injury, disruption of critical behaviors. The PSOs would establish a minimum SZ with a 500–m radius. The 500–m SZ would be based on radial distance from the edge of the airgun array (rather than being based on the center of the array or around the vessel itself). With certain exceptions (described below), if a marine mammal appears within or enters this zone, the airgun array would be shut down.

The pre-start clearance zone is defined as the area that must be clear of marine mammals prior to beginning ramp-up of the airgun array, and includes the SZ plus the buffer zone. Detections of marine mammals within the pre-start clearance zone would prevent airgun operations from beginning (*i.e.,* ramp-up).

The 500–m SZ is intended to be precautionary in the sense that it would be expected to contain sound exceeding the injury criteria for all cetacean hearing groups, (based on the dual criteria of SEL_{cum} and peak SPL), while also providing a consistent, reasonably observable zone within which PSOs would typically be able to conduct effective observational effort. Additionally, a 500–m SZ is expected to minimize the likelihood that marine mammals will be exposed to levels likely to result in more severe behavioral responses. Although significantly greater distances may be observed from an elevated platform under good conditions, we believe that 500 m is likely regularly attainable for PSOs using the naked eye during typical conditions. The pre-start clearance zone simply represents the addition of a buffer to the SZ, doubling the SZ size during pre-clearance.

An extended SZ of 1,500 m must be enforced for all beaked whales and *Kogia* species. No buffer of this extended SZ is required, as NMFS concludes that this extended SZ is sufficiently protective to mitigate harassment to beaked whales and *Kogia* species.

Pre-Start Clearance and Ramp-Up

Ramp-up (sometimes referred to as ''soft start'') means the gradual and systematic increase of emitted sound levels from an airgun array. Ramp-up begins by first activating a single airgun of the smallest volume, followed by doubling the number of active elements in stages until the full complement of an array's airguns are active. Each stage should be approximately the same duration, and the total duration should not be less than approximately 20 minutes. The intent of pre-start clearance observation (30 minutes) is to ensure no marine mammals are observed within the pre-start clearance zone (or extended SZ, for beaked whales and *Kogia* spp.) prior to the beginning of ramp-up. During the pre-start clearance period is the only time observations of marine mammals in the buffer zone would prevent operations (*i.e.,* the beginning of ramp-up). The intent of ramp-up is to warn marine mammals of pending seismic survey operations and to allow sufficient time for those animals to leave the immediate vicinity prior to the sound source reaching full intensity. A ramp-up procedure, involving a step-wise increase in the number of airguns firing and total array volume until all operational airguns are activated and the full volume is achieved, is required at all times as part of the activation of the airgun array. All operators must adhere to the following pre-start clearance and ramp-up requirements:

- The operator must notify a designated PSO of the planned start of ramp-up as agreed upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up in order to allow the PSOs time to monitor the pre-start clearance zone (and extended SZ) for 30 minutes prior to the initiation of ramp-up (pre-start clearance);
- Ramp-ups shall be scheduled so as to minimize the time spent with the source activated prior to reaching the designated run-in;
- One of the PSOs conducting pre-start clearance observations must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed;
- Ramp-up may not be initiated if any marine mammal is within the applicable shutdown or buffer zone. If a marine mammal is observed within the pre-start clearance zone (or extended SZ, for beaked whales and *Kogia* species) during the 30 minute pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (15 minutes for small odontocetes, and 30 minutes for all mysticetes and all other odontocetes, including sperm whales, beaked whales, and large delphinids, such as pilot whales);
- Ramp-up shall begin by activating a single airgun of the smallest volume in the array and shall continue in stages by doubling the number of active elements at the commencement of each stage, with each stage of approximately the same duration. Duration shall not be less than 20 minutes. The operator must provide information to the PSO documenting that appropriate procedures were followed;
- PSOs must monitor the pre-start clearance zone (and extended SZ) during ramp-up, and ramp-up must cease and the source must be shut down upon detection of a marine mammal within the applicable zone. Once ramp-up has begun, detections of marine mammals within the buffer zone do not require shutdown, but such observation shall be communicated to the operator to prepare for the potential shutdown;
- Ramp-up may occur at times of poor visibility, including nighttime, if appropriate acoustic monitoring has occurred with no detections in the 30 minutes prior to beginning ramp-up. Airgun array activation may only occur at times of poor visibility where operational planning cannot reasonably avoid such circumstances;
- If the airgun array is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than implementation of prescribed mitigation (*e.g.,* mechanical difficulty), it may be activated again without ramp-up if PSOs

have maintained constant visual and/or acoustic observation and no visual or acoustic detections of marine mammals have occurred within the pre-start clearance zone (or extended SZ, where applicable). For any longer shutdown, pre-start clearance observation and ramp-up are required.; and

- Testing of the airgun array involving all elements requires ramp-up. Testing limited to individual source elements or strings does not require ramp-up but does require pre-start clearance of 30 minutes.

Shutdown

The shutdown of an airgun array requires the immediate de-activation of all individual airgun elements of the array. Any PSO on duty will have the authority to delay the start of survey operations or to call for shutdown of the airgun array if a marine mammal is detected within the applicable SZ. The operator must also establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the airgun array to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. When both visual and acoustic PSOs are on duty, all detections will be immediately communicated to the remainder of the on-duty PSO team for potential verification of visual observations by the acoustic PSO or of acoustic detections by visual PSOs. When the airgun array is active (*i.e.,* anytime one or more airguns is active, including during ramp-up) and (1) a marine mammal appears within or enters the applicable SZ and/or (2) a marine mammal (other than delphinids, see below) is detected acoustically and localized within the applicable SZ, the airgun array will be shut down. When shutdown is called for by a PSO, the airgun array will be immediately deactivated and any dispute resolved only following deactivation. Additionally, shutdown will occur whenever PAM alone (without visual sighting), confirms presence of marine mammal(s) in the SZ. If the acoustic PSO cannot confirm presence within the SZ, visual PSOs will be notified but shutdown is not required.

Following a shutdown, airgun activity would not resume until the marine mammal has cleared the SZ. The animal would be considered to have cleared the SZ if it is visually observed to have departed the SZ (*i.e.,* animal is not required to fully exit the buffer zone where applicable), or it has not been seen within the SZ for 15 minutes for small odontocetes, or 30 minutes for all mysticetes and all other odontocetes, including sperm whales, beaked whales, *Kogia* species, and large delphinids, such as pilot whales.

The shutdown requirement is waived for small dolphins if an individual is detected within the SZ. As defined here, the small dolphin group is intended to encompass those members of the Family Delphinidae most likely to voluntarily approach the source vessel for purposes of interacting with the vessel and/or airgun array (*e.g.,* bow riding). This exception to the shutdown requirement applies solely to specific genera of small dolphins (*Delphinus, Lagenodelphis, Stenella, Steno,* and *Tursiops*).

We include this small dolphin exception because shutdown requirements for small dolphins under all circumstances represent practicability concerns without likely commensurate benefits for the animals in question. Small dolphins are generally the most commonly observed marine mammals in the specific geographic region and would typically be the only marine mammals likely to intentionally approach the vessel. As described above, auditory injury is extremely unlikely to occur for MF cetaceans (*e.g.,* delphinids), as this group is relatively insensitive to sound produced at the predominant frequencies in an airgun pulse while also having a relatively high threshold for the onset of auditory injury (*i.e.,* permanent threshold shift).

A large body of anecdotal evidence indicates that small dolphins commonly approach vessels and/or towed arrays during active sound production for purposes of bow riding, with no apparent effect observed (*e.g.,* Barkaszi *et al.,* 2012; Barkaszi and Kelly, 2018). The potential for increased shutdowns resulting from such a measure would require the Langseth to revisit the missed track line to reacquire data, resulting in an overall increase in the total sound energy input to the marine environment and an increase in the total duration over which the survey is active in a given area. Although other MF hearing specialists (*e.g.,* large delphinids) are no more likely to incur auditory injury than are small dolphins, they are much less likely to approach vessels. Therefore, retaining a shutdown requirement for large delphinids would not have similar impacts in terms of either practicability for the applicant or corollary increase in sound energy output and time on the water. We do anticipate some benefit for a shutdown requirement for large delphinids in that it simplifies somewhat the total range of decision-making for PSOs and may preclude any potential for physiological effects other than to the auditory system as well as some more severe behavioral reactions for any such animals in close proximity to the Langseth.

Visual PSOs shall use best professional judgment in making the decision to call for a shutdown if there is uncertainty regarding identification (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived or one of the species with a larger SZ).

L–DEO must implement shutdown if a marine mammal species for which take was not authorized, or a species for which authorization was granted but the authorized takes have been met, approaches the Level A or Level B harassment zones. L–DEO must also implement shutdown if any large whale (defined as a sperm whale or any mysticete species) with a calf (defined as an animal less than two-thirds the body size of an adult observed to be in close association with an adult) and/or an aggregation of six or more large whales are observed at any distance. Finally, L–DEO must implement shutdown upon detection (visual or acoustic) of a North Atlantic right whale at any distance.

Vessel Strike Avoidance

Vessel personnel should use an appropriate reference guide that includes identifying information on all marine mammals that may be encountered. Vessel operators must comply with the below measures except under extraordinary circumstances when the safety of the vessel or crew is in doubt or the safety of life at sea is in question. These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A single marine mammal at the surface may indicate the presence of submerged animals in the vicinity of the vessel; therefore, precautionary measures should always be exercised. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1)

distinguish marine mammals from other phenomena and (2) broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammals.

All vessels, regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of North Atlantic right whales from vessel strikes. These include all Seasonal Management Areas (SMA) (when in effect) and any dynamic management areas (DMA) (when in effect). See *www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-ship-strikes-north-atlantic-right-whales* for specific detail regarding these areas.

Vessel speeds must be reduced to 10 kn or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.

All vessels must maintain a minimum separation distance of 500 m from right whales. If a right whale is sighted within the relevant separation distance, the vessel must steer a course away at 10 knots or less until the 500-m separation distance has been established. If a whale is observed but cannot be confirmed as a species other than a right whale, the vessel operator must assume that it is a right whale and take appropriate action.

All vessels must maintain a minimum separation distance of 100 m from sperm whales and all other baleen whales.

All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel).

When marine mammals are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Operational Restrictions

L–DEO must limit airgun use to between May 1 and October 31. Vessel movement and other activities that do not require use of airguns may occur outside of these dates. If any activities (non-seismic) are conducted between November 1 and April 30, L–DEO must submit daily observations to the NMFS Southeast Regional Office (SERO). L–DEO must also notify SERO on the start and end date of seismic operations in the survey area via email at *nmfs.ser.research.notification@noaa.gov.*

To further prevent exposure of North Atlantic right whales during a time when they may start to migrate to calving and nursing grounds in coastal and shelf waters adjacent to the survey area, the L–DEO must not conduct seismic survey activities in the nearshore portions (*i.e.,* survey tracklines) of the action area on or after October 1 through April 30. We define ''nearshore lines'' as those within 100 km of the U.S. shore in areas north of 31° N and within 80 km from the U.S. shore in areas south of 31° N. Relative to the survey area, these nearshore portions of the survey area overlap with higher density areas for North Atlantic right whale during the month of October as shown in Roberts *et al.* (2023).

Based on our evaluation of the applicant's measures, as well as other measures considered by NMFS, NMFS has determined that the 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 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.

Vessel-Based Visual Monitoring

As described above, PSO observations would take place during daytime airgun operations. During seismic survey operations, at least five visual PSOs would be based aboard the Langseth. Two visual PSOs would be on duty at all times during daytime hours. Monitoring shall be conducted in accordance with the following requirements:

- The operator shall provide PSOs with bigeye binoculars (*e.g.,* 25 x 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality solely for PSO use. These shall be pedestal-mounted on the deck at the most appropriate vantage point that provides for optimal sea surface observation, PSO safety, and safe operation of the vessel; and
- The operator will work with the selected third-party observer provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals.

PSOs must have the following requirements and qualifications:

- PSOs shall be independent, dedicated, trained visual and acoustic PSOs and must be employed by a third-party observer provider;

- PSOs shall have no tasks other than to conduct observational effort (visual or acoustic), collect data, and communicate with and instruct relevant vessel crew with regard to the presence of protected species and mitigation requirements (including brief alerts regarding maritime hazards);
- PSOs shall have successfully completed an approved PSO training course appropriate for their designated task (visual or acoustic). Acoustic PSOs are required to complete specialized training for operating PAM systems and are encouraged to have familiarity with the vessel with which they will be working;
- PSOs can act as acoustic or visual observers (but not at the same time) as long as they demonstrate that their training and experience are sufficient to perform the task at hand;
- NMFS must review and approve PSO resumes accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.,* experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course;
- PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program;
- PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics; and
- The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Requests shall be granted or denied (with justification) by NMFS within 1 week of receipt of submitted information. Alternate experience that may be considered includes, but is not limited to: (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored protected species surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.
- For data collection purposes, PSOs shall use standardized electronic data collection forms. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of animals to the airgun array and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the airgun array. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:
  - Vessel name, vessel size and type, maximum speed capability of vessel;
  - Dates (MM/DD/YYYY) of departures and returns to port with port name;
  - PSO names and affiliations, PSO ID (initials or other identifier);
  - Date (MM/DD/YYYY) and participants of PSO briefings;
  - Visual monitoring equipment used (description);
  - PSO location on vessel and height (meters) of observation location above water surface;
  - Watch status (description);
  - Dates (MM/DD/YYYY) and times (Greenwich Mean Time/UTC) of survey on/off effort and times (GMC/UTC) corresponding with PSO on/off effort;
  - Vessel location (decimal degrees) when survey effort began and ended and vessel location at beginning and end of visual PSO duty shifts;
  - Vessel location (decimal degrees) at 30-second intervals if obtainable from data collection software, otherwise at practical regular interval;
  - Vessel heading (compass heading) and speed (knots) at beginning and end of visual PSO duty shifts and upon any change;
  - Water depth (meters) (if obtainable from data collection software);
  - Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions changed significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;
  - Factors that may have contributed to impaired observations during each PSO shift change or as needed as environmental conditions changed (description) (*e.g.,* vessel traffic, equipment malfunctions); and
  - Vessel/Survey activity information (and changes thereof) (description), such as airgun power output while in operation, number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (*i.e.,* pre-start clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, *etc.*).
- Upon visual observation of any marine mammals, the following information must be recorded:
  - Sighting ID (numeric);
  - Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
  - Location of PSO/observer (description);
  - Vessel activity at the time of the sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other);
  - PSO who sighted the animal/ID;
  - Time/date of sighting (GMT/UTC, MM/DD/YYYY);
  - Initial detection method (description);
  - Sighting cue (description);
  - Vessel location at time of sighting (decimal degrees);
  - Water depth (meters);
  - Direction of vessel's travel (compass direction);
  - Speed (knots) of the vessel from which the observation was made;
  - Direction of animal's travel relative to the vessel (description, compass heading);
  - Bearing to sighting (degrees);
  - Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified) and the composition of the group if there is a mix of species;
  - Species reliability (an indicator of confidence in identification) (1 = unsure/possible, 2 = probable, 3 = definite/sure, 9 = unknown/not recorded);
  - Estimated distance to the animal (meters) and method of estimating distance;
  - Estimated number of animals (high/low/best) (numeric);
  - Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, *etc.*);
  - Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
  - Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);
  - Animal's closest point of approach (meters) and/or closest distance from any element of the airgun array;
  - Description of any actions implemented in response to the sighting

(*e.g.,* delays, shutdown, ramp-up) and time and location of the action.

- Photos (Yes/No);
- Photo Frame Numbers (List of numbers); and
- Conditions at time of sighting (Visibility; Beaufort Sea State);

If a marine mammal is detected while using the PAM system, the following information should be recorded:

- An acoustic encounter identification number, and whether the detection was linked with a visual sighting;
- Date and time when first and last heard;
- Types and nature of sounds heard (*e.g.,* clicks, whistles, creaks, burst pulses, continuous, sporadic, strength of signal); and
- Any additional information recorded such as water depth of the hydrophone array, bearing of the animal to the vessel (if determinable), species or taxonomic group (if determinable), spectrogram screenshot, and any other notable information.

Reporting

The Holder shall submit a draft comprehensive report on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of marine mammals, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all marine mammal sightings (dates, times, locations, activities, associated survey activities). The draft report shall also include geo-referenced time-stamped vessel tracklines for all time periods during which airgun arrays were operating. Tracklines should include points recording any change in airgun array status (*e.g.,* when the sources began operating, when they were turned off, or when they changed operational status such as from full array to single gun or vice versa). GIS files shall be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available. The report must summarize data collected as described above in ''Data Collection.'' A final report must be submitted within 30 days following resolution of any comments on the draft report.

The report must include a validation document concerning the use of PAM, which should include necessary noise validation diagrams and demonstrate whether background noise levels on the PAM deployment limited achievement of the planned detection goals. Copies of any vessel self-noise assessment reports must be included with the report.

Reporting NARW

Although not anticipated, if a North Atlantic right whale is observed at any time by PSOs or personnel on any project vessels, during surveys or during vessel transit, L–DEO must immediately report sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System: 877–WHALE–HELP (877–942–5343). North Atlantic right whale sightings in any location must also be reported to the U.S. Coast Guard via channel 16.

Reporting Injured or Dead Marine Mammals

Discovery of injured or dead marine mammals—In the event that personnel involved in the survey activities discover an injured or dead marine mammal, the L–DEO shall report the incident to the OPR, NMFS, and to the NMFS Southeast Regional Stranding Coordinator as soon as feasible. 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.

Vessel strike—In the event of a strike of a marine mammal by any vessel involved in the activities covered by the authorization, L–DEO shall report the incident to OPR, NMFS, and to the NMFS Southeast Regional Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measure were taken, if any, to avoid strike;
- Environmental conditions (*e.g.,* wind speed and direction, BSS, cloud cover, visibility) immediately preceding the strike;
- Species identification (if known) or description of the animal(s) involved;
- Estimated size and length of the animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals present immediately preceding the strike;
- Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

Actions To Minimize Additional Harm to Live-Stranded (or Milling) Marine Mammals

In the event of a live stranding (or near-shore atypical milling) event within 50 km of the survey operations, where the NMFS stranding network is engaged in herding or other interventions to return animals to the water, the Director of OPR, NMFS (or designee), will advise L–DEO of the need to implement shutdown procedures for all active airgun arrays operating within 50 km of the stranding. Shutdown procedures for live stranding or milling marine mammals include the following: if at any time, the marine mammal(s) die or are euthanized, or if herding/intervention efforts are stopped, the Director of OPR, NMFS (or designee), will advise the IHA-holder that the shutdown around the animals' location is no longer needed. Otherwise, shutdown procedures will remain in effect until the Director of OPR, NMFS (or designee), determines and advises L–DEO that all live animals involved have left the area (either of their own volition or following an intervention).

If further observations of the marine mammals indicate the potential for re-stranding, additional coordination with the IHA-holder will be required to determine what measures are necessary to minimize that likelihood (*e.g.,* extending the shutdown or moving operations farther away) and to implement those measures as appropriate.

Additional Information Requests—if NMFS determines that the circumstances of any marine mammal

stranding found in the vicinity of the activity suggest investigation of the association with survey activities is warranted, and an investigation into the stranding is being pursued, NMFS will submit a written request to L–DEO indicating that the following initial available information must be provided as soon as possible, but no later than 7 business days after the request for information:

- Status of all sound source use in the 48 hours preceding the estimated time of stranding and within 50 km of the discovery/notification of the stranding by NMFS; and
- If available, description of the behavior of any marine mammal(s) observed preceding (*i.e.,* within 48 hours and 50 km) and immediately after the discovery of the stranding.

In the event that the investigation is still inconclusive, the investigation of the association of the survey activities is still warranted, and the investigation is still being pursued, NMFS may provide additional information requests, in writing, regarding the nature and location of survey operations prior to the time period above.

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 all the species listed in Table 1, 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 species or stocks they are included as separate subsections below. NMFS does not anticipate that serious injury or mortality would occur as a result of L–DEO's planned survey, even in the absence of mitigation, and no serious injury or mortality is authorized. As discussed in the ''Potential Effects of Specified Activities on Marine Mammals and Their Habitat'' section above, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that the majority of potential takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007).

We are authorizing a limited number of Level A harassment of 4 species in the form of PTS, and Level B harassment only of the remaining marine mammal species. If any PTS is incurred in marine mammals as a result of the planned activity, we expect only a small degree of PTS that would not result in severe hearing impairment because of the constant movement of both the Langseth and of the marine mammals in the project areas, as well as the fact that the vessel is not expected to remain in any one area in which individual marine mammals would be expected to concentrate for an extended period of time. Additionally, L–DEO would shut down the airgun array if marine mammals approach within 500 m (with the exception of specific genera of dolphins, see ''Mitigation'' section), further reducing the expected duration and intensity of sound, and therefore the likelihood of marine mammals incurring PTS. Since the duration of exposure to loud sounds will be relatively short it would be unlikely to affect the fitness of any individuals. Also, as described above, we expect that marine mammals would likely move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice of the Langseth's approach due to the vessel's relatively low speed when conducting seismic surveys. Accordingly, we expect that the majority of takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007; Ellison *et al.,* 2012).

In addition to being temporary, the maximum expected Level B harassment zone around the survey vessel is 6,733 m for water depths greater than 1,000 m (and up to 10,100 m in water depths of 100 to 1,000 m). Therefore, the ensonified area surrounding the vessel is relatively small compared to the overall distribution of animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the short duration (40 days) and temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating, or calving grounds known to be biologically important to marine mammals within the survey area and there are no feeding areas known to be biologically important to marine mammals within the survey area. There is no designated critical habitat for any ESA-listed marine mammals in the survey area.

Marine Mammal Species With Active Unusual Mortality Events (UMEs)

There are several active UMEs occurring in the vicinity of L–DEO's survey area. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or

DPS) remains stable at approximately 12,000 individuals.

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales, and the UME is pending closure.

The mitigation measures are expected to reduce the number and/or severity of takes for all species listed in Table 1, including those with active UMEs, to the level of least practicable adverse impact. In particular they would provide animals the opportunity to move away from the sound source throughout the survey area before seismic survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury (Level A harassment) or more severe Level B harassment.

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;
- The activity is temporary and of relatively short duration (40 days);
- The vast majority of anticipated impacts of the activity on marine mammals would be temporary behavioral changes due to avoidance of the area around the vessel;
- The availability of alternative areas of similar habitat value for marine mammals to temporarily vacate the survey area during the survey to avoid exposure to sounds from the activity is readily abundant;
- The potential adverse effects on fish or invertebrate species that serve as prey species for marine mammals from the survey would be temporary and spatially limited, and impacts to marine mammal foraging would be minimal;
- The mitigation measures are expected to reduce the number of takes by Level A harassment (in the form of PTS) by allowing for detection of marine mammals in the vicinity of the vessel by visual and acoustic observers; and
- The mitigation measures, including visual and acoustic shutdowns are expected to minimize potential impacts to marine mammals (both amount and severity).

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 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 amount of take NMFS is authorizing is below one-third of the estimated stock abundance for all species with available abundance estimates except for melon headed whale and Fraser's dolphin; for these species, the amount of take authorized by NMFS could amount to 34.5 percent of the modeled population abundance. Applying qualitative factors into our analysis, however, NMFS anticipates that actual take will be well below the one-third threshold. First, spatial factors lead us to believe only small numbers of the species will be taken given that the survey area is a very small fraction of these species' range. The melon headed whale occurs in deep waters offshore of the southeastern U.S. and in the Gulf of Mexico extending as far south as southern Brazil, while Fraser's dolphin also occurs off the Western Atlantic in deep waters (1,000 m) from the Gulf of Mexico extending as far south as Uruguay. The Blake Plateau is a tiny fraction of these wide ranges, and NMFS does not anticipate, based on the species' behavior and life histories, a substantial percentage of either stock to concentrate in the Blake Plateau. This prediction is additionally informed by the fact that there have been zero OBIS database sightings of either species within the survey area. Second, temporal factors suggest only small numbers of take given that the activity would occur only over 40 days and during this brief period it is extremely unlikely that significant numbers of individual members of these species will be present near the survey area. Last, our calculation of 34.5 percent take is conservative in that it assumes that each anticipated take affects a different individual from the population. In fact, certain individuals may experience more than a single take, and given that fact, we would expect actual take to affect well below one-third of the relevant populations.

Based on the analysis contained herein of the planned activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we authorize take for endangered or threatened species, in this case with the ESA Interagency Cooperation Division within NMFS' OPR.

The NMFS OPR ESA Interagency Cooperation Division issued a Biological Opinion under section 7 of the ESA, on the issuance of an IHA to L–DEO under section 101(a)(5)(D) of the MMPA by the NMFS OPR Permits and Conservation Division. The Biological Opinion concluded that the action is not likely to jeopardize the continued existence of ESA-listed North Atlantic right whales, blue whales, fin whales, sei whales, and sperm whales.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), the NSF prepared an Environmental Analysis (EA) to consider the direct, indirect, and cumulative effects to the human environment from the planned marine geophysical survey off of North Carolina. NSF's EA was made available to the public for review and comment in relation to its suitability for adoption by NMFS in order to assess the impacts to the human environment of issuance of an IHA to L–DEO. In compliance with NEPA and the Council on Environmental Quality regulations, as well as NOAA Administrative Order 216–6, NMFS has reviewed the NSF's EA, determined it to be sufficient, and adopted that EA and signed a Finding of No Significant Impact (FONSI) available on our website at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-lamont-doherty-earth-observatorys-marine-geophysical-surveys.* NSF's EA is available at *https://www.nsf.gov/geo/oce/envcomp/.*

Authorization

NMFS has issued an IHA to L–DEO for the incidentalharassment of small numbers of 29 marine mammal species incidental to a marine geophysical survey of Blake Plateau in the northwest Atlantic Ocean that includes the previously explained mitigation, monitoring and reporting requirements.

Dated: July 10, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–14946 Filed 7–13–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2022–0012]

Department of Defense Contract Finance Study Follow-Up Activity

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

ACTION: Request for information.

SUMMARY: This notice requests input on improving the timeliness of payments to defense subcontractors as a means of enhancing and securing the financial health of these critical members of the Defense Industrial Base, as well as attracting new entrants into the Defense Industrial Base while retaining existing participants. Input is solicited from the public, including companies currently participating in the Defense Industrial Base as a prime contractor, subcontractor, supplier, or vendor; as well as other interested parties.

DATES: Interested parties should submit written comments to the address shown in the **ADDRESSES** section on or before September 12, 2023.

ADDRESSES: Submit comments in response to the questions provided below, using either of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Search for ''Docket Number DARS–2022–0012.'' Select ''Comment'' and follow the instructions to submit a comment. Please include your name, company name (if any), and ''Docket Number DARS–2022–0012'' on any attached document(s).
- *Email: osd.pentagon.ousd-a-s.mbx.dpc-pcf@mail.mil.* Include ''DoD Contract Finance Study Follow-up Activity'' in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission, to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Regina Bova, telephone 937–200–4020.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD Contract Finance Study, published in April 2023 and available at *https://www.acq.osd.mil/asda/dpc/pcf/finance-study.html,* was the first comprehensive contract finance study since publication of the Defense Financial and Investment Review in June 1985. The DoD Contract Finance Study concluded that, in the aggregate, the defense industry is financially healthy, and that its financial health has improved over time. However, the findings were not as auspicious when specifically considering the supply base (the members of the Defense Industrial Base operating as first-tier or lower-tier subcontractors and suppliers). The DoD Contract Finance Study found that defense subcontractors and suppliers generally do not receive favorable cash flow benefits as consistently or to the same extent enjoyed by defense prime contractors. This is a crucial finding, as the Government Accountability Office (GAO) has noted estimates of 60 to 70% of defense work being performed by subcontractors (GAO–11–61r). In response to the findings of the DoD Contract Finance Study, the Department is investigating ways to improve cash flow and payment timeliness for the supplier base. Enhancements in this area would not only improve the financial health of defense subcontractors and suppliers, but could potentially assist in attracting new entrants into the Defense Industrial Base, including at the supply chain level.

B. Areas of Interest

The Department is seeking input on the following questions, all of which but one relate to Tenet 2 in the DoD Contract Finance Study Report (see page 6 of the Report for the Summary Table identifying all tenets). The Department anticipates requesting public comments on other areas of the DoD Contract Finance Study in subsequent **Federal Register** notices (*e.g.,* responses to question 6.c. may inform further exploration of Tenet 4).

1. What are your thoughts about extending the protections provided by the Prompt Payment Act to subcontractors? Generally, the Prompt Payment Act establishes payment due dates (in most cases, 30 days after receipt of a proper invoice or after acceptance of the product or service, whichever is later); establishes constructive acceptance criteria for purposes of starting the ''interest clock''; and requires payment of interest from the payment due date to the actual payment date when payment is not made timely. (Reference: Tenet 2, Action 2a; details available in the Study Report, Section 3, under the headings of ''Favorable Payment Terms and the Prompt Payment Act'' and ''Payment Timeliness''; see pages 56–62.)

2. What are your ideas about how to improve the timeliness of payments to subcontractors? (Reference: Tenet 2, Action 2b; details available in the Study Report, Section 3, under the heading of ''Payment Timeliness''; see pages 60–62.)

3. Do you think it is necessary to improve the ability of subcontractors to bring payment issues to the attention of the Government contracting officer? If so, how can the Department facilitate subcontractor reporting of nonpayment issues to the cognizant contracting officer? (Reference: Tenet 2, Action 2d; details available in the Study Report, Section 3, under the heading ''Oversight

Concerns and Recourse for Non-payment''; see pages 64–66.)

4. Please share your thoughts about how to improve the implementation of the Executive Branch policy on accelerating payments to small business subcontractors, which was originally laid out by Office of Management and Budget memorandum M–12–16. (This policy is currently implemented through Federal Acquisition Regulation (FAR) clause 52.232–40, Providing Accelerated Payments to Small Business Subcontractors.) What are your thoughts about the concerns laid out in Section 4 of the Defense Contract Finance Study Report regarding providing accelerated payments to small business contractors? For example, on the potential effectiveness of expanding the flowdown of 52.232–40 to all subcontractors, rather than only small business subcontractors? (Reference: Tenet 2, Action 2e; details available in the Study Report, Section 4, under the heading ''FAR 52.232–40, Providing Accelerated Payments to Small Business Subcontractors''; see pages 76–78.)

5. Do you have any other ideas for improving payments to subcontractors on DoD contracts? (Reference: Tenet 2.)

6. Please tell us about your business relationship to the areas of interest enumerated above:

a. In what capacity are you commenting? If you are commenting on behalf of a professional association or a company, what is the size status (see FAR part 19) of your company (or for associations, member companies) for the majority of your contracts and subcontracts? What is your company's (or for associations, member companies') usual role or position in the DoD supply chain? (For context, please see page 53 of the Study Report, Section 3, ''Financing and Payment Policy Impacts to Subcontractors,'' first paragraph.)

b. If you have experienced payment timeliness issues as a member of the DoD supply chain, please provide insights into these experiences, including your role or position in the DoD supply chain at the time, the timeframe (when this occurred and how long it continued), and how frequently such experiences occurred.

c. If you have experienced an inability to obtain financing as a member of the DoD supply chain, please provide insights into these experiences, including your role or position in the DoD supply chain at the time, the timeframe, and how frequently such experiences occurred.

Authority: DoD Instruction 5000.35, Defense Acquisition Regulations (DAR) System.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–14959 Filed 7–13–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0131]

Agency Information Collection Activities; Comment Request; eZ-Audit: Electronic Submission of 90/10 Revenue Attestations for Proprietary Institutions

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before September 12, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *https://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0131. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. 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: eZ-Audit: Electronic Submission of 90/10 Revenue Attestations for Proprietary Institutions.

OMB Control Number: 1845–NEW.

Type of Review: New of a currently approved ICR.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 157,500.

Total Estimated Number of Annual Burden Hours: 2,042.

Abstract: This is a new information collection request for the eZ-Audit—Electronic Submission of 90/10 Revenue Attestation for Proprietary Institutions. The request includes changes to the collection for domestic and foreign proprietary/for-profit schools' 90/10 Revenue Attestation, and updates to the 90/10 Revenue Attestation calculation and reporting requirements per The American Rescue Plan of 2021 (ARP) which amended the Higher Education Act (HEA) of 1965 and the update in regulatory requirements made to 34 CFR 668.28.

Dated: July 11, 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. 2023–14936 Filed 7–13–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Demonstration Grants for Indian Children and Youth Program—Native American Teacher Retention Initiative; Correction

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

ACTION: Notice; correction.

SUMMARY: On May 23, 2023, the Department of Education (Department) published in the **Federal Register** a notice inviting applications (NIA) for new awards for fiscal year (FY) 2023 for the Demonstration Grants for Indian Children and Youth Program—Native American Teacher Retention Initiative (NATRI), Assistance Listing Number (ALN) 84.299A. We are correcting the NIA to be clear that a Tribal college or university (TCU) is eligible to apply. All other information in the NIA remains the same.

DATES: This correction is applicable July 14, 2023.

FOR FURTHER INFORMATION CONTACT: Donna Bussell, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W239, Washington, DC 20202. Telephone: (202) 453–6813. 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: On May 23, 2023, the Department published the NATRI NIA in the **Federal Register** (88 FR 33098). In the NIA, we included a list of eligible applicants that failed to include TCUs. Under section 6121(b) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), a TCU is an eligible entity and should have been included. Therefore, for clarity, as well as consistency with the competitive preference priority for Tribal lead applicants, we are correcting the list of eligible applicants in the NIA by adding TCUs.

All other information in the NIA remains the same.

Correction

In FR Doc. 2023–10901 appearing on page 33102 in the **Federal Register** published on May 23, 2023 (88 FR 33098), we make the following correction:

On page 33102, in the middle column, under heading ''III. Eligibility Information,'' and paragraph 1 ''Eligible Applicants,'' we are revising the eligible entities to include ''(f) Tribal college or university (TCU).''

Program Authority: 20 U.S.C. 7441.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this notice, the NIA, and a copy of the application 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 this 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,

Principal Deputy Assistant Secretary Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary Office of Elementary and Secondary Education.

[FR Doc. 2023–14928 Filed 7–13–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD22–9–000]

New England Winter Gas-Electric Forum; Notice Inviting Post-Forum Comments

On June 20, 2023, the Federal Energy Regulation Commission (Commission) convened a Commissioner-led forum to discuss solutions to the electric and gas challenges facing the New England region.

All interested persons are invited to file post-forum comments on the topics in the forum agenda and discussed during the forum. We also invite responses to the questions below. Commenters may reference material previously filed in this docket but are encouraged to avoid repetition or replication of previously filed material. Commenters need not answer all of the questions but are encouraged to organize responses using the numbering and order in the below questions. Comments should be submitted on or before 45 days from issuance of this notice.

Comments on Supplemental Notice for June 20, 2023, Second New England Winter Gas-Electric Forum

In accordance with the deadline above, we seek responses to the questions listed in the Supplemental Notice issued in this proceeding on May 26, 2023, which are restated below.

Panel 1: Should Everett Be Retained and, If So, How?

Please comment on whether Everett is needed for the reliable operation of the electric and/or natural gas systems in New England during the upcoming winters and beyond. As part of these comments, please address the following:

a. Is there sufficient information available to make this assessment? If not, what additional information would be most useful to determine whether there is a need to retain Everett (*e.g.,* information about the uses of, beneficiaries of, and costs to maintain the Everett facility)?

b. Is LNG from other sources (*e.g.,* Repsol and/or Excelerate) a full substitute for the LNG from Everett? If not, under what circumstances is it not a full substitute and are there conditions under which electric system and/or gas system operators would be unable to meet electric and/or gas demand or maintain reliable service if Everett retires?

c. To the extent there is a need for Everett's continued operation, does that need change over a longer time horizon? If so, what circumstances drive its need?

d. What are potential next steps on these issues in both the short-term (winters 2023/2024 and 2024/2025) and beyond (beginning winter 2025/2026)?

Panel 2: Reactions to the EPRI Study

Please comment on the assumptions and conclusions of the EPRI study and what next steps should be taken given the study's results.[1] As part of these comments, please address the following:

[1] We note that the 45-day comment period provided herein should allow commenters to also respond to the 2032 results of the EPRI Study that were not available at the time of the June forum, based on ISO–NE's announced schedule for the release of those results. Several panelists at the June forum stated that the 2032 results will inform answers to the questions in this notice. We therefore encourage commenters to provide feedback on the ''Review of Step 3 (Probabilistic

a. Do these findings provide the information needed to make decisions about winter energy risks in New England? If not, what additional information is needed?

b. Are additional or continuous studies needed to assess New England electric and gas winter issues? If so, what analyses are needed and how often should this be conducted?

Panel 3: Path to Sustainable Solutions—Infrastructure

Please comment on what infrastructure is necessary to support reliable electric and gas system operations in New England. As part of these comments, please address the following:

a. Are those infrastructure projects currently being pursued? If not, why not?

b. What obstacles need to be addressed to allow new infrastructure to be placed timely into operation, and how are those obstacles currently being addressed?

c. What steps, if any, should the Commission, ISO–NE, the New England states, and/or others take to address obstacles under their jurisdiction?

Panel 4: Path to Sustainable Solutions—Market Design

Please comment on what market reforms are necessary to support reliable electric and gas system operations in New England. As part of these comments, please address the following:

a. What proposals currently under consideration in the stakeholder process and in the ISO–NE work plan would be most helpful to address New England's winter electric and gas system challenges?

i. Please specify which proposals under consideration are a priority for your organization and explain how, if possible, necessary market changes can be expedited.[2]

ii. At a high level, are there any major concerns with the current proposals under discussion that should be addressed?

b. Are there additional reforms that are not currently under consideration in the stakeholder process that are necessary for energy resources to enhance fuel procurement strategies? If so, what other reforms should be considered? How should these market changes should be prioritized?

Closing Roundtable

In the Closing Roundtable, Commissioners and panelists discussed what was learned through the presentations and panels and considered next steps.

a. Please discuss what next steps, if any, you recommend coming out of the forum.

Dated: July 10, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–14995 Filed 7–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket Nos.
Umbriel Solar, LLC	EG23–113–000
Cattlemen Solar Park, LLC	EG23–114–000
Crooked Lake Solar, LLC	EG23–115–000
Indiana Crossroads Wind Farm II LLC	EG23–116–000
Pearl River Solar Park LLC	EG23–117–000
Riverstart Solar Park III LLC	EG23–118–000
Hecate Energy Desert Storage 1 LLC	EG23–119–000
Apex Solar LLC	EG23–120–000
Clearwater Wind East, LLC	EG23–121–000
Sagebrush ESS II, LLC	EG23–122–000
Caden Energix Endless Caverns, LLC	EG23–123–000
Caden Energix Axton LLC	EG23–124–000
Roundhouse Interconnect, LLC	EG23–125–000
Delta's Edge Solar, LLC	EG23–126–000
Roundhouse Renewable Energy II, LLC	EG23–127–000
Bronco Plains Wind II, LLC	EG23–128–000
Estrella Solar, LLC	EG23–129–000
Raceway Solar 1, LLC	EG23–130–000
Big Elm Solar, LLC	EG23–131–000
Angelo Storage, LLC	EG23–132–000
Angelo Solar, LLC	EG23–133–000
Shady Oaks Wind 2, LLC	EG23–134–000
Shady Oaks Transco Interconnection, LLC	EG23–135–000
Elawan Pitts Dudik Solar, LLC	EG23–136–000
Holtville BESS, LLC	EG23–137–000
Elawan Dileo Solar, LLC	EG23–138–000
Adams Solar LLC	EG23–139–000
Sun Valley Storage LLC	EG23–140–000
Libra Storage LLC	EG23–141–000

Take notice that during the month of June 2023, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2022).

Energy Assessments) results for study year 2032'' and their importance for considering next steps. *See* ISO New England, *Reliability Committee Preliminary Meeting Topics (Two-Month Look Ahead) July/August 2023,* (July 5, 2023) at 2, *https://www.iso-ne.com/static-assets/documents/2023/07/rc_2_month_look_ahead_forecast_july_august_2023.docx.*

[2] This question has been modified from the May 26 and June 13 Supplemental Notices that asked ''[a]re these proposals appropriately prioritized? If not, what should be done and how can necessary market changes be expedited?'' *See* May 26, 2023, Supplemental Notice of Second New England Winter Gas-Electric Forum, 88 FR 36306 at 36308 (June 2, 2023) and June 13, 2023, Supplemental Notice of Second New England Winter Gas-Electric Forum, 88 FR 39837 at 39838 (June 20, 2023).

Dated: July 10, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–14993 Filed 7–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR23–4–000]

HF Sinclair Refining & Marketing LLC, Valero Marketing and Supply Company v. SFPP, L.P.; Notice of Complaint

Take notice that on June 30, 2023, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 CFR 385.206 (2022), HF Sinclair Refining & Marketing LLC and Valero Marketing and Supply Company filed a complaint against SFPP, L.P. challenging the justness and reasonableness of the East Line (Tariff No. 197.19.0) index rates implemented for the period July 1, 2021, through February 28, 2022.

The Complainant certifies that copies of the complaint were served on the contacts listed for Respondents in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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 TTY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

Comment Date: 5:00 p.m. Eastern Time on July 20, 2023.

Dated: July 10, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–14996 Filed 7–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2853–073]

Montana Department of Natural Resources and Conservation; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2853–073.

c. *Date filed:* June 30, 2022.

d. *Applicant:* Montana Department of Natural Resources and Conservation (Montana DNRC).

e. *Name of Project:* Broadwater Hydroelectric Project (project).

f. *Location:* On the Missouri River near the town of Toston in Broadwater County, Montana. The project is adjacent to and includes federal lands administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David Lofftus, Hydro Power Program Manager, Montana Department of Natural Resources and Conservation, 1424 9th Avenue, P.O. Box 201601, Helena, Montana 59620; Phone at (406) 444–6659; or email at *dlofftus@mt.gov*

i. *FERC Contact:* Ingrid Brofman at (202) 502–8347, or *Ingrid.brofman@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Broadwater Hydroelectric Project (P–2853–073).

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 and is now ready for environmental analysis.

l. *The existing Broadwater Hydroelectric Project consists of:* (1) a 630-foot-long, 24-foot-high concrete gravity dam with a 360-foot-long spillway containing seven inflatable rubber gates capable of raising the dam's crest elevation by 11 feet; (2) a 275-acre, 9-mile-long reservoir; (3) a 160-foot long rock jetty that extends upstream into the reservoir that serves to separate inflow to the powerhouse from the headworks

of the non-project irrigation canal adjacent to the dam; (4) an intake integral with the powerhouse and covered by two inclined trashracks, each 20 feet wide and 40 feet high, with a clear bar spacing of 3 inches; (5) a 160-foot-long, 46-foot-wide, 64-foot high powerhouse containing a single Kaplan turbine with a rated capacity of 9.66 megawatts; (6) a 100-kilovolt, 2.8-mile-long transmission line; and (6) appurtenant facilities.

The project is operated in a run-of-river mode and generates an estimated average of 40,669 megawatt-hours per year.

Montana DNRC proposes to remove the jetty that separates the hydropower intake and the irrigation canal intake and install two parallel 100-foot-long, 10-foot-wide by 10-foot-high box culverts within the irrigation intake canal and a bulkhead near the current irrigation headworks. Once these facilities are installed, any water diverted for irrigation would first pass through a new angled screen with 6-inch spacing between the bars and then pass through the two new box culverts before entering the existing irrigation intake at the dam. The existing irrigation intake and facilities at the dam conveying water to the Broadwater-Missouri irrigation canal system would remain in place. Montana DNRC proposes to include the new tilted screen and box culverts as licensed project facilities.

Montana DNRC also proposes to modernize the project trash rake (*i.e.,* replace and recalibrate sensors on the rake) to minimize debris buildup on the dam intake and to upgrade its SCADA monitoring system (*i.e.,* improving connectivity to the substation, protective relaying, and automation upgrades).

Montana DNRC proposes to continue to operate the project in an automated run-of-river mode throughout the year where outflow from the project approximates inflow (minus flows diverted for irrigation). Montana DNRC proposes to modify its procedures for responding to an unplanned unit trip to reduce the potential for fish stranding downstream of the project.

m. A copy of the application is available for review 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 at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (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 submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

n. *The applicant must file no later than 60 days following the date of issuance of this notice:* (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR 121.5(b), including documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please also note that the certification request must be sent to the certifying authority and to the Commission concurrently.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for Filing Comments, Recommendations, and Agency Terms and Conditions/Prescriptions	September 2023.
Licensee's Reply to REA Comments	October 2023.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: July 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–14899 Filed 7–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR23–5–000]

Zenith Energy Terminals Holdings, LLC v. Tallgrass Pony Express Pipeline, LLC, and Tallgrass Terminals, LLC; Notice of Complaint

Take notice that on July 5, 2023, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 CFR 385.206 (2022), Zenith Energy Terminals Holding LLC filed a complaint against Tallgrass Pony Express Pipeline, LLC and Tallgrass Terminals, LLC. The complaint raises several issues, including matters related to Pawnee Terminal, the Buckingham Terminal, the Hereford Lateral, and Tallgrass Pony Express Northeast Colorado Lateral.

The Complainant certifies that copies of the complaint were served on the

contacts listed for Respondents in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov,* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

Comment Date: 5 p.m. Eastern Time on August 4, 2023.

Dated: July 10, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–14997 Filed 7–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC23–11–000]

Commission Information Collection Activities (FERC–510); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the proposed extension of currently approved information collection, FERC–510 (Application for Surrender of a Hydropower License).

DATES: Comments on the collection of information are due August 14, 2023.

ADDRESSES: Send written comments on FERC–510 to OMB through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number 1902–0068 (Application for Surrender of a Hydropower License) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**.

Please submit copies of your comments (identified by Docket No. IC23–11–000 and the form) to the Commission as noted below. Electronic filing through *https://www.ferc.gov,* is preferred.

Electronic Filing: Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.

For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

Mail via U.S. Postal Service only, addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Mail via any other service (including courier delivery): Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Please reference the specific collection number(s) and/or title(s) in your comments.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at: *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission; click ''submit'' and select ''comment'' to the right of the subject collection. FERC submissions must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–510, Application for Surrender of a Hydropower License.

OMB Control No.: 1902–0068.

Type of Request: Three-year extension of the FERC–510 information collection requirements with no changes to the current reporting and recordkeeping requirements.

Abstract: The purpose of FERC–510 is to implement information collections pursuant to sections 4(e), 6, and 13 of the Federal Power Act (FPA) (16 U.S.C. 797(e), 799 and 806). Section 4(e) gives the Commission authority to issue licenses for the purposes of constructing, operating and maintaining dams, water conduits, reservoirs, powerhouses, transmission lines or other power project works necessary or convenient for developing and improving navigation, transmission and utilization of power using bodies of water over which Congress has jurisdiction. Section 6 gives the Commission the authority to prescribe the conditions of licenses including the revocation or surrender of the license. Section 13 defines the Commission's authority to delegate time periods for when a license must be terminated if project construction has not begun. Surrender of a license may be desired by a licensee when a licensed project is retired or not constructed or natural catastrophes have damaged or destroyed the project facilities.

FERC–510 is the application for the surrender of a hydropower license.[1] The information is used by Commission staff to determine the broad impact of such surrender. The Commission will issue a notice soliciting comments from the public and other agencies and conduct a review of the application before

[1] 18 CFR 6.1–6.4.

issuing an order for Surrender of a License. The order is the result of an analysis of the information produced (*i.e.,* dam safety, public safety, and environmental concerns, etc.), which is examined to determine whether any conditions must be satisfied before granting the surrender. The order implements the existing regulations and is inclusive for surrender of all types of hydropower licenses issued by FERC and its predecessor, the Federal Power Commission.

Type of Respondent: Private or Municipal Hydropower Licensees.

Estimate of Annual Burden: [2] The Commission estimates the total annual burden and cost [3] for this information collection as follows:

FERC–510

Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden hrs. & cost ($) per response	Total annual burden hrs. & total annual cost ($)	Cost per respondent ($)
(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
7	1	7	80 hrs.; $7,280	560 hrs.; $50,960	$7,280

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collection; and (4) 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.

Dated: July 10, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–14989 Filed 7–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2607–016]

Spencer Mountain Hydropower, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* 2607–016.

c. *Date filed:* June 26, 2023.

d. *Applicant:* Spencer Mountain Hydropower, LLC.

e. *Name of Project:* Spencer Mountain Hydroelectric Project (Spencer Mountain Project).

f. *Location:* On the South Fork Catawba River, near the town of Gastonia, in Gaston County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Kevin Edwards and Mrs. Amy Edwards, Spencer Mountain Hydropower, LLC, 916 Comer Rd., Stoneville, NC 27048; Phone at (336) 589–6138, or *smhydro@pht1.com.*

i. *FERC Contact:* Michael Spencer at (202) 502–6093, or *michael.spencer@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* September 8, 2023.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* 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: Spencer Mountain Project (P–2607–016).

m. The application is not ready for environmental analysis at this time.

n. *The Spencer Mountain Project consists of the following existing facilities:* (1) a 12-foot-high, 636-foot-long masonry and rubble dam with a crest elevation of 634.7 feet mean sea level (msl); (2) a 68-acre reservoir with a storage capacity of 166 acre-feet; (3) a 58.9-foot-long canal headwork, consisting of four 6-foot-wide gates; (4) a 53.8-foot-long canal spillway

[2] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For additional information, refer to Title 5 Code of Federal Regulations 1320.3. The number of respondents is based on the average number of respondents over the last three years.

[3] The Commission staff thinks that the average respondent for this collection is similarly situated to the Commission, in terms of salary plus benefits. The FERC 2022 average salary plus benefits for one FERC full-time equivalent (FTE) is $188,922/year (or $91.00/hour).

connected to the downstream side of the canal headwork; (5) a 30-foot-wide, 10-foot-deep, 3,644-foot-long open earthen canal; (6) a 32-foot-wide trashrack at the powerhouse forebay; (7) a 36-inch-diameter bypass pipe; (8) a 22.5-foot-high, 49.5-foot-long, 48.75-foot-wide powerhouse containing two Francis-type generating units with a total capacity of 0.64 megawatts; (9) a concrete lined tailrace discharging flows back into the South Fork Catawba River; (10) a substation containing a 2.3/44-kilovolt (kV) transformer and interconnection to Duke Energy's 44kV transmission line; and (11) appurtenant facilities.

The project operates in a run-of-river mode with a minimum bypass flow of 76 cubic feet per second. Spencer Mountain Hydropower, LLC proposes no changes to the project facilities or operations. The project has an average annual generation of 4,064 megawatt-hours.

o. Copies of the application 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 (P–2607). For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

p. *Procedural schedule and final amendments:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary)—August 2023
Request Additional Information (if necessary)—September 2023
Issue Acceptance Letter—November 2023
Issue Scoping Document 1 for comments—November 2023
Issue Scoping Document 2 (if necessary)—January 2024
Issue Notice of Ready for Environmental Analysis—February 2024

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: July 10, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–14990 Filed 7–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–504–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on June 27, 2023, Columbia Gas Transmission (Columbia), 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.216(b) of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act (NGA), and Columbia's blanket certificate issued in Docket No. CP83–76–000,[1] for authorization to abandon one injection/withdrawal well, connecting pipe, and appurtenant facilities located at the Wellington Storage Field in Lorain County, Ohio, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

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 at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application should be directed to David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, at (832) 320–5477 or *david_alonzo@tcenergy.com.*

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,[2] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on September 5, 2023. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

[1] *Columbia Gas Transmission Corporation (predecessor to Columbia Gas Transmission, LLC), 22 FERC ¶ 62,029 (1983).*

[2] 18 CFR (Code of Federal Regulations) 157.9.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[3] any person,[4] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[5] and must be submitted by the protest deadline, which is September 5, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[6] and the regulations under the NGA[7] by the intervention deadline for the project, which is September 5, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before September 5, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How to File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–504–000 in your submission:

(1) You may file your protest, motion to intervene, and comments by using the Commission's *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or[8]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–504–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, TX 77002–2700 or *david_alonzo@tcenergy.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: July 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–14897 Filed 7–13–23; 8:45 am]

BILLING CODE 6717–01–P

[3] 18 CFR 157.205.

[4] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[5] 18 CFR 157.205(e).

[6] 18 CFR 385.214.

[7] 18 CFR 157.10.

[8] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14787–004]

Black Canyon Hydro, LLC; Notice of Revised Schedule for the Seminoe Pumped Storage Project

This notice revises the Federal Energy Regulatory Commission's (Commission) schedule for processing Black Canyon Hydro, LLC's license application for the

Seminoe Pumped Storage Project. A prior notice issued on March 31, 2023, identified an anticipated schedule for issuance of draft and final National Environmental Policy Act (NEPA) documents and a final order for the project. After the issuance of that notice, Black Canyon Hydro, LLC agreed to conduct additional studies requested by the agencies and file the study results by ''November 2023,'' and Commission staff issued a letter requiring the corresponding study reports and additional information to be filed with the Commission by November 30, 2023. To account for the additional time needed for Black Canyon Hydro, LLC to complete the studies and file the additional information, the application will be processed according to the following revised schedule.

Notice of Ready for Environmental Analysis: February 2024
Draft NEPA Document: October 2024
Final NEPA Document: May 9, 2025

In addition, in accordance with Title 41 of the Fixing America's Surface Transportation Act, enacted on December 4, 2015, agencies are to publish completion dates for all federal environmental reviews and authorizations. This notice identifies the Commission's anticipated schedule for issuance of the final order for the project, which is based on the revised issuance date for the final NEPA document. Accordingly, we currently anticipate issuing a final order for the project no later than:

Issuance of Final Order: September 18, 2025

If a schedule change becomes necessary, an additional notice will be provided so that interested parties and government agencies are kept informed of the project's progress.

Dated: July 10, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–14991 Filed 7–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15088–000]

Daybreak Power, Inc.; Notice of Surrender of Preliminary Permit

Take notice that Daybreak Power, Inc., permittee for the proposed Halverson Canyon Pumped Storage Project No. 15088, has requested that its preliminary permit be terminated. The permit was issued on June 28, 2021 and would have expired on May 31, 2025. The project would have been located at the U.S. Bureau of Reclamation's Lake Roosevelt in Lincoln County, Washington.

The preliminary permit for Project No. 15088 will remain in effect until the close of business, August 9, 2023. But, if the Commission is closed on this day, then the permit remains in effect until the close of business on the next day in which the Commission is open.[1] New applications for this site may not be submitted until after the permit surrender is effective.

Dated: July 10, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–14988 Filed 7–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–506–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on June 29, 2023, National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street, Williamsville, New York 14221, filed a prior notice request for authorization, in accordance with 18 CFR 157.205, 157.208, and 157.216 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act and National Fuel's blanket certificate issued in Docket No. CP83–4–000, to abandon two injection/withdrawal storage wells, EC–463 and State Line 7405, and the associated well lines ECW463 and NSLW7405, in its Beech Hill Storage Field (Beech Hill) located in Allegany County, New York. National Fuel states the abandonment is required due to localized corrosion on the production strings of EC–463 and State Line 7405 wells. National Fuel states that the cost of the abandonment project will be $731,000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

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://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 at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

Any questions concerning this application should be directed to Meghan Emes, Senior Attorney, National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 14221, by phone at (716) 857–7004, or by email at *emesm@natfuel.com.*

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on September 5, 2023. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and

[1] 18 CFR 385.2007(a)(2) (2020).

[1] 18 CFR (Code of Federal Regulations) § 157.9.

others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[2] any person [3] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[4] and must be submitted by the protest deadline, which is September 5, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [5] and the regulations under the NGA [6] by the intervention deadline for the project, which is September 5, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before September 5, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–506–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [7]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–506–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Meghan Emes, Senior Attorney, National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 14221, by phone at (716) 857–7004, or by email at *emesm@natfuel.com.*

Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: July 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–14896 Filed 7–13–23; 8:45 am]

BILLING CODE 6717–01–P

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[4] 18 CFR 157.205(e).

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

[7] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–466–000]

Great Basin Gas Transmission Company; Notice of Schedule for the Preparation of an Environmental Assessment for the 2024 Expansion Project

On May 1, 2023, Great Basin Gas Transmission Company (Great Basin) filed an application in Docket No. CP23–466–000 requesting a Certificate of Public Convenience and Necessity pursuant to section 7(c) and Authorization pursuant to section 7(b) of the Natural Gas Act to construct, operate, and abandon certain natural gas pipeline facilities. The proposed project is known as the 2024 Expansion Project (Project), and would provide 5,674 dekatherms per day of incremental firm transportation service for two existing firm transportation shippers. The expansion would require construction of approximately 3.41 miles of upsized or looped pipeline segments across Douglas, Lyon, and Storey Counties, Nevada.

On May 15, 2023, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the Project and the planned schedule for the completion of the environmental review.[1]

Schedule for Environmental Review

Issuance of EA—November 28, 2023
90-day Federal Authorization Decision Deadline[2]—February 26, 2024

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

[1] 40 CFR 1501.10 (2020).

[2] The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

Project Description

Great Basin proposes to: (1) construct approximately 0.25 mile of 20-inch-diameter pipeline loop along its Carson Lateral in Storey County, Nevada, referred to as the Truckee Canal segment; (2) abandon and replace approximately 2.88 miles of existing 10-inch-diameter pipeline with new 20-inch-diameter pipeline along the Carson Lateral in Lyon County, Nevada, referred to as the Silver Springs segment; and (3) construct approximately 0.28 mile of 12-inch-diameter pipeline loop paralleling its South Tahoe Lateral in Douglas County, Nevada, referred to as the Kingsbury segment. Additionally, Great Basin would install new aboveground valves and associated piping at its existing White Sage Pressure Limiting Station and at the Fort Churchill Valve Assembly on the Silver Springs pipeline segment in Lyon County, Nevada. Great Basin would also install one new belowground valve assembly and a below-ground hot tap at the terminus point of the Kingsbury pipeline segment in Douglas County, Nevada.

Background

On June 15, 2023, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Great Basin 2024 Expansion Project* (Notice of Scoping). The Notice of Scoping was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the Notice of Scoping, the Commission received comments in support of the Project from Southwest Gas Corporation and comments in protest from the Office of the Nevada Attorney General, Bureau of Consumer Protection. The primary issues raised by the Nevada Attorney General are associated with project need, capacity, and rates. All substantive environmental comments will be addressed in the EA.

The Bureau of Land Management is a cooperating agency in the preparation of the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview to register for eSubscription.*

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP23–466), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: July 10, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–14987 Filed 7–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–492–000]

Florida Gas Transmission Company, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed South Louisiana Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document, that will discuss the environmental impacts of the South Louisiana Project involving construction and operation of facilities by Florida Gas Transmission Company, LLC (FGT) in St. Landry, East Baton Rouge, and Washington Parishes, Louisiana and Perry County, Mississippi. The Commission will use

this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00pm Eastern Time on August 7, 2023. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on June 2, 2023, you will need to file those comments in Docket No. CP23–492–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

FGT provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas, Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is also on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP23–492–000) on your letter. 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.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Summary of the Proposed Project

FGT proposes to increase its certificated capacity and throughput at certain compressor stations, and construct, modify, install, own, operate, and maintain certain compression and auxiliary facilities in St. Landry, East Baton Rouge, and Washington Parishes, Louisiana and Perry County, Mississippi. The South Louisiana Project would provide 100 billion British thermal units per day of additional natural gas firm transportation capacity to Florida Power & Light Company. This project would expand Florida Power and Light Company's flow path back into FGT's Zone 2 pool and provide gas to downstream customers, which includes power generation and local distribution companies.

The South Louisiana Project would consist of the following facilities at existing compressor stations:

• Compressor Station 7.5—Uprate two existing natural gas-fired compressor turbines (Units 7501 and 7502), each from 6,500 horsepower (hp) to 7,700 hp, for an overall certificated compressor station increase of 2,400 hp. FGT would also modify existing auxiliary facilities under section 2.55(a) of the Commission's regulations, as required to support compressor station operations.

• Compressor Station 8—Add process cooling units to support the existing gas compressors. In addition, FGT would modify existing auxiliary facilities under section 2.55(a) of the Commission's regulations, including electrical distribution and communications infrastructure, station piping, and valving, as required to support operation of the new cooling units. No change to the certificated HP is proposed at Compressor Station 8.

• Compressor Station 9—Install one new 7,700 hp natural gas-fired turbine (Solar Taurus 60) compressor unit. FGT would modify existing station auxiliary facilities under section 2.55(a) of the Commission's regulations, including new process cooling units to support the new and existing gas compressors, electrical distribution and communications infrastructure, and station piping and valving as required to support compressor station operations.

• Compressor Station 10—Install one new 15,900 hp natural gas-fired turbine (Solar Mars 100) compressor unit. FGT would modify existing station auxiliary facilities under section 2.55(a) of the Commission's regulations, including new process cooling units to support the new and existing gas compressors, electrical distribution and communications infrastructure, and station piping and valving as required to support compressor station operations.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would only disturb land owned by FGT at the existing compressor station sites. FGT would only use public roads and its existing access roads during construction and operation. All disturbed areas would occur within the compressor station sites' fencelines and no new land impacts are required.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- socioeconomics;
- environmental justice;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary[2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Section 1501.8.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP23–492–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: July 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–14900 Filed 7–13–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–077]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed June 30, 2023 10 a.m. EST

Through July 10, 2023 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20230084, Draft Supplement, USFS, ID, Crow Creek Pipeline Project, Comment Period Ends: 10/12/2023, Contact: Robbert Mickelsen 208–557–5764.

EIS No. 20230085, Draft Supplement, USFS, UT, High Uintas Wilderness Domestic Sheep Analysis, Comment Period Ends: 08/28/2023, Contact: Paul Cowley 801–999–2177.

Dated: July 10, 2023.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2023–14968 Filed 7–13–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–077]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed June 30, 2023 10 a.m. EST

Through July 10, 2023 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20230084, Draft Supplement, USFS, ID, Crow Creek Pipeline Project, *Comment Period Ends:* 10/12/2023, *Contact:* Robbert Mickelsen 208–557–5764.

EIS No. 20230085, Draft Supplement, USFS, UT, High Uintas Wilderness Domestic Sheep Analysis, *Comment Period Ends:* 08/28/2023, *Contact:* Paul Cowley 801–999–2177.

Dated: July 10, 2023.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2023–14937 Filed 7–13–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0855; FR ID 154354]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before August 14, 2023.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the

right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (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 burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0855.

Title: Telecommunications Reporting Worksheets and Related Collections, FCC Forms 499–A and 499–Q.

Form Number(s): FCC Forms 499–A and 499–Q.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit and not-for-profit institutions.

Number of Respondents and Responses: 8,000 respondents; 40,300 responses.

Estimated Time per Response: 0.25 hours–25 hours.

Frequency of Response: Annually, quarterly, recordkeeping and on occasion reporting requirements.

Obligation to Respond: Mandatory. Statutory authority for this collection of information is contained in 151, 154(i), 154(j), 155, 157, 159, 201, 205, 214, 225, 254, 303(r), 715 and 719 of the Act, 47 U.S.C. 151, 154(i), 154(j), 155, 157, 159, 201, 205, 214, 225, 254, 303(r), 616, and 620.

Total Annual Burden: 250,850 hours.

Total Annual Cost: No cost.

Needs and Uses: This information collection requires contributors to the federal universal service fund, telecommunications relay service fund, and numbering administration to file, pursuant to sections 151, 225, 251 and 254 of the Act, a Telecommunications Reporting Worksheet on an annual basis (FCC Form 499–A and/or on a quarterly basis (FCC Form 499–Q). The information is also used to calculate FCC regulatory fees for interstate telecommunications service providers.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–14801 Filed 7–13–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0888; FR ID 154535]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written comments should be submitted on or before September 12, 2023. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501–3520), the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0888.

Title: Section 1.221, Notice of hearing; appearances; Section 1.229 Motions to enlarge, change, or delete issues; Section 1.248 Prehearing conferences; hearing conferences; Section 76.7, Petition Procedures; Section 76.9, Confidentiality of Proprietary Information; Section 76.61, Dispute Concerning Carriage; Section 76.914, Revocation of Certification; Section 76.1001, Unfair Practices; Section 76.1003, Program Access Proceedings; Section 76.1302, Carriage Agreement Proceedings; Section 76.1513, Open Video Dispute Resolution.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 684 respondents; 684 responses.

Estimated Time per Response: 6.4 to 95.4 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 4(i), 4(j) 303(r), 338, 340, 614, 615, 616, 623, 628, and 653 of the Communications Act of 1934, as amended.

Total Annual Burden: 34,816 hours.

Total Annual Cost: $3,775,680.

Needs and Uses: Commission rules specify pleading and other procedural requirements for parties filing petitions or complaints under Part 76 of the Commission's rules, including petitions for special relief, cable carriage complaints, program access complaints, and program carriage complaints.

47 CFR 1.221(f) requires that, in a program carriage complaint proceeding filed pursuant to § 76.1302 that the Chief, Media Bureau refers to an administrative law judge for an initial decision, each party, in person or by attorney, shall file a written appearance within five calendar days after the party informs the Chief Administrative Law Judge that it elects not to pursue alternative dispute resolution pursuant to § 76.7(g)(2) or, if the parties have mutually elected to pursue alternative dispute resolution pursuant to § 76.7(g)(2), within five calendar days after the parties inform the Chief Administrative Law Judge that they have failed to resolve their dispute through alternative dispute resolution. The written appearance shall state that the party will appear on the date fixed for hearing and present evidence on the issues specified in the hearing designation order.

47 CFR 1.229(b)(1) requires that, in a program carriage complaint proceeding filed pursuant to § 76.1302 that the Chief, Media Bureau refers to an administrative law judge for an initial decision, a motion to enlarge, change, or delete issues shall be filed within 15 calendar days after the deadline for submitting written appearances pursuant to § 1.221(h), except that persons not named as parties to the proceeding in the designation order may file such motions with their petitions to intervene up to 30 days after publication of the full text or a summary of the designation order in the **Federal Register**.

47 CFR 1.229(b)(2) provides that any person desiring to file a motion to modify the issues after the expiration of periods specified in paragraphs (a) and (b)(1) of § 1.229, shall set forth the reason why it was not possible to file the motion within the prescribed period.

47 CFR 1.248(a) provides that presiding officer may direct the parties or their attorneys to appear at a specified time and place for a status conference during the course of a hearing proceeding, or to submit suggestions in writing, for the purpose of considering, among other things, the matters specified in § 1.248(c). Any party may request a status conference at any time after release of the order designating a matter for hearing. During a status conference, the presiding officer may issue rulings regarding matters relevant to the conduct of the hearing proceeding including procedural matters, discovery, and the submission of briefs or evidentiary materials.

47 CFR 1.248(b) provides that the presiding officer shall schedule an initial status conference promptly after written appearances have been submitted under *§ 1.91* or *§ 1.221.* At or promptly after the initial status conference, the presiding officer shall adopt a schedule to govern the hearing proceeding. If the *Commission* designated a matter for hearing on a written record under *§§ 1.370* through 1.376, the scheduling order shall include a deadline for filing a motion to request an oral hearing in accordance with *§ 1.376.* If the *Commission* did not designate the matter for hearing on a written record, the scheduling order shall include a deadline for filing a motion to conduct the hearing on a written record.

47 CFR 76.7. Pleadings seeking to initiate FCC action must adhere to the requirements of Section 76.6 (general pleading requirements) and Section 76.7 (initiating pleading requirements). Section 76.7 is used for numerous types of petitions and special relief petitions, including general petitions seeking special relief, waivers, enforcement, show cause, forfeiture and declaratory ruling procedures.

47 CFR 76.7(g)(2) provides that, in a proceeding initiated pursuant to § 76.7 that is referred to an administrative law judge, the parties may elect to resolve the dispute through alternative dispute resolution procedures, or may proceed with an adjudicatory hearing, provided that the election shall be submitted in writing to the Commission and the Chief Administrative Law Judge.

47 CFR 76.9. A party that wishes to have confidentiality for proprietary information with respect to a submission it is making to the FCC must file a petition pursuant to the pleading requirements in Section 76.7 and use the method described in Sections 0.459 and 76.9 to demonstrate that confidentiality is warranted. The petitions filed pursuant to this provision are contained in the existing information collection requirement and are not changed by the rule changes.

47 CFR 76.61(a) permits a local commercial television station or qualified low power television station that is denied carriage or channel positioning or repositioning in accordance with the must-carry rules by a cable operator to file a complaint with the FCC in accordance with the procedures set forth in Section 76.7. Section 76.61(b) permits a qualified local noncommercial educational television station that believes a cable operator has failed to comply with the FCC's signal carriage or channel positioning requirements (Sections 76.56 through 76.57) to file a complaint with the FCC in accordance with the procedures set forth in Section 76.7.

47 CFR 76.61(a)(1) states that whenever a local commercial television station or a qualified low power television station believes that a cable operator has failed to meet its carriage or channel positioning obligations, pursuant to Sections 76.56 and 76.57, such station shall notify the operator, in writing, of the alleged failure and identify its reasons for believing that the cable operator is obligated to carry the signal of such station or position such signal on a particular channel.

47 CFR 76.61(a)(2) states that the cable operator shall, within 30 days of receipt of such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning and other requirements of the must-carry rules. If a refusal for carriage is based on the station's distance from the cable system's principal headend, the operator's response shall include the location of such headend. If a cable operator denies carriage on the basis of the failure of the station to deliver a good quality signal at the cable system's principal headend, the cable operator must provide a list of equipment used to make the measurements, the point of measurement and a list and detailed description of the reception and over-the-air signal processing equipment used, including sketches such as block diagrams and a description of the

methodology used for processing the signal at issue, in its response.

47 CFR 76.914(c) permits a cable operator seeking revocation of a franchising authority's certification to file a petition with the FCC in accordance with the procedures set forth in Section 76.7.

47 CFR 76.1003(a) permits any multichannel video programming distributor (MVPD) aggrieved by conduct that it believes constitute a violation of the FCC's program access rules to commence an adjudicatory proceeding at the FCC to obtain enforcement of the rules through the filing of a complaint, which must be filed and responded to in accordance with the procedures specified in Section 76.7, except to the extent such procedures are modified by Section 76.1003.

47 CFR 76.1001(b)(2) permits any multichannel video programming distributor to commence an adjudicatory proceeding by filing a complaint with the Commission alleging that a cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor, has engaged in an unfair act involving terrestrially delivered, cable-affiliated programming, which must be filed and responded to in accordance with the procedures specified in § 76.7, except to the extent such procedures are modified by §§ 76.1001(b)(2) and 76.1003. In program access cases involving terrestrially delivered, cable-affiliated programming, the defendant has 45 days from the date of service of the complaint to file an answer, unless otherwise directed by the Commission. A complainant shall have the burden of proof that the defendant's alleged conduct has the purpose or effect of hindering significantly or preventing the complainant from providing satellite cable programming or satellite broadcast programming to subscribers or consumers; an answer to such a complaint shall set forth the defendant's reasons to support a finding that the complainant has not carried this burden. In addition, a complainant alleging that a terrestrial cable programming vendor has engaged in discrimination shall have the burden of proof that the terrestrial cable programming vendor is wholly owned by, controlled by, or under common control with a cable operator or cable operators, satellite cable programming vendor or vendors in which a cable operator has an attributable interest, or satellite broadcast programming vendor or vendors; an answer to such a complaint shall set forth the defendant's reasons to support a finding that the complainant has not carried this burden.

47 CFR 76.1003(b) requires any aggrieved MVPD intending to file a complaint under this section to first notify the potential defendant cable operator, and/or the potential defendant satellite cable programming vendor or satellite broadcast programming vendor, that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in Sections 76.1001 or 76.1002 of this part. The notice must be sufficiently detailed so that its recipient(s) can determine the nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

47 CFR 76.1003(c) describes the required contents of a program access complaint, in addition to the requirements of Section 76.7 of this part.

47 CFR 76.1003(c)(3) requires a program access complaint to contain evidence that the complainant competes with the defendant cable operator, or with a multichannel video programming distributor that is a customer of the defendant satellite cable programming or satellite broadcast programming vendor or a terrestrial cable programming vendor alleged to have engaged in conduct described in § 76.1001(b)(1).

47 CFR 76.1003(d) states that, in a case where recovery of damages is sought, the complaint shall contain a clear and unequivocal request for damages and appropriate allegations in support of such claim.

47 CFR 76.1003(e)(1) requires cable operators, satellite cable programming vendors, or satellite broadcast programming vendors which expressly reference and rely upon a document in asserting a defense to a program access complaint or in responding to a material allegation in a program access complaint filed pursuant to Section 76.1003, to include such document or documents, such as contracts for carriage of programming referenced and relied on, as part of the answer. Except as otherwise provided or directed by the Commission, any cable operator, satellite cable programming vendor or satellite broadcast programming vendor upon which a program access complaint is served under this section shall answer within twenty (20) days of service of the complaint, provided that the answer shall be filed within forty-five (45) days of service of the complaint if the complaint alleges a violation of Section 628(b) of the Communications Act of 1934, as amended, or Section 76.1001(a).

47 CFR 76.1003(e)(2) requires an answer to an exclusivity complaint to provide the defendant's reasons for refusing to sell the subject programming to the complainant. In addition, the defendant may submit its programming contracts covering the area specified in the complaint with its answer to refute allegations concerning the existence of an impermissible exclusive contract. If there are no contracts governing the specified area, the defendant shall so certify in its answer. Any contracts submitted pursuant to this provision may be protected as proprietary pursuant to Section 76.9 of this part.

47 CFR 76.1003(e)(3) requires an answer to a discrimination complaint to state the reasons for any differential in prices, terms, or conditions between the complainant and its competitor, and to specify the particular justification set forth in Section 76.1002(b) of this part relied upon in support of the differential.

47 CFR 76.1003(e)(4) requires an answer to a complaint alleging an unreasonable refusal to sell programming to state the defendant's reasons for refusing to sell to the complainant, or for refusing to sell to the complainant on the same terms and conditions as complainant's competitor, and to specify why the defendant's actions are not discriminatory.

47 CFR 76.1003(f) provides that, within fifteen (15) days after service of an answer, unless otherwise directed by the Commission, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

47 CFR 76.1003(g) states that any complaint filed pursuant to this subsection must be filed within one year of the date on which one of three specified events occurs.

47 CFR 76.1003(h) sets forth the remedies that are available for violations of the program access rules, which include the imposition of damages, and/or the establishment of prices, terms, and conditions for the sale of programming to the aggrieved multichannel video programming distributor, as well as sanctions available under title V or any other provision of the Communications Act.

47 CFR 76.1003(j) states in addition to the general pleading and discovery rules contained in § 76.7 of this part, parties to a program access complaint may serve requests for discovery directly on opposing parties, and file a copy of the request with the Commission. The

respondent shall have the opportunity to object to any request for documents that are not in its control or relevant to the dispute. Such request shall be heard, and determination made, by the Commission. Until the objection is ruled upon, the obligation to produce the disputed material is suspended. Any party who fails to timely provide discovery requested by the opposing party to which it has not raised an objection as described above, or who fails to respond to a Commission order for discovery material, may be deemed in default and an order may be entered in accordance with the allegations contained in the complaint, or the complaint may be dismissed with prejudice.

47 CFR 76.1003(l) permits a program access complainant seeking renewal of an existing programming contract to file a petition along with its complaint requesting a temporary standstill of the price, terms, and other conditions of the existing programming contract pending resolution of the complaint, to which the defendant will have the opportunity to respond within 10 days of service of the petition, unless otherwise directed by the Commission.

47 CFR 76.1302(a) states that any video programming vendor or multichannel video programming distributor aggrieved by conduct that it believes constitute a violation of the program carriage rules may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The complaint shall be filed and responded to in accordance with the procedures specified in Section 76.7, except to the extent such procedures are modified by Section 76.1302.

47 CFR 76.1302(b) states that any aggrieved video programming vendor or multichannel video programming distributor intending to file a program carriage complaint must first notify the potential defendant multichannel video programming distributor that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in Section 76.1301 of this part. The notice must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

47 CFR 76.1302(c) specifies the content of carriage agreement complaints, in addition to the requirements of Section 76.7 of this part.

47 CFR 76.1302(c)(1) provides that a program carriage complaint filed pursuant to § 76.1302 must contain the following: whether the complainant is a multichannel video programming distributor or video programming vendor, and, in the case of a multichannel video programming distributor, identify the type of multichannel video programming distributor, the address and telephone number of the complainant, what type of multichannel video programming distributor the defendant is, and the address and telephone number of each defendant.

47 CFR 76.1302(d) sets forth the evidence that a program carriage complaint filed pursuant to § 76.1302 must contain in order to establish a prima facie case of a violation of § 76.1301.

47 CFR 76.1302(e)(1) provides that a multichannel video programming distributor upon whom a program carriage complaint filed pursuant to § 76.1302 is served shall answer within sixty (60) days of service of the complaint, unless otherwise directed by the Commission.

47 CFR 76.1302(e)(2) states that an answer to a program carriage complaint shall address the relief requested in the complaint, including legal and documentary support, for such response, and may include an alternative relief proposal without any prejudice to any denials or defenses raised.

47 CFR 76.1302(f) states that within twenty (20) days after service of an answer, unless otherwise directed by the Commission, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

47 CFR 76.1302(h) states that any complaint filed pursuant to this subsection must be filed within one year of the date on which one of three events occurs.

47 CFR 76.1302(j)(1) states that upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, mandatory carriage of a video programming vendor's programming on defendant's video distribution system, or the establishment of prices, terms, and conditions for the carriage of a video programming vendor's programming.

47 CFR 76.1302(k) permits a program carriage complainant seeking renewal of an existing programming contract to file a petition along with its complaint requesting a temporary standstill of the price, terms, and other conditions of the existing programming contract pending resolution of the complaint, to which the defendant will have the opportunity to respond within 10 days of service of the petition, unless otherwise directed by the Commission. To allow for sufficient time to consider the petition for temporary standstill prior to the expiration of the existing programming contract, the petition for temporary standstill and complaint shall be filed no later than thirty (30) days prior to the expiration of the existing programming contract.

47 CFR 76.1513(a) permits any party aggrieved by conduct that it believes constitute a violation of the FCC's regulations governing open video systems or in section 653 of the Communications Act (47 U.S.C. 573) to commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint, which must be filed and responded to in accordance with the procedures specified in Section 76.7, except to the extent such procedures are modified by Section 76.1513.

47 CFR 76.1513(b) provides that an open video system operator may not provide in its carriage contracts with programming providers that any dispute must be submitted to arbitration, mediation, or any other alternative method for dispute resolution prior to submission of a complaint to the Commission.

47 CFR 76.1513(c) requires that any aggrieved party intending to file a complaint under this section must first notify the potential defendant open video system operator that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in this part or in Section 653 of the Communications Act. The notice must be in writing and must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

47 CFR 76.1513(d) describes the contents of an open video system complaint.

47 CFR 76.1513(e) states that an *open video system operator* upon which a *complaint* is served under this section shall answer within thirty (30) days of service of the *complaint* and specifies the requirements for such answers.

47 CFR 76.1513(f) states within twenty (20) days after service of an answer, the complainant may file and serve a reply which shall be responsive

to matters contained in the answer and shall not contain new matters.

47 CFR 76.1513(g) requires that any complaint filed pursuant to this subsection must be filed within one year of the date on which one of three events occurs.

47 CFR 76.1513(h) states that upon completion of the adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, requiring carriage, awarding damages to any person denied carriage, or any combination of such sanctions. Such order shall set forth a timetable for compliance, and shall become effective upon release.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–14916 Filed 7–13–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; OMB 3060–XXXX; FR ID 153919]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before August 14, 2023.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (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 burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–XXXX.

Title: Section 90.175(g)(2), Amendment of Part 90 of the Commission's Rules.

Form Number: N/A.

Type of Review: New information collection.

Respondents: State, Local or Tribal Government.

Number of Respondents and Responses: 213 respondents, 213 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to retain or retain benefits. Statutory authority for this collection is contained in 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401–1473 of the Communications Act of 1934.

Total Annual Burden: 213 hours.

Total Annual Cost: $234,300.

Needs and Uses: This collection will be submitted as a new collection after this 60-day comment period to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance.

Section 90.175(g)(2) adopted in the Commission's Report and Order FCC 23–3 requires public safety applicants seeking to license new or modify existing facilities in the 4.9 GHz band to obtain a frequency recommendation from the nationwide Band Manager before the application is filed with the Commission.

The purpose of requiring each public safety applicant to obtain a frequency recommendation from the nationwide Band Manager is to ensure that public safety entities seeking to license new or modify existing facilities in the 4.9 GHz band cause no interference to incumbent licensees or previously filed applicants.

OMB Control Number: 3060–XXXX.

Title: Sections 90.1207(e)–(f), Amendment of Part 90 of the Commission's Rules.

Form Number: N/A.

Type of Review: New information collection.

Respondents: State, Local or Tribal Government.

Number of Respondents and Responses: 3,871 respondents, 3,871 responses.

Estimated Time per Response: 16–160 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection is contained

in 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401–1473 of the Communications Act of 1934.

Total Annual Burden: 592,288 hours.

Total Annual Cost: $14,882,400.

Needs and Uses: This collection will be submitted as a new collection after this 60-day comment period to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance.

Section 90.1207(e) adopted in the Commission's Report and Order FCC 23–3 requires public safety applicants seeking to license new or modify existing facilities in the 4.9 GHz band to submit granular technical data on their proposed operations into ULS. Section 90.1207(f), also adopted in the Commission's Report and Order FCC 23–3, requires incumbent public safety licensees to perform a one-time submission into ULS of the granular data specified in paragraph (e) for their existing operations and gives incumbent licensees at least a one-year period to complete this one-time collection.

The purpose of requiring incumbent public safety licensees and public safety applicants in the 4.9 GHz band to submit granular technical data into ULS is to enable the Band Manager at 4.9 GHz to use the granular technical data on public safety deployments to perform its frequency coordination duties and facilitate non-public safety access to the band.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–14800 Filed 7–13–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0805; FR ID 154424]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before September 12, 2023. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0805.

Title: 700 MHz Eligibility, Regional Planning Requirements, and 4.9 GHz Guidelines (47 CFR 90.523, 90.527, and 90.1211).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit; not-for-profit institutions; state, local or tribal government.

Number of Respondents and Responses: 1,175 respondents; 1,175 responses.

Estimated Time per Response: 1 hour–628 hours.

Frequency of Response: On occasion reporting and one-time reporting requirements; third party disclosure.

Obligation to Respond: Required to obtain or retain benefits (47 CFR 90.523, 90.527), and voluntary (47 CFR 90.1211). Statutory authority for this information collection is contained in 4(i), 11, 303(g), 303(r), 332(c)(7), and 337(f) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), and 337(f), unless otherwise noted.

Total Annual Burden: 35,660 hours.

Total Annual Cost: No Cost.

Needs and Uses: Section 90.523 requires that nongovernmental organizations that provide services which protect the safety of life or property obtain a written statement from an authorizing state or local government entity to support the nongovernmental organization's application for assignment of 700 MHz frequencies. *Section 90.527* requires 700 MHz regional planning regions to submit an initial plan for use of the 700 MHz general use spectrum in the consolidated narrowband segment 769–775 MHz and 799–805 MHz. Regional planning committees may modify plans by written request, which must contain the full text of the modification and certification that the modification was successfully coordinated with adjacent regions. Regional planning promotes a fair and open process in developing allocation assignments by requiring input from eligible entities in the allocation decisions and the application technical review/approval process. Entities that seek inclusion in the plan to obtain future licenses are considered third party respondents. *Section 90.1211* authorizes the fifty-five 700 MHz regional planning committees to develop and submit on a voluntary basis a plan on guidelines for coordination procedures to facilitate the shared use of the 4940–4990 MHz (4.9 GHz) band. The Commission has stayed this requirement indefinitely. Applicants are granted a geographic area license for the entire fifty MHz of 4.9 GHz spectrum over a geographical area defined by the boundaries of their jurisdiction—city, county or state. Accordingly, licensees are required to coordinate their operations in the shared band to avoid interference, a common practice when joint operations are conducted.

Commission staff use the information to assign licenses, determine regional spectrum requirements and to develop technical standards. The information is also used to determine whether prospective licensees operate in compliance with the Commission's rules. Without such information, the Commission could not accommodate regional requirements or provide for the efficient use of the available frequencies. This information collection includes rules to govern the operation and licensing of the 700 MHz and 4.9 GHz bands rules and regulation to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934, as amended. Such

information will continue to be used to verify that applicants are legally and technically qualified to hold licenses, and to determine compliance with Commission rules.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–14914 Filed 7–13–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1254; FR ID 153846]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before September 12, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

OMB Control Number: 3060–1254.

Title: Next Gen TV/ATSC 3.0 Local Simulcasting Rules; 47 CFR 73.3801 (full-power TV), 73.6029 (Class A TV), and 74.782 (low-power TV) and FCC Form 2100 (Next Gen TV License Application).

Form Number: FCC Form 2100 (Next Gen TV License Application).

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, state, local, or tribal government and not for profit institutions.

Number of Respondents and Responses: 1,222 respondents; 11,260 responses.

Estimated Time per Response: 0.017–8 hours.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement; Third party disclosure.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 1, 4, 7, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 157, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 534, and 535.

Total Annual Burden: 3,802 hours.

Total Annual Cost: $147,000.

Needs and Uses: On June 23, 2023, the Commission released a Third Report and Order (*Third R&O*), FCC 23–53, in GN Docket No. 16–142. In this *Third R&O,* the Commission makes changes to its Next Gen TV rules designed to preserve over-the-air (OTA) television viewers' access to multicast streams during television broadcasters' transition to ATSC 3.0.

Multicast Licensing. The Commission generally adopts its proposal in the *Next Gen TV Multicast Licensing FNPRM* to allow a Next Gen TV station to seek modification of its license to include certain of its non-primary video programming streams (multicast streams) that are aired on ''host'' stations during a transitional period. In adopting this proposal, the Commission follows the same licensing framework, and to a large extent the same regulatory regime, established for the simulcast of primary video programming streams on ''host'' station facilities.

Form 2100. The Commission adopts the Next Gen TV Multicast Licensing FNPRM's proposal to modify its Next Gen TV license application form (FCC Form 2100) to accommodate multicast licensing by collecting information similar to that already collected in the interim STA process. The Commission requires certain additional information as an addendum to Form 2100 if stations seek to include hosted multicast streams within their license. It also clarifies and slightly modifies the requirements of its rules governing Form 2100 to reflect the possibility of reliance on multiple hosts.

Specifically, applicants must prepare an Exhibit identifying each proposed hosted stream and provide the following information about each stream, as broadcast:

- the host station;
- channel number (RF and virtual);
- network affiliation (or type of programming if unaffiliated);
- resolution (*e.g.,* 1080i, 720p, 480p, or 480i);
- the predicted percentage of population within the noise limited service contour served by the station's original ATSC 1.0 signal that will be served by the host, with a contour overlay map identifying areas of service loss and, in the case of 1.0 streams, coverage of the originating station's community of license; and
- whether the stream will be simulcast, and if so, the ''paired'' stream in the other service.

Finally, the Exhibit must either state that the applicant will be airing the same programming that it is airing in 1.0 at the time of the application or identify the station that has aired or is airing the same or a similar programming lineup at the same resolutions on the same type of facility (individual or shared), as well as that station's lineup (with resolutions). This Exhibit must be placed on the applicant's public website or in the applicant's online public inspection file if the station does not have a dedicated website, with a link provided in the application. This information is consistent both with that currently collected in STA applications and the approach identified in the Next Gen TV Multicast Licensing FNPRM. As with broadcast licenses generally, modifications to this license application or its accompanying exhibit (with respect to the primary or multicast streams) must be preceded by the filing and approval of a new application. Changes to the affiliation or content of a stream, or the elimination of a stream,

however, do not implicate the concerns raised in this proceeding if they would not result in the use of additional capacity and if information about the change is easily available to the public. Therefore, in order to streamline this process for both broadcasters and the Commission, such changes may be implemented without prior Commission approval. They need only be reflected in a timely update to the Exhibit that the applicant makes available on its public website or in the applicant's online public inspection file and in an email notice to the Chief of the Media Bureau's Video Division.

The new information collection requirements are contained in §§ 73.3801(f) and (i), 73.6029(f) and (i), and 74.782(g) and (j) of the Commission's rules.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–14792 Filed 7–13–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0550, OMB 3060–0560; FR ID 154532]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written comments should be submitted on or before September 12, 2023. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501–3520), the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0550.

Title: Local Franchising Authority Certification, FCC Form 328; Section 76.910, Franchising Authority Certification.

Form No.: FCC Form 328.

Type of Review: Extension of a currently approved collection.

Respondents: State, local or tribal governments; Businesses or other for-profit entities.

Number of Respondents and Responses: 7 respondents; 13 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: One-time reporting requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in section 3 of the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C. 543), as well as sections 4(i), 4(j), and 623 of the Communications Act of 1934, as amended, and section 111 of the STELA Reauthorization Act of 2014.

Total Annual Burden: 26 hours.

Total Annual Cost: No cost.

Needs and Uses: On June 3, 2015, the Commission released a Report and Order, MB Docket No. 15–53; FCC 15–62. The Report and Order adopted a rebuttable presumption that cable operators are subject to competing provider effective competition. The information collection requirements have not changed since they were last approved by the Office of Management and Budget (OMB). The information collection requirements consist of:

FCC Form 328. Pursuant to section 76.910, a franchising authority must be certified by the Commission to regulate the basic service tier and associated equipment of a cable system within its jurisdiction. To obtain this certification, the franchising authority must prepare and submit FCC Form 328. The Report and Order revised section 76.910 to require a franchising authority filing Form 328 to submit specific evidence demonstrating its rebuttal of the presumption in section 76.906 that the cable system is subject to competing provider effective competition pursuant to section 76.905(b)(2). The franchising authority bears the burden of submitting evidence rebutting the presumption that competing provider effective competition, as defined in section 76.905(b)(2), exists in the franchise area. Unless a franchising authority has actual knowledge to the contrary, it may rely on the presumption in section 76.906 that the cable system is not subject to one of the other three types of effective competition.

Evidence establishing lack of effective competition. If the evidence establishing the lack of effective competition is not otherwise available, section 76.910(b)(4) provides that franchising authorities may request from a multichannel video programming distributor (MVPD) information regarding the MVPD's reach and number of subscribers. An MVPD must respond to such request within 15 days. Such responses may be limited to numerical totals.

Franchising authority's obligations if certified. Section 76.910(e) of the Commission's rules currently provides

that, unless the Commission notifies the franchising authority otherwise, the certification will become effective 30 days after the date filed, provided, however, that the franchising authority may not regulate the rates of a cable system unless it: (1) Adopts regulations (i) consistent with the Commission's regulations governing the basic tier and (ii) providing a reasonable opportunity for consideration of the views of interested parties, within 120 days of the effective date of the certification; and (2) notifies the cable operator that the franchising authority has been certified and has adopted the required regulations.

OMB Control Number: 3060–0560.

Title: Section 76.911, Petition for Reconsideration of Certification.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: State, local or tribal governments; Businesses or other for-profit entities.

Number of Respondents and Responses: 15 respondents; 25 responses.

Estimated Time per Response: 2–10 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in sections 4(i) and 623 of the Communications Act of 1934, as amended.

Total Annual Burden: 130 hours.

Total Annual Cost: No cost.

Needs and Uses: On June 3, 2015, the Commission released a Report and Order, MB Docket No. 15–53; FCC 15–62. The Report and Order adopted a rebuttable presumption that cable operators are subject to competing provider effective competition. Reversing the previous rebuttable presumption of no effective competition and adopting the procedures discussed in the Report and Order resulted in changes to the information collection burdens.

The information collection requirements consist of: Petitions for reconsideration of certification, oppositions and replies thereto, cable operator requests to competitors for information regarding the competitor's reach and number of subscribers if evidence establishing effective competition is not otherwise available, and the competitors supplying this information. They have not changed since they were last approved by OMB.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–14915 Filed 7–13–23; 8:45 am]

BILLING CODE 6712–01–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 Trade Regulation Rule on Disclosure Requirements and Prohibitions Concerning Franchising (''Franchise Rule'' or ''Rule''). That clearance expires on November 30, 2023.

DATES: Comments must be filed by August 14, 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: Christine M. Todaro, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, 600 Pennsylvania Ave. NW, CC–8548, Washington, DC 20580, (202) 326–3711, *ctodaro@ftc.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Franchise Rule, 16 CFR part 436.

OMB Control Number: 3084–0107.

Type of Review: Extension without change of currently approved collection.

Abstract: The Franchise Rule ensures that consumers who are considering a franchise investment have access to the material information they need to make an informed investment decision and compare different franchise offerings. The Rule requires franchisors to furnish prospective purchasers with a Franchise Disclosure Document (''FDD'') that provides information relating to the franchisor, its business, the nature of the proposed franchise, and any representations by the franchisor about financial performance regarding actual or potential sales, income, or profits. The Rule also requires that franchisors maintain records to facilitate enforcement of the Rule.[1] The franchisor must preserve materially different copies of its FDD for 3 years, as well as information that provides a reasonable basis for any financial performance representation it elects to make.

Affected Public: Private Sector: Businesses and other for-profit entities.

Estimated Annual Burden Hours: 22,480.

Estimated Annual Labor Costs: $8,386,800.

Estimated Annual Non-Labor Costs: $4,800,000.

Request for Comment

On February 1, 2023, the FTC sought public comment on the information collection requirements associated with the Franchise Rule. 88 FR 6727 (Feb. 2, 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 6727.

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

[1] The Rule was amended in 2007 to conform its disclosure requirements with the disclosure format accepted by states that have franchise registration or disclosure laws. *See* 72 FR 15444 (Mar. 30, 2007). The amended Rule has significantly minimized any compliance burden beyond what is required by state law.

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. 2023–14913 Filed 7–13–23; 8:45 am]

BILLING CODE 6750–01–P

GOVERNMENT PUBLISHING OFFICE

Congressionally Mandated Reports: OMB/GPO Guidance

AGENCY: U.S. Government Publishing Office.

ACTION: Notice of OMB/GPO guidance on congressionally mandated reports.

SUMMARY: Federal agencies are now required by law to submit congressionally mandated reports to GPO by the end of the year. On June 21, 2023, GPO and the Office of Management and Budget (OMB) released a memo providing guidance to Federal agencies: *https://www.whitehouse.gov/wp-content/uploads/2023/06/M-23-17-Access-to-Congressionally-Mandated-Reports-Act-Implementation-Guidance.pdf.* The memo outlines instructions and deadlines for compliance with this mandate, including information about reports that are exempt from submission to GPO. The reports will be published and made available to the public on GPO's online system, GovInfo: *https://www.govinfo.gov.* Under this new requirement, agencies will also continue to submit printed, signed copies of mandated reports to Congressional committees and subcommittees. When fully deployed, this will be the first time congressionally mandated reports will be accessible to the public in one place. Beginning October 1, 2023, Federal agencies will designate a point of contact for report submission and register for an account for the upcoming GPO Submission Portal. All resources related to congressionally mandated reports for Federal agencies can be found at: *https://www.gpo.gov/congressionally-mandated-reports.* For questions, please use askGPO: *https://ask.gpo.gov/.* Select the Federal Agency customer type, and the Other inquiry category.

Hugh Nathanial Halpern,

Director, U.S. Government Publishing Office.

[FR Doc. 2023–14966 Filed 7–13–23; 8:45 am]

BILLING CODE 1520–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–1353; Docket No. CDC–2023–0059]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled, Integrated Viral Hepatitis Surveillance and Prevention Funding for Health Departments (CDC–RFA–PS21–2103). This data collection is for viral hepatitis (VH) case reporting data collected from the National Notifiable Diseases Surveillance System (NNDSS) which provides the primary population-based data used to describe the epidemiology of VH in the United States and for annual reporting of surveillance, prevention, and epidemiology performance measures via an Annual Performance Report.

DATES: CDC must receive written comments on or before September 12, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0059 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7118; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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 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;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Integrated Viral Hepatitis Surveillance and Prevention Funding for Health Departments (CDC–RFA–PS21–2103) (OMB Control No. 0920–1353, Exp. 11/30/2024)—Revision—National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) requests three-year

OMB approval for the Revision of an information collection package (OMB Control No. 0920–1353, Exp. Date 11/30/2024). CDC is authorized under Sections 304 and 306 of the Public Health Service Act (42 U.S.C. 242b and 242k) to collect information on cases of viral hepatitis (VH). Data collected by NNDSS (OMB Control No. 0920–0728) are the primary data used to monitor the extent and characteristics of the VH burden in the United States. VH surveillance data are used to describe trends in VH incidence, prevalence, and characteristics of infected persons and are used widely at the federal, state, and local levels for planning and evaluating prevention programs and health-care services and to allocate funding for prevention and care.

In 2021, CDC implemented activities under a new cooperative agreement Integrated Viral Hepatitis Surveillance and Prevention Funding for Health Departments (CDC–RFA–PS21–2103). Tools exist to prevent new cases of hepatitis A, B, and C, to treat people living with hepatitis B, and to cure people living with hepatitis C. Yet, new cases of VH continue to rise, many people infected with VH remain undiagnosed, and far too many VH-related deaths occur in the US each year. The purpose of these activities is to enable state and local health departments to collect data to evaluate disease burden and trends and to analyze and disseminate that data to develop or refine recommendations, policies, and practices that will ultimately reduce the burden of VH in their jurisdictions. The goals of the activities are to reduce new VH infections, VH-related morbidity and mortality, and VH-related disparities and to establish comprehensive national VH surveillance, which are in accordance with the Division of Viral Hepatitis 2025 Strategic Plan. In addition, the cooperative agreement supports VH elimination planning in these jurisdictions and maximize access to testing, treatment, and prevention services for populations at high risk for viral hepatitis (including service provision in in high-impact settings).

The activities of this cooperative agreement include two components (Component 1: Surveillance, and Component 2: Prevention), containing six strategies: 1.1—develop, implement, and maintain a plan to rapidly detect and respond to outbreaks for hepatitis A, B, and C; 1.2—collect, analyze, interpret, and disseminate data to characterize trends, and implement public health interventions for hepatitis A, acute hepatitis B and acute and chronic hepatitis C; 1.3—contingent on available funding), collect, analyze, interpret, and disseminate data to characterize trends and implement public health interventions for chronic hepatitis B and perinatal hepatitis C; 2.1—support VH elimination planning and surveillance, and maximize access to testing, treatment, and prevention; 2.2—(contingent on available funding), increase access to HCV and HBV testing and referral to care in high-impact settings; and 2.3—(contingent on available funding), improve access to services preventing VH among persons who inject drugs. Contingent on funding, an optional component (Component 3: Special Projects) will support improved access to prevention, diagnosis, and treatment of viral, bacterial and fungal infections related to drug use in settings disproportionately affected by drug use.

In 2023, CDC will fund health department recipients to implement additional activities through supplemental funding. These activities relate to increasing access to viral hepatitis testing and linkage to care in high-impact settings. Specific activities include increasing routine VH testing in high-impact settings; providing counseling, linkage to treatment, and referral to prevention services in high-impact settings; and building public health laboratory capacity. These activities are the same activities described in the cooperative agreement (Component 2) but provide additional funding to health department recipients to expand/increase these services in their jurisdictions.

Performance measures are monitored to assess recipient performance, including quality of data, effective program implementation, and accountability of funds. Data collection via the Annual Performance Report is used for program accountability and to inform performance improvement. Outbreak reporting are submitted throughout the year. These data, which complement case data as another key component of national viral hepatitis surveillance, are critical to determining both the level of viral hepatitis activity within a jurisdiction as well as the effectiveness of each jurisdiction's approach to cluster and outbreak response. A standardized Case Report Form is used for surveillance data collection submitted to the National Notifiable Diseases Surveillance System (NNDSS). De-identified data including national VH surveillance data are submitted to CDC electronically per each jurisdiction's usual mechanism. Recipients submit other required quantitative and qualitative performance measure data annually via an Annual Performance Report and as needed for outbreak reporting.

In the first two years of this cooperative agreement, health department recipients worked toward establishing a jurisdictional framework to respond to VH-related outbreaks; assessed public health reporting of chronic and perinatal HCV and chronic HBV infection, and undetectable HCV RNA and HBV DNA laboratory results; increased engagement with community partners in elimination planning across their jurisdiction; and increased the level of hepatitis testing services in a variety of setting types (including linkage to care and treatment for individuals diagnosed with VH).

With the data submitted through the Annual Performance Report data collection forms in Year 1 and Year 2, CDC assessed the progress of jurisdictions in meeting the deliverables of CDC–RFA–PS21–2103. Additionally, CDC developed and provided feedback reports to recipients to summarize progress made toward meeting the overarching objectives of the funding award which include: establishment of comprehensive national VH surveillance, reduced new VH infections, increased access to care for persons with VH, improved health outcomes for people with VH, reduced deaths among people with VH, reduced VH-related health disparities and decreased overdose deaths. Specifically, jurisdictions reported developing VH outbreak response plans and elimination plans and serving persons who inject drugs, including number of clients tested for HBV and HCV and number of clients vaccinated against HAV and HBV.

CDC requests OMB approval for an estimated 6,657 annual burden hours. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)
Health Departments	Viral Hepatitis Case Report Form	51	381	20/60	6,412
Health Departments	APR: Component 1	59	1	70/60	69
Health Departments	APR: Component 2	59	1	70/60	69
Health Departments	APR: Component 3	20	1	70/60	23
Health Departments	Supplemental APR	8	1	45/60	6
Health Departments	Initial Outbreak Report Form	59	2	20/60	39
Health Departments	Outbreak Summary Report Form	59	2	20/60	39
Total					6,657

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–14953 Filed 7–13–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–1307; Docket No. CDC–2023–0058]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled *Shigella Hypothesis Generating Questionnaire (SHGQ).* The SHGQ supports shigellosis cluster and outbreak investigations. CDC will collect state and local health department furnished shigellosis case data.

DATES: CDC must receive written comments on or before September 12, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0058 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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 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;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Shigella Hypothesis Generating Questionnaire (SHGQ) (OMB Control No. 0920–1307, Exp. 11/30/2023)—Extension—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Shigella are a family of bacteria that cause the diarrheal disease shigellosis. It is estimated that *Shigella* causes about 450,000 cases of diarrhea in the United States annually, with increasing evidence of antimicrobial resistance. From 2009 through 2021, there have been 1,252 outbreaks of shigellosis in the United States, with most of these outbreaks attributed to person to person spread. Outbreaks of shigellosis have been reported in a range of settings such as community-wide, daycares, schools, restaurants, and retirement homes. Outbreaks of shigellosis have impacted a range of populations such as children, men who have sex with men, people experiencing homelessness, tight knit religious communities, international travelers, and refugees/displaced persons. Finally, outbreaks of shigellosis have been attributed to a range of

transmission modes including person-to-person/no common source, sexual person-to person contact, contaminated food, and contaminated water. As part of *Shigella* outbreak investigations, it is common for state and local health departments to conduct comprehensive interviews with cases and contacts to identify how individuals became sick with shigellosis, to identify individuals who could have come into contact with an individual sick with shigellosis, and to identify strategies to control the cluster or outbreak. As person-to-person contact is the most common mode of transmission for shigellosis, and shigellosis is highly contagious, it can be challenging to identify how individuals could have become ill. As a result, comprehensive hypothesis generating questionnaires focused on a range of settings, activities, and potential modes of transmission are needed to guide prevention and control activities.

The Shigella Hypothesis Generating Questionnaire (SHGQ) will be administered by state and local public health officials via telephone interviews or self-administered web-based surveys with cases of shigellosis or their proxy who are part of a shigellosis cluster or outbreak. The SHGQ will collect information on demographics characteristics, household information and family member event and activity attendance, clinical signs and symptoms, medical care and treatment information, travel history, contact with international travelers or other ill individuals, event and activity attendance, limited food and water exposure, work, visit, and volunteer locations, childcare and school attendance, and recent sexual partner(s) and activity. This interview/survey activity is consistent with the state's existing authority to investigate reports of notifiable diseases for routine surveillance purposes; therefore, formal consent to participate in the activity is not required. However, cases may choose not to participate and may choose not to answer any question they do not wish to answer. It will take health department personnel approximately 45 minutes to administer the questionnaire to an estimated 1,500 patient respondents. This results in an estimated annual burden to the public of 1,125 hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Shigellosis case patients identified as part of outbreak or cluster investigations.	Shigella Hypothesis Generating Questionnaire.	1,500	1	45/60	1,125
Total					1,125

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–14955 Filed 7–13–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–116 and CMS–2746]

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 September 12, 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 *https://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–116 Clinical Laboratory Improvement Amendments (CLIA) Application Form and Supporting Regulations
CMS–2746 End Stage Renal Disease Death Notification

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:* Revision of a currently approved collection; *Title of Information Collection:* Clinical Laboratory Improvement Amendments (CLIA) Application Form and Supporting Regulations; *Use:* Section 353 (b) of the Public Health Service Act specifies that the laboratory must submit an application in such form and manner as the Secretary shall prescribe that describes the characteristics of the laboratory and examinations and procedures performed by the laboratory. The application must be completed by entities performing laboratory's testing specimens for diagnostic or treatment purposes. This information is vital to the certification process. In this revision, the majority of changes were minor changes to the form and accompanying instructions to facilitate the completion and data entry of the form. We anticipate that the changes will not increase the time to complete the form. *Form Number:* CMS–116 (OMB control number: 0938–0581); *Frequency:* Biennially and Occasionally; *Affected Public:* Private Sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 64,598; *Total Annual Responses:* 64,598; *Total Annual Hours:* 64,598. (For policy questions regarding this collection contact Kimberly Weaver at 410–786–3366.)

2. *Type of Information Collection Request:* Reinstatement of a previously approved collection; *Title of Information Collection:* End Stage Renal Disease Death Notification; *Use:* The ESRD Death Notification form (CMS–2746) is completed by all Medicare-approved ESRD facilities upon death of an ESRD patient. Its primary purpose is to collect fact of death and cause of death of ESRD patients. The ESRD Program Management and Medical Information System (PMMIS) has the responsibility of collecting, maintaining, and disseminating, on a national basis, uniform data pertaining to ESRD patients and their treatment of care. All renal facilities approved to participate in the ESRD program are required by Public Law 95–292 to supply data to this system.

Federal regulations require that the ESRD Networks examine the mortality rates of every Medicare-approved facility within its area of responsibility. CMS–2746 provides the necessary data to assist the ESRD Networks in making decisions that result in improved patient care and in cost-effective distribution of ESRD resources. The data is used by the ESRD Networks to verify facility deaths and to monitor facility performance. The form is also used by health care planning agencies and researchers to determine survival rates by diagnoses. This request is to revise the form to better align with the common verbiage used on standardized forms, by other Federal agencies, including the Census Bureau. *Form Number:* CMS–2746 (OMB control number: 0938–0448); *Frequency:* Yearly; *Affected Public:* Private Sector (Business or other for-profits, Not-for-Profit Institutions); *Number of Respondents:* 7,726; *Total Annual Responses:* 101,491; *Total Annual Hours:* 50,746. (For policy questions regarding this collection contact Christina Goatee at 410–786–6689.)

Dated: July 11, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–14985 Filed 7–13–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10847]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Correction

In notice document 2023–14176 beginning on page 42722 in the issue of Monday, July 3, 2023, make the following correction:

On page 42722, in the third column, in the third line of the **DATES** section, ''August 2, 2023'' should read ''July 31, 2023''.

[FR Doc. C1–2023–14176 Filed 7–13–23; 8:45 am]

BILLING CODE 0099–10–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; Guidance for Tribal Temporary Assistance for Needy Families Program (Office of Management and Budget #0970–0157)

AGENCY: Office of Family Assistance; Administration for Children and Families; Department of Health and Human Services.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) is requesting a 3-year extension of the form ACF–123: Guidance for the Tribal Temporary Assistance for Needy Families (TANF) Program (Office of Management and Budget (OMB) #0970–0157, expiration date: August 31, 2023). There are minor clarifying changes requested to the guidance.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect 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 30-day Review—Open

for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

Description: 42 U.S.C. 612 (Section 412 of the Social Security Act) requires each Indian tribe that elects to administer and operate a TANF program to submit a TANF Tribal Plan. This request includes the renewal of the guidance for completing the initial Tribal TANF Plan. The TANF Tribal Plan is a mandatory statement submitted to the Secretary of the United States Department of Health and Human Services (HHS) by the Indian tribe, which consists of an outline of how the Indian tribe's TANF program will be administered and operated. It is used by the Secretary to determine whether the plan is approvable and to determine that the Indian tribe is eligible to receive a TANF assistance grant. It is also made available to the public. The renewal includes minor edits, such as updating hyperlinks and correcting typographical errors. Additionally, the list of requirements has been reformatted so that it is easier to read and use.

Respondents: Indian tribes applying to operate a TANF program and to renew their Tribal Family Assistance Plan.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Guidance for the TANF Program	75	1	68	5,100	1,700

Estimated Total Annual Burden Hours: 1,700.

Authority: 42 U.S.C. 612.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–15001 Filed 7–13–23; 8:45 am]

BILLING CODE 4184–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–2680]

Pediatric Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA or the Agency) announces a forthcoming public advisory committee meeting of the Pediatric Advisory Committee (the Committee). The general function of the Committee is to provide advice and recommendations to the Agency on pediatric regulatory issues. At least one portion of the meeting will be closed to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held virtually on September 19, 2023, from 9 a.m. to 5:30 p.m. Eastern Time and September 20, 2023, from 9 a.m. to 1 p.m. Eastern Time.

ADDRESSES: All meeting participants will be joining this advisory committee via an online teleconferencing platform. All meeting participants will be heard, viewed, captioned, and recorded for this advisory committee meeting via an online teleconferencing and/or video conferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2023–N–2680. The docket will close on September 18, 2023. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 18, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before September 5, 2023, will be provided to the Committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments 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–2680 for ''Pediatric Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9

a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA 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 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 the 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: Marieann Brill, Office of Pediatric Therapeutics, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4442, Silver Spring, MD 20993–0002, 240–402–3838, *Marieann.Brill@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The purpose of this public advisory committee meeting is to discuss the appropriate development plans for establishing safety and effectiveness of artificial womb technology devices, including regulatory and ethical considerations for first in human studies. The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing and/or video conferencing platform.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website after the meeting. Background material and the link to the online teleconference and/or video conference meeting will be available will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio and video components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. All electronic and written submissions to the Docket (see **ADDRESSES**) on or before September 5, 2023, will be provided to the Committee. Written submissions may be made to the contact person on or before September 12, 2023. Oral presentations from the public will be scheduled between approximately 11:30 a.m. and 12:30 p.m. Eastern Time on September 19, 2023. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 5, 2023. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 6, 2023.

Closed Committee Deliberations: On September 20, 2023, from 9 a.m. to 1 p.m. Eastern Time, the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)).

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Marieann Brill (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*). This meeting notice also serves as notice that, pursuant to 21 CFR 10.19, the requirements in 21 CFR 14.22(b), (f), and (g) relating to the location of advisory committee meetings are hereby waived to allow for this meeting to take place using an online meeting platform. This waiver is in the interest of allowing greater transparency and opportunities for public participation, in addition to convenience for advisory committee members, speakers, and guest speakers. No participant will be prejudiced by this waiver, and that the ends of justice will be served by allowing for this modification to FDA's advisory committee meeting procedures.

Dated: July 10, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–14923 Filed 7–13–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–2436]

Manufacturing Changes and Comparability for Human Cellular and Gene Therapy Products; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft document entitled ''Manufacturing Changes and Comparability for Human Cellular and Gene Therapy Products; Draft Guidance for Industry.'' The management of manufacturing changes presents many challenges for human cellular therapy or gene therapy (CGT) products due to the complexity of these products. The draft guidance provides sponsors of Investigational New Drug Applications (INDs) and applicants of Biologics License Applications (BLAs) for CGT products, with recommendations regarding product comparability and the management of manufacturing changes for investigational and licensed CGT products. The purpose of this draft guidance is to provide FDA's current thinking on management and reporting of manufacturing changes for CGT products based on a life-cycle approach, and comparability studies to assess the effect of manufacturing changes on product quality.

DATES: Submit either electronic or written comments on the draft guidance by September 12, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2023–D–2436 for ''Manufacturing Changes and Comparability for Human Cellular and Gene Therapy Products; Draft Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Phillip Kurs, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Manufacturing Changes and Comparability for Human Cellular and Gene Therapy Products; Draft Guidance for Industry.'' The management of manufacturing changes presents many challenges for human CGT products due to the complexity of these products. The draft guidance provides sponsors of INDs and applicants who intend to submit or currently hold BLAs for CGT products, with recommendations on product comparability and the management of manufacturing changes for investigational and licensed CGT products, considering the unique challenges that apply to these products.

While existing guidances provide general principles and recommendations regarding comparability studies and management of manufacturing changes for biological products, they generally do not address specific CGT product challenges. The purpose of this draft guidance is to provide FDA's current thinking on: (1) management and reporting of manufacturing changes for CGT products based on a life-cycle approach and (2) comparability studies to assess the effect of manufacturing changes on CGT product quality.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Manufacturing Changes and Comparability for Human Cellular and Gene Therapy Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 211 have been approved under OMB control number 0910–0139; the collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; and the collections of information in 21 CFR 601.2 and 601.12 have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents*, or *https://www.regulations.gov*.

Dated: July 10, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–14917 Filed 7–13–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–6395]

Request for Applications for New Members of the Clinical Trials Transformation Initiative/Food and Drug Administration Patient Engagement Collaborative

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for applications.

SUMMARY: The Food and Drug Administration (FDA or Agency), in collaboration with the Clinical Trials Transformation Initiative (CTTI), is requesting applications from patient advocates interested in participating on the Patient Engagement Collaborative (PEC). The PEC is an ongoing, collaborative forum coordinated through the FDA's Patient Affairs Staff, Office of Clinical Policy and Programs (OCPP), Office of the Commissioner at FDA, and is hosted by CTTI. Through the PEC, the patient community and FDA Staff are able to discuss an array of topics related to increasing meaningful patient engagement with diverse populations in medical product development and regulatory discussions at FDA. The activities of the PEC may include, but are not limited to, providing diverse perspectives on topics such as systematic patient engagement, transparency, and communication; providing considerations for implementing new strategies to enhance patient engagement at FDA; and proposing new models of collaboration in which patient, caregiver and patient advocate perspectives are incorporated into general medical product development and regulatory processes.

DATES: Applications can be submitted starting at 11:59 p.m. Eastern Time on July 14, 2023. This announcement is open to receive a maximum of 75 applications. Applications will be accepted until 11:59 p.m. Eastern Time on August 14, 2023 or until 75 applications are received, whichever happens first.

ADDRESSES: All applications should be submitted to FDA's Patient Affairs Staff in OCPP. The preferred application method is via the online submission system provided by CTTI, available at *https://duke.qualtrics.com/jfe/form/SV_6L8l7z4YfyCHFVY.* For those applicants unable to submit an application electronically, please call FDA's Patient Affairs Staff at 301–796–8460 to arrange for mail or delivery service submission. Only complete applications, as described under section IV of this document, will be considered.

FOR FURTHER INFORMATION CONTACT: Wendy Slavit, Office of the Commissioner, Office of Clinical Policy and Programs, Patient Affairs Staff, Food and Drug Administration, 301–796–8460, *PatientEngagementCollaborative@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

The CTTI is a public-private partnership cofounded by FDA and Duke University whose mission is to develop and drive adoption of practices that will increase the quality and efficiency of clinical trials. FDA and CTTI have long involved patients and considered patient perspectives in their work. Furthering the engagement of diverse patients as valued partners across the medical product research and development continuum requires an open forum for patients and regulators to discuss and exchange ideas.

The PEC is an ongoing, collaborative forum in which the patient community and FDA Staff discuss an array of topics related to increasing patient engagement in medical product development and regulatory discussions at FDA. The PEC is a joint endeavor between FDA and CTTI. The activities of the PEC may inform relevant FDA and CTTI activities. The PEC is not intended to advise or otherwise direct the activities of either organization, and membership will not constitute employment by either organization.

The Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), section 1137, entitled ''Patient Participation in Medical Product Discussions,'' added section 569C to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb–8c). This provision directs the Secretary of Health and Human Services to ''develop and implement strategies to solicit the views of patients during the medical product development process and consider the perspectives of patients during regulatory discussions.'' On November 4, 2014, FDA issued a **Federal Register** notice establishing a docket (FDA–2014–N–1698) for public commenters to submit information related to FDA's implementation of this provision. Upon review of the comments received, one common theme, among others, included establishing an external group to provide input on patient engagement strategies across FDA's Centers. After considering the comments, FDA formed the PEC in 2018 to discuss a variety of

patient engagement topics. This group is consistent with additional legislation subsequently enacted in section 3001 of the 21st Century Cures Act (Pub. L. 114–255) and section 605 of the FDA Reauthorization Act of 2017 (Pub. L. 115–52), further supporting tools for fostering patient participation in the regulatory process.

The PEC currently has 16 members. To help ensure continuity in its activities and organizational knowledge, the PEC maintains staggered membership terms. During the fall of 2023, eight members will complete a term and up to eight new members will be selected. The purpose of this notice is to announce that the application process for up to eight new members of the PEC is now open, and to invite and encourage applications by the submission deadline for appropriately qualified individuals.

II. Criteria for Membership

The PEC includes up to 16 diverse representatives of the patient community. Eight members from the previous application process will remain on the PEC. The current application process is to select up to eight new PEC members. Selected members will include the following: (1) patients who have personal experience with a disease or medical condition; (2) caregivers who help support a patient—parent, child, partner, other family member, or friend—as they manage their disease or medical condition; and/or (3) representatives of patient groups who, through their role in the patient group, have direct or indirect disease experience. Please note that for purposes of this activity, the term ''caregiver'' is not intended to include individuals who are engaged in caregiving as healthcare professionals; and the term ''patient group'' is used herein to encompass patient advocacy organizations, disease advocacy organizations, voluntary health agencies, nonprofit research foundations, and public health organizations. The ultimate goal of the application and selection process is to identify individuals who can represent patient voices for their patient community.

Selection criteria include the applicant's potential to meaningfully contribute to the activities of the PEC, ability to represent and express patient voices for their constituency, ability to work in a constructive manner with involved stakeholders, and understanding of the clinical research enterprise. Consideration will also be given to ensuring the PEC includes diverse perspectives and experiences, including but not limited to sociodemographic factors (such as age, gender, ethnicity, and education level) and disease experience. PEC members are required to be residents of the United States and must be 18 years of age or older.

Financial and other conflicts of interest will not necessarily make applicants ineligible for membership in the PEC. However, applicants cannot be direct employees of the medical product development industry or a currently registered lobbyist for an FDA-regulated industry.

III. Responsibilities and Expectations

Participation as a PEC member is voluntary. Meetings will be held two to four times per year and will be conducted virtually with the potential for in-person events (in the Washington, DC area).

Reasonable accommodations will be made for members with special needs for participation in a meeting or for any necessary travel. Applications for PEC membership are encouraged from individuals of all ages, sexes, genders, sexual orientations, racial and ethnic groups, education levels, income levels, and those with and without disabilities. Travel support will be provided, as applicable.

To help ensure continuity in its activities and organizational knowledge, the PEC will maintain staggered membership terms for patient community representatives. Membership terms for new members will be 2-year appointments, beginning January 1, 2024.

Additional responsibilities and expectations are set forth in the PEC Framework, which should be reviewed prior to submitting an application, and is available at *https://ctti-clinicaltrials.org/wp-content/uploads/2023/05/PEC-Framework_Revised-Apr-10-2023_FINAL.pdf.*

IV. Application Process

Any interested person may apply for membership on the PEC. To apply, go to *https://duke.qualtrics.com/jfe/form/SV_6L8l7z4YfyCHFVY.* The application is completed online and includes questions to help determine eligibility for the PEC, demographic and other background questions, and four brief essay questions. The brief essay questions, to be answered in 500 characters or fewer (including spaces), are as follows:

- Please explain why you would have an outstanding ability to represent and express the patient voice for the disease area(s) you selected above.
- Please give a few examples of experiences that demonstrate your outstanding ability to work across or interact with stakeholders in the medical product development and regulatory processes.
- Please explain how you have established an understanding of the medical product development and regulatory processes.
- Please tell us why you are interested in becoming a member of the PEC and how you would be able to contribute.

Completing the application also involves submitting: (1) A current one-page résumé or bio that summarizes your patient advocacy experience and related activities (PDF format required) and (2) a one-page letter of endorsement from a patient group (or other similar group) with which the applicant has worked closely on activities that are relevant to the PEC (PDF format required). Please note, only the application and the two documents specified above will be reviewed. Your completed application form, résumé or bio, and letter of endorsement should all be submitted at the same time.

The résumé or bio must provide examples and descriptions of relevant activities and experiences related to the applicant's qualifications for PEC membership. The letter of endorsement should emphasize information relevant to the criteria for membership described above. This letter must be from and written by someone other than yourself. The letter may address topics such as the applicant's involvement in patient advocacy activities, experiences that stimulated an interest in participating in discussions about patient engagement in medical product development and regulatory decision processes, and other information that may be helpful in evaluating the applicant's qualifications as a potential member of the PEC.

Applications will be accepted until 11:59 p.m. Eastern Time on August 14, 2023 or until 75 applications are received, whichever happens first. Only complete applications will be considered.

The application review period will take a minimum of 2 months after 11:59 p.m. Eastern Time on August 14, 2023.

Additional information may be needed from some applicants during the review period, including information relevant to understanding potential sources of conflict of interest, in which case applicants will be contacted directly. All applicants (both those selected for PEC membership and those who are not selected) will be notified of the final application decision no later than December 31, 2023.

Dated: July 10, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–14920 Filed 7–13–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–0559]

Postmarketing Studies and Clinical Trials: Determining Good Cause for Noncompliance With Section 505(o)(3)(E)(ii) of the Federal Food, Drug, and Cosmetic Act; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Postmarketing Studies and Clinical Trials: Determining Good Cause for Noncompliance with Section 505(o)(3)(E)(ii) of the Federal Food, Drug, and Cosmetic Act.'' The Federal Food, Drug, and Cosmetic Act (FD&C Act) authorizes FDA to require certain postmarketing studies and clinical trials for prescription drugs at the time of approval or after approval if FDA becomes aware of new safety information. This draft guidance describes the factors FDA considers when determining whether an applicant has demonstrated good cause for failure to comply with the timetable for completion of studies or clinical trials required under the provisions. This draft guidance also provides information on relevant procedures, including how an applicant should communicate with FDA regarding compliance with these required studies and trials and describes actions FDA may take for noncompliance with the requirements.

DATES: Submit either electronic or written comments on the draft guidance by September 12, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2023–D–0559 for ''Postmarketing Studies and Clinical Trials: Determining Good Cause for Noncompliance with Section 505(o)(3)(E)(ii) of the Federal Food, Drug, and Cosmetic Act.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Kathy Weil, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5367, Silver Spring, MD 20993, 301–796–6054, or Diane Maloney, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Postmarketing Studies and Clinical Trials: Determining Good Cause for Noncompliance with Section 505(o)(3)(E)(ii) of the Federal Food, Drug, and Cosmetic Act.'' This draft guidance provides information for holders of applications for human prescription drugs that are required to conduct postmarketing studies or clinical trials under section 505(o)(3) of the FD&C Act (21 U.S.C. 355(o)(3). Section 505(o), added by the Food and Drug Administration Amendments Act of 2007 (FDAAA), authorizes FDA to require certain postmarketing studies for prescription drugs at the time of approval or after approval if FDA becomes aware of new safety information. These postmarketing studies and clinical trials are also referred to as postmarketing requirements (PMRs) or FDAAA PMRs.

An applicant required to conduct a PMR must provide certain information to FDA, including a timetable for study or clinical trial completion and periodic reports on the status of the study or clinical trial. If an applicant fails to comply with the timetable or fails to submit periodic status reports, FDA considers the applicant to be in violation of section 505(o)(3) of the FD&C Act, unless the applicant has demonstrated good cause for its PMR noncompliance. Under section 505(o)(3)(E)(ii) of the FD&C Act, FDA is responsible for determining what constitutes good cause for PMR noncompliance. Violations of requirements under this section are subject to enforcement action, including pursuant to sections 505(o)(1) (charges under section 505 of the FD&C Act), 502(z) (21 U.S.C. 332(z)) (misbranding charges), and 303(f)(4)(A) (21 U.S.C. 333(f)(4)(A)) (civil monetary penalties).

This draft guidance describes the factors FDA considers when determining whether an applicant has demonstrated good cause for its noncompliance with the timetable for PMR completion. This draft guidance also provides information on relevant procedures including how to communicate with FDA regarding PMR compliance, submission of an explanation of the circumstances that led to noncompliance, and how FDA notifies an applicant of a determination of noncompliance, and describes the enforcement actions FDA can take for PMR noncompliance. Although this draft guidance primarily addresses noncompliance with the timetable for completion of PMR milestones, any violation of a requirement under section 505(o)(3)(E)(ii) of the FD&C Act is subject to enforcement action, in the absence of a demonstration of good cause.

Section 505(o) of the FD&C Act applies only to prescription drugs approved under section 505(b) of the FD&C Act and biological drug products approved under section 351 of the Public Health Service Act.[1] This draft guidance does *not* apply to nonprescription drugs, including nonprescription drugs that are approved under a new drug application, or to generic drugs approved under section 505(j) of the FD&C Act.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Postmarketing Studies and Clinical Trials: Determining Good Cause for Noncompliance with Section 505(o)(3)(E)(ii) of the Federal Food, Drug, and Cosmetic Act.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 314, including the submission of status reports of postmarketing study commitments under § 314.81(b)(2)(vii), have been approved under OMB control number 0910–0001.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

[1] See section 505(o)(2)(B) of the FD&C Act.

Dated: July 10, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–14905 Filed 7–13–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3402]

Advisory Committee; National Mammography Quality Assurance Advisory Committee; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of Federal advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the National Mammography Quality Assurance Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the National Mammography Quality Assurance Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until the July 7, 2025, expiration date.

DATES: Authority for the National Mammography Quality Assurance Advisory Committee will expire on July 7, 2025, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: James Swink, Office of Management, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993–0002, 301–796–6313, email: *James.Swink@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services and by the General Services Administration, FDA is announcing the renewal of the National Mammography Quality Assurance Advisory Committee (the Committee). The Committee is a non-discretionary Federal advisory committee established to provide advice to the Commissioner.

The Commissioner is charged with the administration of the Federal Food, Drug, and Cosmetic Act and various provisions of the Public Health Service Act. The Mammography Quality Standards Act of 1992 amends the Public Health Service Act to establish national uniform quality and safety

standards for mammography facilities. The National Mammography Quality Assurance Advisory Committee advises the Secretary and, by delegation, the Commissioner of Food and Drugs or designee in discharging their responsibilities with respect to establishing a mammography facilities certification program. The Committee shall advise the HHS Secretary and the Commissioner or designee on:

(A) developing appropriate quality standards and regulations for mammography facilities;

(B) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program;

(C) developing regulations with respect to sanctions;

(D) developing procedures for monitoring compliance with standards;

(E) establishing a mechanism to investigate consumer complaints;

(F) reporting new developments concerning breast imaging which should be considered in the oversight of mammography facilities;

(G) determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas;

(H) determining whether there will exist a sufficient number of medical physicists after October 1, 1999; and

(I) determining the costs and benefits of compliance with these requirements.

The Committee shall consist of a core of 15 members, including the Chair. Members and the Chair are selected by the Commissioner or designee from among physicians, practitioners, and other health professionals, whose clinical practice, research specialization, or professional expertise includes a significant focus on mammography. Members will be invited to serve for overlapping terms of up to 4 years. Almost all members of this committee serve as Special Government Employees. The core of voting members shall include at least four individuals from among national breast cancer or consumer health organizations with expertise in mammography, and at least two practicing physicians who provide mammography services. In addition to the voting members, the Committee shall include two nonvoting industry representative members who have expertise in mammography equipment. The Committee may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/advisory-committees/radiation-emitting-products/national-mammography-quality-assurance-advisory-committee* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: July 10, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–14919 Filed 7–13–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0008]

Request for Nominations From Industry Organizations Interested in Participating in the Selection Process for Nonvoting Industry Representatives and Request for Nominations for Nonvoting Industry Representatives on Public Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is requesting that any industry organizations interested in participating in the selection of nonvoting industry representatives to serve on its public advisory committees for the Center for Drug Evaluation and Research (CDER) notify FDA in writing. FDA is also requesting nominations for nonvoting industry representatives to serve on CDER's public advisory committees. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for current vacancies effective with this notice.

DATES: Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to FDA by August 14, 2023, (see sections I and II of this document for further details). Concurrently, nomination materials for prospective candidates should be sent to FDA by August 14, 2023.

ADDRESSES: All statements of interest from industry organizations interested in participating in the selection process of nonvoting industry representative nominations should be sent to Nicholas Marsh (see **FOR FURTHER INFORMATION CONTACT**). All nominations for nonvoting industry representatives may be submitted electronically by accessing the FDA Advisory Committee Membership Nomination Portal at: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to Division of Advisory Committee and Consultant Management, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2418, Silver Spring, MD 20993–0002. Information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's website at: *http://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: Nicholas Marsh, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2418, Silver Spring, MD 20993–0002, 240–402–5357, email: *Nicholas.Marsh@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency intends to add a nonvoting industry representative to the following advisory committees:

I. CDER Advisory Committees

A. Anesthetic and Analgesic Drug Products Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in anesthesiology and surgery.

B. Antimicrobial Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders.

C. Arthritis Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of arthritis, rheumatism, and related diseases.

D. Cardiovascular and Renal Drugs Advisory Committee

Reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drug products for use in the treatment of cardiovascular and renal disorders.

E. Dermatologic and Ophthalmic Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of dermatologic and ophthalmic disorders.

F. Drug Safety and Risk Management Advisory Committee

Reviews and evaluates information on risk management, risk communication, and quantitative evaluation of spontaneous reports for drugs for human use.

G. Endocrinologic and Metabolic Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of endocrine and metabolic disorders.

H. Gastrointestinal Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of gastrointestinal diseases.

I. Medical Imaging Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

J. Nonprescription Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases.

K. Obstetrics, Reproductive and Urologic Drugs Advisory Committee (Formerly Bone, Reproductive and Urologic Drugs Advisory Committee)

Reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of obstetrics, gynecology, urology and related specialties.

L. Oncologic Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of cancer.

M. Peripheral and Central Nervous System Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of neurologic diseases.

N. Pharmaceutical Science and Clinical Pharmacology Advisory Committee

Reviews and evaluates scientific, clinical, and technical issues related to the safety and effectiveness of drug products for use in the treatment of a broad spectrum of human diseases.

O. Pharmacy Compounding Advisory Committee

Provides advice on scientific, technical, and medical issues concerning drug compounding.

P. Psychopharmacologic Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the practice of psychiatry and related fields.

Q. Pulmonary-Allergy Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

II. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations and a list of all nominees along with their current résumés. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for the committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner of Food and Drugs will select the nonvoting member to represent industry interests.

III. Application Procedure

Individuals may self-nominate and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. Contact information, a current curriculum vitae, and the name of the committee of interest should be sent to the FDA Advisory Committee Membership Nomination Portal (see **ADDRESSES**) within 30 days of publication of this document (see **DATES**). FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process.

FDA seeks to include the views of women, and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: July 10, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–14922 Filed 7–13–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0198]

Mark Moffett; Conviction Reversal; Final Order Withdrawing Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order, under the Federal Food, Drug, and Cosmetic Act (FD&C Act), withdrawing its January 25, 2023, order debarring Mark Moffett from providing services in any capacity to a person with an approved or pending drug product

application. FDA is issuing this order because the U.S. Court of Appeals for the First Circuit vacated Mr. Moffett's convictions and sentence.

DATES: The order is applicable July 14, 2023.

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Compliance and Enforcement, Office of Policy, Compliance, and Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240–402–8743, *debarments@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on January 25, 2023 (88 FR 4826), Mark Moffett was permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262). The debarment was based on FDA's finding, under section 306(a)(2)(B) of the FD&C Act (21 U.S.C. 335a(a)(2)(B)), that Mr. Moffett had been convicted of a felony under Federal law for conduct relating to the regulation of any drug product.

Mr. Moffett appealed the judgment of the District Court, and on November 18, 2022, the U.S. Court of Appeals for the First Circuit issued a judgment vacating Mr. Moffett's convictions as to all counts. On January 26, 2023, Mr. Moffett petitioned FDA for withdrawal of his debarment, citing section 306(d)(3)(B)(i) of the FD&C Act. Pursuant to section 306(d)(3)(B)(i) of the FD&C Act, ''If the conviction which served as the basis for the debarment of an individual under subsection (a)(2) . . . is reversed, the Secretary shall withdraw the order of debarment.''

FDA has concluded that because the U.S. Court of Appeals for the First Circuit vacated Mr. Moffett's convictions, the order of debarment must be withdrawn. Accordingly, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(d)(3)(B)(i) of the FD&C Act, under authority delegated to the Assistant Commissioner, is issuing this order withdrawing the order that permanently debarred Mark Moffett from providing services in any capacity to a person with an approved or pending drug product application.

Dated: July 10, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–14929 Filed 7–13–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Committee on Heritable Disorders in Newborns and Children

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with the Public Health Service Act and the Federal Advisory Committee Act, this notice announces that the Advisory Committee on Heritable Disorders in Newborns and Children (ACHDNC or Committee) scheduled a public meeting to be held Thursday, August 10, 2023, and Friday, August 11, 2023. Information about ACHDNC and the agenda for this meeting can be found on ACHDNC's website at *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html*.

DATES: Thursday, August 10, 2023, from 10:00 a.m. to 3:00 p.m. Eastern Time (ET) and Friday, August 11, 2023, from 10:00 a.m. to 2:00 p.m. ET.

ADDRESSES: This meeting will be held via webinar. While this meeting is open to the public, advance registration is required. Persons wishing to register to attend the meeting can do so via this link: *https://achdncmeetings.org/registration/*. Registration closes at 12:00 p.m. ET on August 9, 2023. Instructions on how to access the meeting via webcast will be provided upon registration.

FOR FURTHER INFORMATION CONTACT: Alaina Harris, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room 18W66, Rockville, Maryland 20857; 301–443–0721; or *ACHDNC@hrsa.gov*.

SUPPLEMENTARY INFORMATION: ACHDNC provides advice and recommendations to the Secretary of Health and Human Services (Secretary) on the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. ACHDNC reviews and reports regularly on newborn and childhood screening practices, recommends improvements in the national newborn and childhood screening programs, and fulfills requirements stated in the authorizing legislation. In addition, ACHDNC's recommendations regarding inclusion of additional conditions for screening on the Recommended Uniform Screening Panel (RUSP), following adoption by the Secretary, are evidence-informed preventive health services provided for in the comprehensive guidelines supported by HRSA pursuant to section 2713 of the Public Health Service Act (42 U.S.C. 300gg–13). Under this provision, non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance are required to provide insurance coverage without cost-sharing (a co-payment, co-insurance, or deductible) for preventive services for plan years (*i.e.,* policy years) beginning on or after the date that is 1 year from the Secretary's adoption of the condition for screening.

During the August 10–11, 2023, meeting, ACHDNC will hear from experts in the fields of public health, medicine, heritable disorders, rare disorders, and newborn screening. Agenda items include the following:

- A presentation on health equity and newborn screening;
- An update on the Duchenne muscular dystrophy condition nomination and a potential vote on whether to move it forward to full evidence-based review, which, depending on the strength of the evidence, could lead to a future recommendation to add this condition to the RUSP;
- A presentation, discussion, and vote on an ACHDNC expedited review process for resubmitted condition nomination packages; and
- A potential presentation and vote on whether to consider Krabbe disease through the ACHDNC expedited review process described above.

The agenda for this meeting includes a potential vote on whether to recommend a nominated condition (Duchenne muscular dystrophy) to full evidence-based review. In addition, as noted in the agenda items, the Committee may hold a vote on whether to recommend a nominated condition (Krabbe disease) be considered through the ACHDNC expedited review process described above. Both votes may lead to a recommendation to add or not add these conditions to the RUSP at a future time.

Agenda items are subject to change as priorities dictate. Information about the ACHDNC, including a roster of members and past meeting summaries, is also available on the ACHDNC website listed above.

Members of the public will have an opportunity to provide comments on any or all of the above agenda items. Public participants may request to

provide general oral comments and may submit written statements in advance of the scheduled meeting. Oral comments will be honored in the order they are requested and may be limited as time allows. Subject to change: members of the public registered to submit oral public comments are tentatively scheduled to provide their statements on Thursday, August 10, 2023. Requests to provide a written statement or make oral comments to ACHDNC must be submitted via the registration website by 12:00 p.m. ET on Wednesday, July 26, 2023. Written comments will be shared with the Committee, so that they have an opportunity to consider them prior to the meeting.

Individuals who need special assistance or another reasonable accommodation should notify Alaina Harris at the address and phone number listed above at least 10 business days prior to the meeting.

Amy P. McNulty,

Deputy Director, Executive Secretariat.

[FR Doc. 2023–14957 Filed 7–13–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; 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 Center for Advancing Translational Sciences Special Emphasis Panel; CTSA Collaborative and Innovative Acceleration Awards.

Date: September 27, 2023.

Time: 11:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Center for Advancing Translational Sciences, 6701 Democracy Boulevard, Room 1073, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: M. Lourdes Ponce, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1073, Bethesda, MD 20892, 301–435–0810, *lourdes.ponce@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: July 11, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–14956 Filed 7–13–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye 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: National Eye Institute Special Emphasis Panel; Pathway to Independence Award (K99).

Date: August 10, 2023.

Time: 12:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, 6700B Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Ashley Fortress, Ph.D., Designated Federal Official, Division of Extramural Activities, National Eye Institute, National Institutes of Health, 6700 B Rockledge Drive, Bethesda, MD 20817, (301) 451–2020, *ashley.fortress@nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: July 11, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–14975 Filed 7–13–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Eye Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Eye Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Eye Institute.

Date: July 31–August 1, 2023.

Time: July 31, 2023, 9:00 a.m. to 6:15 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Claude D. Pepper Building, 6C, Rooms A and B, 31 Center Drive Bethesda, MD 20892 (Hybrid Meeting).

Time: August 01, 2023, 9:15 a.m. to 1:30 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Claude D. Pepper Building, 6C, Rooms A and B, 31 Center Drive, Bethesda, MD 20892, (Hybrid Meeting).

Contact Person: David M Schneeweis, Ph.D., Acting Scientific Director, National Eye Institute, National Institutes of Health, Building 31, Room 6A22, Bethesda, MD 20892, 301–451–6763, *David.schneeweis@nih.gov.*

Information is also available on the Institute's/Center's home page: *https://www.nei.nih.gov/about/advisory-committees,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: July 11, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–14979 Filed 7–13–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

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 Advisory Neurological Disorders and Stroke Council.

Date: August 24, 2023.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications and Other Transactions applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Robert Finkelstein, Ph.D., Director of Extramural Research, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248, *finkelsr@ninds.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 10, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–14926 Filed 7–13–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 Deafness and Other Communication Disorders Special Emphasis Panel; Review of Opportunities for Collaborative Research at the NIH Clinical Center.

Date: August 14, 2023.

Time: 1 to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Andrea B. Kelly, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, 6001 Executive Boulevard, Room 8351, Bethesda, MD 20892, (301) 451–6339, *kellya2@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: July 3, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–14976 Filed 7–13–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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: Center for Scientific Review Special Emphasis Panel; Drug Discovery for Aging, Neuropsychiatric and Neurologic Disorders.

Date: July 24–25, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kathryn Partlow, Ph.D., Scientific Review Officer Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1016D, Bethesda, MD 20892, (301) 594–2138 *partlowkc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 11, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–14958 Filed 7–13–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Glioma, Multiple Sclerosis, Epilepsy, and Neuroinflammation.

Date: August 3, 2023.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Samuel C. Edwards, Ph.D., Chief, BDCN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Aging comorbidities.

Date: August 8, 2023.

Time: 1 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Roger Alan Bannister, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1010–D, Bethesda, MD 20892, (301) 435–1042, *bannisterra@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 11, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–14974 Filed 7–13–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2023–0251]

National Merchant Mariner Medical Advisory Committee; Vacancies

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard seeks applications to fill two member vacancies on the National Merchant Mariner Medical Advisory Committee (Committee). This Committee advises the Secretary of the Department of Homeland Security through the Commandant of the United States Coast Guard on matters relating to the medical certification determinations for the issuance of licenses, certification of registry, and merchant mariners' documents with respect to merchant mariners; medical standards and guidelines for the physical qualifications of operators of commercial vessels; medical examiner education; and medical research.

DATES: Completed applications should reach the U.S. Coast Guard on or before September 12, 2023.

ADDRESSES: Applications should include a cover letter expressing interest in an appointment to the National Merchant Mariner Medical Advisory Committee, a resume detailing the applicant's relevant experience for the position applied for (including the mariner reference number for the credentials held for professional mariner applicants), and a brief biography. Applications should be submitted via email with subject line ''Application for NMEDMAC'' to *pamela.j.moore@uscg.mil.*

FOR FURTHER INFORMATION CONTACT: Ms. Pamela Moore, Alternate Designated Federal Officer of the National Merchant Mariner Medical Advisory Committee; telephone 202–372–1361 or email at *pamela.j.moore@uscg.mil.*

SUPPLEMENTARY INFORMATION: The National Merchant Mariner Medical Advisory Committee is a Federal advisory committee. The Committee must operate under the provisions of the *Federal Advisory Committee Act,* (Pub. L. 117–286, 5 U.S.C. ch. 10), and 46 U.S.C. 15109.

The Committee was established on December 4, 2018, by section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018* (Pub. L. 115–282, 132 Stat. 4192), and is codified in 46 U.S.C. 15104.

The Committee is required to meet at least once a year in accordance with 46 U.S.C. 15109(a). We expect the Committee will hold meetings at least twice a year, at locations across the country selected by the U.S. Coast Guard.

Under provisions in 46 U.S.C. 15109(f)(6), if you are appointed as a member of the Committee, your membership term will expire on December 31st of the third full year after the effective date of your appointment. Under 46 U.S.C. 15109(f)(4), the Secretary of Homeland Security may require an individual to have passed an appropriate security background examination before appointment to the Committee.

All members serve at their own expense and receive no salary or other compensation from the Federal Government. Members may be reimbursed for travel and per diem in accordance with Federal Travel Regulations. If you are appointed as a member of the Committee, you will be required to sign a Non-Disclosure Agreement and a Gratuitous Services Agreement.

In this solicitation for Committee members, we will consider applications for two (2) positions:

- One shall be a health-care professional with particular expertise, knowledge, and experience regarding the medical examinations of merchant mariners or occupational medicine and represent health-care professionals.
- One shall be a professional mariner who has expertise, knowledge, and experience in occupational requirements for mariners and represent professional mariners.

Each member of the Committee must have particular expertise, knowledge, and experience on matters relating to (1) medical certification determinations for the issuance of licenses, certification of registry, and merchant mariners' documents with respect to merchant mariners; (2) medical standards and guidelines for the physical qualifications of operators of commercial vessels; (3) medical examiner education; and (4) medical research.

The members who will hold the two positions described above will be appointed to represent the interest of their respective groups and viewpoints and are not Special Government Employee as defined in 18 U.S.C. 202(a).

In order for the Department, to fully leverage broad-ranging experience and education, the National Merchant Mariner Medical Advisory Committee must be diverse with regard to professional and technical expertise. The Department is committed to pursuing opportunities, consistent with applicable law, to compose a committee that reflects the diversity of the Nation's people.

If you are interested in applying to become a member of the Committee, email your application to *pamela.j.moore@uscg.mil* as provided in the **ADDRESSES** section of this notice. Applications must include: (1) a cover letter expressing interest in an appointment to the National Merchant Mariner Medical Advisory Committee; (2) a resume detailing the applicant's relevant experience and (3) a brief biography of the applicant by the deadline in the **DATES** section of this notice. The U.S. Coast Guard will not consider incomplete or late applications.

Dated: June 27, 2023.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2023–14947 Filed 7–13–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7075–N–09]

60-Day Notice of Proposed Information Collection: 2024 Rental Housing Finance Survey; OMB Control No.: 2528–0276

AGENCY: Office of Policy Development and Research, 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:* September 12, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be submitted within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Anna Guido, 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: Anna Guido, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna Guido at *Anna.P.Guido@hud.gov,* telephone 202–402–5535 (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. Guido.

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: 2024 Rental Housing Finance Survey.

OMB Approval Number: 2528–0276.

Type of Request: Revision of a currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: The Rental Housing Finance Survey (RHFS) provides a measure of financial, mortgage, and property characteristics of rental housing properties in the United States. RHFS focuses on mortgage financing of rental housing properties, with emphasis on new originations for purchase-money mortgages and refinancing, and the characteristics of these new originations.

The RHFS will collect data on property values of residential structures, characteristics of residential structures, rental status and rental value of units within the residential structures, commercial use of space within residential structures, property management status, ownership status, a detailed assessment of mortgage financing, and benefits received from Federal, state, local, and non-governmental programs.

Many of the questions are the same or similar to those found on the 1995 Property Owners and Managers Survey, the rental housing portion of the 2001 Residential Finance Survey, and previous collections of the Rental Housing Finance Survey. This survey does not duplicate work done in other existent HUD surveys or studies that deal with rental units financing.

Policy analysts, program managers, budget analysts, and Congressional staff can use the survey's results to advise executive and legislative branches about the mortgage finance characteristics of the rental housing stock in the United States and the suitability of public policy initiatives. Academic researchers and private organizations will also utilize the data to facilitate their research and projects.

The Department of Housing and Urban Development (HUD) needs the RHFS data for the following two reasons:

1. This is the only source of information on the rental housing finance characteristics of rental properties.

2. HUD needs this information to gain a better understanding of the mortgage finance characteristics of the rental housing stock in the United States to evaluate, monitor, and design HUD programs.

Members of affected public: Owners and managers of rental properties.

Estimated number of respondents: 10,000.

Estimated time per response: 60 minutes.

Frequency of response: One time every three years

Estimated total annual burden hours: 10,000.

Estimated total annual cost: The only cost to respondents is that of their time.

Respondent's obligation: Voluntary.

Legal authority: This survey is conducted under Title 13, U.S.C., Section 8b and Title 12, U.S.C., Section 1701z–1 et seq.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
RHFS	10,000	1	10,000	1	10,000	$40.51	$405,100

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. 3507.

Todd M. Richardson,

General Deputy Assistant Secretary for Policy, Development and Research.

v

[FR Doc. 2023–14950 Filed 7–13–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7077–N–13]

Privacy Act of 1974; System of Records

AGENCY: Office of Multifamily Housing, Office of Housing, HUD.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Housing and Urban Development (HUD), Office of Multifamily Housing, is modifying system of records for the Tenant Rental Assistance Certification System (TRACS). The modification will clarify the authority for maintenance of the system; routine uses of records in the system; practices for retrieval, policies and practices for retention and disposal of records, system location, system manager(s), and administrative updates to comply with the OMB Circular A–108 SORN template format.

DATES: Comments will be accepted on or before August 14, 2023. This proposed action will be effective immediately upon publication. Routine uses will become effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number or by one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the instructions provided on that site to submit comments electronically.

Fax: 202–619–8365.

Email: www.privacy@hud.gov.

Mail: Attention: Privacy Office; LaDonne White, Chief Privacy Officer; Office of the Executive Secretariat; 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov.* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ladonne White; 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001; telephone number (202) 708–3054 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: This ''Notice of a Modified System of Records'' aligns the cited statutory authority with the broad purpose of the system, which has been and continues to be the collection of information for managing the Office of Multifamily Housing (MFH) Programs' rental assistance programs. With this change, the cited authority now includes express citations for: the Tenant Rental Assistance Certification System (TRACS) is being enhanced to comply with Presidential Executive Order 13985, released on January 20, 2021, ''Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,'' that requires system modifications to collect ethnic and race data to evaluate whether HUD's policies produce racially inequitable results when implemented and to ensure underserved communities are properly supported; HUD to share data match capability to enable the ability to establish eligibility for the Lifeline, EBB and other FTB programs for families which also participate in a HUD rental assistance program. HUD must develop an application protocol interface (API) with the Universal Service Administrative Company (USAC), designated by the Federal Communications Commission (FCC) as the federal administrator of the Universal Service Fund (USF or Fund) Lifeline Program (Lifeline), the Emergency Broadband Benefit (EBB) program and other Federal Telecommunications Benefit (FTB) programs. The USAC Routine Use #8 will enable FCC to use Lifeline eligibility criteria as specified by the Lifeline program establishing a matching program between HUD's TRACS and USAC's National Verifier. 47 CFR 54.409; and lastly the Housing Opportunity Through Modernization Act of 2016 (HOTMA) was enacted on July 29, 2016. The HOTMA Final Rule will revise HUD regulations to put sections of HOTMA into effect. These sections make sweeping changes to the United States Housing Act of 1937, particularly those affecting TRACS income calculation and reviews for assisted families, occupancy standards, and the financial records required for eligibility determinations. This includes: (a) Changes about income reviews for public housing and HUD's Section 8 programs. (b) Modifications to the continued occupancy standards of public housing residents whose income has grown above the threshold for initial eligibility, including setting maximum limits on the assets that families living in public housing and Section 8 assisted housing may have. (c) HUD must direct public housing agencies to require that all applicants for and recipients of assistance, through HUD's public housing or Section 8 programs, lets public housing agencies obtain financial records needed for eligibility determinations.

SYSTEM NAME AND NUMBER:

Tenant Rental Assistance Certification System (TRACS)—HUD/HOU–11.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The Department of Housing and Urban Development Headquarters, 451 Seventh Street SW, Washington, DC 20410–0001; and at HUD Field and Regional Office. TRACS is maintained at: the National Center for Critical Information Processing and Storage, 9325 Cypress Loop Road, Stennis, MS 39629.

SYSTEM MANAGER(S):

Lanier M. Hylton, Senior Program Manager, Office of Deputy Assistant Secretary for Multifamily Housing Programs, 451 7th Street SW, Room 6124, Washington, DC 20410, (202) 708–2495.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The United States Housing Act of 1937, Public Law 93–383, 88 Stat. 653, as amended, 42 U.S.C. 1437 *et seq.;* The Housing and Community Development Act of 1987, Public Law 100–242, 101

Stat. 1864, Section 165, 42 U.S.C § 3543, Public Law 97–35, 95 Stat. 408; The Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Public Law 100–628, 102 Stat. 3259, Section 904 as amended, 42 U.S.C. 3544.

PURPOSE(S) OF THE SYSTEM:

TRACS performs edit checks and accepts tenant and voucher request data needed to verify data quality, and interfaces with other HUD systems to validate tenant income, verify contract funding, obligate, and commit contract funds, provide information to other HUD divisions, and submit voucher requests for payment to minimize improper payments, and detect subsidy fraud, waste, and abuse in multifamily housing rental housing assistance programs.

TRACS automates and integrates critical modules for TRACS activities related to the Contract Business System, the Tenant Business System, and the Voucher/Payment Business System:

- Integrated Multifamily Access Exchange (iMAX) provides efficient access to authorized industry partners (*i.e.,* Contract Administrators (CAs) and Owner/Agents (OAs)) to transmit tenant data and voucher data files to HUD and other authorized partners.
- Integrated Contracts (iCon) supports rental assistance contracts repository. Contracts are added (*e.g.,* for the Rental Assistance Demonstration (RAD) and Paperwork Reduction Act (PRA) 811 demo programs) and maintained by internal MFH staff.
- Automated Renewal and Amendment Management Subsystem (ARAMS) Supports funding functions for contract renewals and amendments. Headquarters staff enter and update funding transactions which are then interfaced to Line of Credit Control System (LOCCS).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals receiving project-based rental housing assistance; property owner, management agent, and contract administrator who administers or receives subsidies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full Name, SSN, Date of Birth, Employment Status/History/Information, Address, Marital Status, Military Status or other information, Race/Ethnicity, Phone Number(s), Salary, Sex, Taxpayer ID, User ID, Name of head of household member, Name of all household members, Name of Owners/management agent, Tenant/owners/management agent, Identification number: Alien Registration Number and Taxpayer Identification Number (TIN), Spouse name, and financial transactions pertaining to the contracts.

RECORD SOURCE CATEGORIES:

Records in the system are obtained from owners/management agents/Housing Authorities and/or Contract administrators on behalf of the assisted tenants. The TRACS system and contained subsystems may collect data and information from the following other systems: Geocode Service Center (GSC), Line of Credit Control System (LOCCS), HUD Central Accounting and Program System (HUDCAPS), Integrated Real Estate Management System (iREMS), and Web Access Security System (WASS).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

(1) To contractors, grantees, experts, consultants, Federal agencies, and non-Federal entities, including, but not limited to, State and local governments and other research institutions or their parties, and entities and their agents with whom HUD has a contract, service agreement, grant, cooperative agreement, or other agreement for the purposes of statistical analysis and research in support of program operations, management, performance monitoring, evaluation, risk management, and policy development, to otherwise support the Department's mission, or for other research and statistical purposes not otherwise prohibited by law or regulation. Records under this routine use may not be used in whole or in part to make decisions that affect the rights, benefits, or privileges of specific individuals. The results of the matched information may not be disclosed in identifiable form.

(2) To Housing Authorities, (HAs) to verify the accuracy and completeness of tenant data used in determining eligibility and continued eligibility and the amount of housing assistance received.

(3) To Private Owners of assisted housing to verify the accuracy and completeness of applicant and tenant data used in determining eligibility and continued eligibility and the amount of assistance received.

(4) To HAs, owners, management agents and contract administrators to identify and resolve discrepancies in tenant data.

(5) To the Internal Revenue Service to report income using IRS Form 1099 and to disclose records to the Internal Revenue Service when HUD determines that the use of those records is relevant and necessary to report payments or discharge of indebtedness

(6) To Social Security Administration and Immigration and Naturalization Service to verify alien status and continued eligibility in HUD's rental assistance programs via Enterprise Income Verification (EIV).

(7) To the congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

(8) To the Universal Service Administrative Company (USAC), which is designated by the Federal Communications Commission (FCC) as the federal administrator of the Universal Service Fund (USF or Fund) Lifeline Program (Lifeline), the Emergency Broadband Benefit (EBB) program and other Federal Telecommunications Benefit (FTB) programs that utilizes Lifeline eligibility criteria as specified by the Lifeline program, 47 CFR 54.409. The purpose of this routine use is to establish eligibility for the Lifeline, EBB and other FTB programs for families which also participate in a HUD rental assistance program.

(9) To any federal, state, or local agency (*e.g.,* state agencies administering the state's unemployment compensation laws, Temporary Assistance to Needy Families, or Supplemental Nutrition Assistance Program agencies, U.S. Department of Health and Human Services, and U.S. Social Security Administration): To verify the accuracy and completeness of the data provided, to verify eligibility or continued eligibility in HUD's rental assistance programs, to identify and recover improper payments under the Payment Integrity Information Act of 2019, Public Law 116–117, and to aid in the identification of tenant errors, fraud, and abuse in assisted housing programs.

(10) To appropriate agencies, entities, and persons when: (1) HUD suspects or has confirmed that there has been a breach of the system of records; (2) HUD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HUD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(11) To another Federal agency or Federal entity, when HUD determines

that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to suspected or confirmed breach, or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(12) To contractors, experts, and consultants with whom HUD has a contract, service agreement, or another assignment when HUD provides system access to HUD contractors to develop, maintain and troubleshoot application issues to support the Department's programs needed to meet its mission. Upgrades and migrations to this TRACS system are needed to meet the changes in technology and improve system performance. This is a corollary purpose that is appropriate and necessary for the efficient conduct of government and in the best interest of both the individual and the public.

(13) To Federal agencies, non-Federal entities, their employees, and agents (including contractors, their agents or employees; employees or contractors of the agents or designated agents); or contractors, their employees or agents with whom HUD has a contract, service agreement, grant, cooperative agreement, or computer matching agreement for the purpose of: (1) detection, prevention, and recovery of improper payments; (2) detection and prevention of fraud, waste, and abuse in major Federal programs administered by a Federal agency or non-Federal entity; (3) detection of fraud, waste, and abuse by individuals in their operations and programs; (4) for the purpose of establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefits programs or recouping payments or delinquent debts under such Federal benefits programs. Records under this routine use may be disclosed only to the extent that the information shared is necessary and relevant to verify pre-award and prepayment requirements prior to the release of Federal funds or to prevent and recover improper payments for services rendered under programs of HUD or of those Federal agencies and non-Federal entities to which HUD provides information under this routine use.

(14) To Appropriate Federal, State, and Local Governments, or Persons when HUD discloses relevant information to protect the health or safety of individuals or data subjects. This is a corollary purpose that is appropriate and necessary for the efficient conduct of government and in the best interest of both the individual and the public. HUD OGC and Privacy Branch provide determination/authorization for any Health and Breach incidents disclosure prior to a HUD disclosure.

(15) To contractors, grantees, experts, consultants and their agents, or others performing or working under a contract, service, grant, cooperative agreement, or other agreement with HUD, when necessary to accomplish an agency function related to a system of records.

(16) To any component of the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when HUD determines that the use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where the Department of Justice or agency conducting the litigation has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

(17) To appropriate Federal, State, local, tribal, or other governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where HUD determines that the information would assist in the enforcement of civil or criminal laws and when such records, either alone or in conjunction with other information, indicate a violation or potential violation of law.

(18) To a court, magistrate, administrative tribunal, or arbitrator in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, mediation, or settlement negotiations, or in connection with criminal law proceedings; when HUD determines that use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where HUD has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic and paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Name, SSN, Home Address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

TRACS retention and disposal requirements are assessed at the module level:

(a) ARAMS module (Contract Database) retention instruction is Temporary: Delete data twenty-five years after the contract expiration date. Tenant Module retention (Extract of TRACS Tenant Data (HUD 50059 data)) instruction is Permanent: Voucher Module (Voucher Database) retention instruction is Temporary: Archive data to tape five (5) years after the last voucher date or any voucher from a contract that has been terminated five (5) years or longer. Delete data from the tape twenty-five (25) years after the last voucher date or any voucher from a contract that has been terminated twenty-five (25) years or longer. N1–207–06–2–Item 14 B a2(c).

(b) iMAX Module retention is Temporary: Destroy upon verification of successful creation of the final document or file or when no longer needed for business use, whichever is later. DAA–GRS–2017–0003–0002, which provides the legal authority to delete this information as required by law.

(c) TRACS User Guides and Manuals retention instruction is Temporary: Destroy or delete when superseded or obsolete. N1–207–06–2, item 14.D(e)

(d) iCon module (Contract Database) retention is Temporary: Delete data twenty-five years after the contract expiration date. Backup and Recovery of digital media will be destroyed or otherwise rendered irrecoverable per NIST SP 800–88 Revision 1 ''Guidelines for Media Sanitization'' N1–207–06–2–Item 14 B a2(b)

(e) Tenant Database (HUD 50059 data) TEMPORARY. Archive data to tape three (3) years after the certification effective date. NARA Job No. N1–207–06–2, item 14.B (a)

(f) Tenant Archives Database. Sub-set of data derived from Tenant Database. TEMPORARY. Delete data twenty-five (25) years after the tenant move-out date or twenty-five (25) years after the termination date. NARA Job No. 1–207–06–2, item 14.B(a)(1)

(g) System Documentation Data Administration Records GRS 3.1 Item 50 & 51

a. Item 50—Documentation necessary for preservation of permanent electronic records. Permanent. Transfer to the National Archives with the permanent electronic records to which the documentation relates. DAA–GRS–2013–0005–0002

b. Item 51—All documentation for temporary electronic records and documentation not necessary for the preservation of permanent records Temporarily. Destroy 5 years after the project/activity/transaction is completed or superseded, or the associated system is terminated, or the associated data is migrated to a successor system, but longer retention is authorized if required for business use. DAA–GRS–2013–0005–0034.

(h) System Development records. GRS 3.1 Item 10 & 11

a. Item 10—Infrastructure project records. Temporary. Destroy 5 years after the project is terminated, but longer retention is authorized if required for business use.

b. Item 11—System development records. Temporary. Destroy 5 years after the system is superseded by a new iteration, or is terminated, defunded, or no longer needed for agency/IT administrative purposes, but longer retention is authorized if required for business use. DAA–GRS2013–0005–00075.

(i) Systems and data security records GRS 3.2 Item 10

a. Item 10—Systems and data security records. Temporary. Destroy 1 year after the system is superseded by a new iteration or when no longer needed for agency/IT administrative purposes to ensure a continuity of security controls throughout the life of the system. DAA–GRS2013–0006–0001

(j) System Access Records GRS 3.2 Item 30 & 31

a. Item 30—Systems not requiring special accountability for access. Temporary. Destroy when business use ceases. DAA–GRS2013–0006–0003

b. Item 31—Systems requiring special accountability for access. Temporary. Destroy 6 years after the password is altered or the user account is terminated, but longer retention is authorized if required for business use. DAA–GRS–2013–0006–00047.

(k) Input and Output Files GRS 5.2 Item 20

a. Item 20—Intermediary records. Temporary. Destroy upon verification of successful creation of the final document or file or when no longer needed for business use, whichever is later. DAA–GRS–2017–0003–0002

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to TRACS is by password and user ID and is limited to authorized users. Role-based access levels or assignment roles are restricted to those with a need to know. When first gaining access to TRACS annually, all users must agree to the system's Rules of Behavior, which specify the handling of personal information and any physical records. Authorized users can download reports—the SSN is masked in both the system and reports during the download process. Access to facilities containing and storing physical copies of this data is controlled by security protocols designed to limit access to authorized individuals.

RECORD ACCESS PROCEDURES:

Individuals requesting records of themselves should address written inquiries to the Department of Housing Urban and Development 451 7th Street SW, Washington, DC 20410–0001. For verification, individuals should provide their full name, current address, and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

CONTESTING RECORD PROCEDURES:

The HUD rule for contesting the content of any record pertaining to the individual by the individual concerned is published in 24 CFR 16.8 or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals requesting notification of records of themselves should address written inquiries to the Department of Housing Urban Development, 451 7th Street SW, Washington, DC 20410–0001. For verification purposes, individuals should provide their full name, office or organization where assigned, if applicable, and current address and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None

HISTORY:

Docket No. FR–5921–N–13, 81 FR 56684, August 22, 2016.

LaDonne White,

Chief Privacy Officer, Office of Administration.

[FR Doc. 2023–14909 Filed 7–13–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7071–N–06]

60-Day Notice of Proposed Information Collection: Manufactured Home Construction and Safety Standards Act Reporting Requirements; OMB Control No.: 2502–0253

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, 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:* September 12, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be submitted within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function. 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: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. 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. Pollard.

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: Manufactured Home Construction and Safety Standards Act Reporting Requirements.

OMB Approval Number: 2502–0253.

OMB Expiration Date: January 31, 2024.

Type of Request: Revision of a currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: To carry out its responsibilities under the Manufactured Housing Construction and Safety Standards Act of 1974 (the Act), HUD issued the Federal Manufactured Home Construction and Safety Standards (the Standards), 24 CFR 3280. The Department has also issued the Manufactured Home Procedural and Enforcement Regulations (the Regulations), 24 CFR 3282, to enforce the Standards. OMB Collection 2502–0253 covers the majority of the information collection and recordkeeping requirements for the Standards and Regulations that support the programs administered by HUD's Office of Manufactured Housing Programs.

Respondents: Business or other for-profit; State, Local or Tribal Government; Individuals or Households.

Estimated Number of Respondents: 196.

Estimated Number of Responses: 197,326.

Frequency of Response: 1,007.

Average Hours per Response: 1.21.

Total Estimated Burden: 239,537.

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.

Jeffrey D. Little,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2023–14938 Filed 7–13–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

DEPARTMENT OF AGRICULTURE

[Docket No. FR–6271–N–02]

RIN 2506–AC55

Adoption of Energy Efficiency Standards for New Construction of HUD- and USDA-Financed Housing: Preliminary Determination and Solicitation of Comment; Extension of Comment Period

AGENCY: Department of Housing and Urban Development and Department of Agriculture.

ACTION: Notice of Preliminary Determination; extension of comment period.

SUMMARY: On May 18, 2023, the U.S. Department of Housing and Urban Development (HUD) and U.S. Department of Agriculture (USDA) published in the **Federal Register** a notice of preliminary determination entitled ''Adoption of Energy Efficiency Standards for New Construction of HUD- and USDA-Financed Housing: Preliminary Determination and of Comment,'' announcing the two agencies' joint preliminary determination, as required under section 481(d)(1) of the Energy Independence and Security Act of 2007 (EISA), that adoption of the 2021 IECC and ASHRAE 90.1–2019 code standards will not negatively affect the affordability and availability of housing for new construction of HUD and USDA housing covered by EISA and seeking public comment on the preliminary determination. The preliminary determination is the first step to ultimately requiring compliance with these standards in HUD and USDA housing covered by EISA. The notice provided for a 60-day comment period, which would have ended July 17, 2023. HUD has determined that a 21-day extension of the comment period, until August 7, 2023, is appropriate. This extension will allow interested persons additional time to analyze the preliminary determination and prepare their comments.

DATES: The comment period for the preliminary determination published on May 18, 2023, at 88 FR 31773, is extended. Comments should be received on or before August 7, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified

above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (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 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 all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: HUD: Michael Freedberg, Office of Environment and Energy, Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410; telephone number 202–402–4366 (this is not a toll-free number). USDA: Meghan Walsh, Rural Housing Service, Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250; telephone number (202) 573–3692 (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 *www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: The Energy Independence and Security Act of 2007 (EISA) (Pub. L. 110–140) establishes procedures for the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Agriculture (USDA) to adopt periodic revisions to the International Energy Conservation Code (IECC) and to ANSI/ASHRAE/IES Standard 90.1: Energy Standard for Buildings, Except Low-Rise Residential Buildings (ASHRAE 90.1), subject to a determination by HUD and USDA that the revised codes do not negatively affect the availability or affordability of new construction of single and multifamily housing covered by EISA. On May 18, 2023, at 88 FR 31773, HUD and USDA published a notice of preliminary determination entitled ''Adoption of Energy Efficiency Standards for New Construction of HUD- and USDA-Financed Housing: Preliminary Determination and Solicitation of Comment,'' announcing the two agencies' joint preliminary determination that adoption of the 2021 IECC and ASHRAE 90.1–2019 code standards will not negatively affect the affordability and availability of housing for new construction of HUD and USDA housing covered by EISA and seeking public comment on the preliminary determination. In making the preliminary determination, the first step to ultimately requiring compliance with these standards in HUD and USDA housing covered by EISA, the notice relies on several studies that show that these codes are cost effective in that the incremental cost of the additional efficiency measures pays for themselves with energy cost savings on a life-cycle basis.

While the preliminary determination provided a 60-day comment period, HUD has received feedback from several commenters requesting additional time to review and provide comments on this rule. Therefore, HUD is extending the deadline for comments for an additional 21 days to August 7, 2023.

Aaron Santa Anna,

Associate General Counsel for Legislation and Regulations, HUD.

Cathy Glover,

Acting Administrator, Rural Housing Service, Rural Development, USDA.

[FR Doc. 2023–15014 Filed 7–12–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7077–N–14]

Privacy Act of 1974; System of Records

AGENCY: Office of Housing, Single Family Acquired Assets Management Branch, HUD.

ACTION: Notice of a modified system of records.

SUMMARY: Under the provision of the rivacy Act of 1974, as amended, the Department of Housing and Urban Development (HUD), Office of Single Family Acquired Assets Management Branch, is modifying system of records titled '' Single Family Acquired Assets Management System (SAMS)''. The Single Family Acquired Assets Management System (SAMS) handles Management and accounting functions for HUD's inventory of insured owned single-family properties for sale, or maintained as, Real Estate Owned (REO) properties. This system of records is being revised to make clarifying changes within: System Location, System Manager, Record Authority for Maintenance of the System, Purpose of the System, Categories of Individuals Covered by the System, Categories of Records in the System, Records Source Categories, Routine Uses of Records Maintained in the System, Retrieval of Records, and Retention and Disposal of Records, and make general updates to the remaining sections to accurately reflect management of the system of records in accordance with the Office of Management and Budget (OMB) Circular A108, Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.

DATES: Comments will be accepted on or before August 14, 2023. This proposed action will be effective immediately upon publication. Routine uses will become effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number or by one of the following methods:

Federal e-Rulemaking Portal: https://www.regulations.gov. Follow the instructions provided on that site to submit comments electronically.

Fax: 202–619–8365.

Email: www.privacy@hud.gov.

Mail: Attention: Privacy Office; LaDonne White, Chief Privacy Officer; Office of the Executive Secretariat; 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov.* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: LaDonne White; 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001; telephone number (202) 708–3054 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/*

consumers/guides/telecommunications-relay-service-trs.

SUPPLEMENTARY INFORMATION: HUD, Single Family Acquired Assets Management Branch, maintains the SAMS system. HUD is publishing this revised notice to reflect new and modified routine uses, and new source protocols implemented to support HUD's move to cloud services. Additionally, administrative updates are being added to the remaining SORN sections to reflect the system in its current state. The change to the system of records will have no undue impact on the privacy of individuals and updates are consistent with the records collected.

The following are updates since the previous SORN publication:

Security Classification: Added systems of record classification status.

System Location: Replaced former data center location in West Virginia with new locations in Virginia, Mississippi, and Washington, DC.

System Manager: Identified new system manager expected to operate under this system of records.

Authority for Maintenance of the System: Updated with existing authorities that permit the maintenance of the systems records by clarifying citations, correcting errors, and including relevant citations to the Code of Federal Register. Statutes and regulations are listed below.

Purpose of the System: Updated to make clarifying changes to the system's purpose.

Categories of Individuals Covered by the System: Reorganized this section to group and clarify individuals according to their program responsibilities.

Categories of Records in the System: Updated this section to clarify the records collected.

Records Source Categories: Updated with record sources for internal and external systems. With source updates to: (1) the HUD disbursements, collections and the Name and Address Identification Numbers (NAIDs) transmittal's function were transferred from HUD's Single Family Acquired Assets Management Division—SAMS to the Assets Disposition Management Division—Asset Disposition and Management System (ADAMS). Financial transaction and documents are now submitted and created in ADAMS, and then sent to SAMS to capture and process core financial transactions, and (2) the SAMS Web cloud-based solution was implemented for uploading, transmitting, storing forms and PDF attachments for program automated reporting.

Routine Use of Records in System: HUD will make new and modified disclosures from this system of records to authorized agencies and participants as described below. The disclosures will enable HUD to resolve disputes, implement remedial actions, test new technology, work with researchers, and respond to investigation actions. To keep track of legal, reporting, hearing, and procedural processes related to these documents, HUD may maintain summaries or details on these disclosures in this system. HUD's responsiveness to records maintained by this system of records makes these disclosures appropriate.

New Routine Uses:

Routine Use (1) was added to help resolve disputes between HUD and persons making FOIA requests; Routine Use (2) was added to help with congressional inquiries made at the request of that individual; Routine Use (3) was added to let researchers access HUD data as needed; Routine Use (4) was added to allow support from contractors, and others when necessary to accomplish a HUD mission function; Routine Use (6) was added to allow for disclosures made to Treasury Bureau of Fiscal Service (BFS) and others for collections and payments services; Routine Use (9), was added to allow testing new to enhance program technology and services; Routine Uses (10) and (11) were added to meet the requirements of OMB M–17–12; Routine Use (12) was added to help enforce civil or criminal laws; and Routine Uses (13) and (14) were added to let HUD litigate as needed and receive effective representation by its representatives (such as the Department of Justice).

Updated Routine Use:

Routine Use (5) was modified to clarify the purpose for reporting 1099 miscellaneous form to Treasury IRS.

Records Retention and Disposition: Updated this section to describe current retention and disposal requirements in a simplified format. Added existing NARA approved general records schedules the agency generally uses to dispose of program related records.

Policy and Practice for Retrieval of Records: Updated to include minor changes and format. Removed the FHA Case Number since it was not a personal identifier, and the property address, purchaser name since these records were not used as a retrieval practice.

SYSTEM NAME AND NUMBER:

Single Family Acquired Asset Management System HUD/HOU–01.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

National Center for Critical Information Processing and Storage, 9325 Cypress Loop Road, Stennis, MS 39629; 250 Burlington Drive, Clarksville, VA 23927; and at the HUD Headquarters, 451Seventh Street SW, Washington, DC 20410–0001.

SYSTEM MANAGER(S):

Kirk Mensah, Director, Single Family Assets Management Division, 451 Seventh Street SW, Room 6242, Washington, DC 20410, telephone number (202) 402–3092.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Housing Act, Public Law 73–479, 48 Stat. 1246, 12 U.S.C. 1701 *et seq.*, Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, Public Law 104–204, 110 Stat. 2894, 12 U.S.C. 1715z–11a, The Housing and Community Development Act of 1987, Public Law 100–242, title I, § 165, 101 Stat. 1864, The Housing Community Development Act of 1987, 42 U.S.C. 3543(a), The Debt Collection Act of 1982, Public Law 97–365, Title 24 Code of Federal Regulations, Part 291, Disposition of HUD-Acquired and Owned Single-Family Property.

PURPOSE(S) OF THE SYSTEM:

SAMS is a management and accounting system for HUD Federal Housing Administration (FHA) insured owned single-family properties for sale, or maintained as, Real Estate Owned (REO) custodial home, that HUD acquires when a lender forecloses on a property and conveys the title to HUD. SAMS supports HUD staff at Headquarters, Homeownership Centers (HOCs), and HUD's Management and Marketing (M&M) contractors to track single-family properties from their acquisition by HUD through the steps necessary to resell the properties. SAMS captures and processes all financial transactions related to repairing, leasing, listing, and selling the properties, including payments for contractor services, taxes, and homeowner association and condominium fees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Purchasers, successful bidders of Federal Housing Administration (FHA) Single-Family owned homes; Mortgagors, including Business and Homebuyers of Real Estate Owned properties (REO); Borrowers, who have defaulted on a HUD loan; HUD Single Family Property Disposition Program Management and Marketing (M&M)

contractors; and HUD employees and contractors involved with REO property functions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full Name, Social Security Number (SSN), Address (Work and Personal), Date of Birth, Employer Identification Number, we Email Address (Work and Personal), Employee Identification Number; Financial Information (bank account numbers, lender ids), Legal Documents (foreclosure, deed-in-lieu agreements), Name and Address Identification Number (NAID), Phone Number (Work and Personal), Race/Ethnicity, Salary (income certification), Taxpayer ID including taxing authority profile, Telephone number, Fax number, and User Ids.

RECORD SOURCE CATEGORIES:

On-line data entry by HUD staff via SAMS Web and exchanged from sources (*i.e.,* purchasers, brokers, homeowner association, appraisers, contractors) by these systems: Office of Single-Family Housing; Computerized Homes Underwriting Management System (CHUMS), Lender Electronic Assessment Portal (LEAP). Housing Office of Finance and Budget; Single Family Insurance Subsystem (SFIS–CLAIMS), Home Equity Reverse Mortgage Information Technology (HERMIT), Electronic Data Interface (EDI); and Single-Family Asset Management; Asset Disposition and Management System (ADAMS).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

(1) To the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures, and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS's offering of mediation service to resolve disputes between persons making FOIA requests and administrative agencies.

(2) To a congressional office from the record of an individual, in response to an inquiry from the congressional office made at the request of that individual.

(3) To contractors, grantees, experts, consultants, Federal agencies, and non-Federal entities, including, but not limited to, State and local governments and other research institutions or their parties, and entities and their agents with whom HUD has a contract, service agreement, grant, cooperative agreement, or other agreement, for the purposes of statistical analysis and research in support of program operations, management, performance monitoring, evaluation, risk management, and policy development, or to otherwise support the Department's mission. Records under this routine use may not be used in whole or in part to make decisions that affect the rights, benefits, or privileges of specific individuals. The results of the matched information may not be disclosed in identifiable form.

(4) To contractors, grantees, experts, consultants and their agents, or others performing or working under a contract, service, grant, cooperative agreement, or other agreement with HUD, when necessary to accomplish an agency function related to a system of records. Disclosure requirements are limited to only those data elements considered relevant to accomplishing an agency function.

(5) To Department of Treasury Internal Revenue Services (IRS) for the purpose of reporting 1099 miscellaneous form, for tax reporting purpose, to all that have purchased Real Estate Owned property from HUD in the prior year.

(6) To the Department of Treasury Bureau of Fiscal Service, their agents, entities and banking institutions (not related to taxes) that provide payment and collection services for HUD: (1) Administrative (Payment Services): Issuing payments and other remittance services for payments certified to authorized contractors, vendors, tax authorities, and others authorized on HUD's behalf. (2) Cross-Servicing (Collection Services): Pursuing financial transactions for payments owed to HUD from buyers, mortgagors, settlement agents, closing agents, lender servicers and other authorized collections due.

(7) To Management and Marketing contractors and their affiliates for processing, inspecting REO properties, and marketing the sale of HUD REO Homes.

(8) To Financial Control Contractors for processing data input for SAMS system that is written in proprietary code.

(9) To contractors, experts and consultants with whom HUD has a contract, service agreement, or other assignment of the Department, when necessary to utilize relevant data for the purpose of testing new technology and systems designed to enhance program operations and performance.

(10) To appropriate agencies, entities, and persons when: (1) HUD suspects or has confirmed that there has been a breach of the system of records; (2) HUD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HUD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(11) To another Federal agency or Federal entity, when HUD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(12) To appropriate Federal, state, local, tribal, or other governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where HUD determines that the information would assist in the enforcement of civil or criminal laws, when such records, either alone or in conjunction with other information, indicate a violation or potential violation of law.

(13) To a court, magistrate, administrative tribunal, or arbitrator in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, mediation, or settlement negotiations; or in connection with criminal law proceedings when HUD determines that use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where HUD has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

(14) To any component of the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body when HUD determines that the use of such records is relevant and necessary

to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where the Department of Justice or agency conducting the litigation has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and electronic.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by Social Security Number and Name.

POLICIES AND PRACTICIES FOR RETENTION AND DISPOSAL OF RECORDS:

General records that are listed are maintained for periods of 1–6 years unless a longer retention period is deemed necessary for investigative purposes or business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Administrative Controls: Backups Secured Off-Site; Methods to Ensure Only Authorized Personnel Access to PII; Periodic Security Audits; Regular Monitoring of Users' Security Practices; FIPS 199 determination. HUD access is safeguarded according to rules and policies, including all applicable automated processes according to security and privacy safeguard policies. HUD has imposed strict controls to minimize the risk of compromising the information being stored. Primary and recovery facilities control physical access to information system output devices to prevent unauthorized individuals from obtaining the output. Back-ups are secured off-site, periodic security audits are performed, and regular monitoring of user's security practices are enforced.

Technical Controls: Firewall; Role-Based Access Controls; Virtual Private Network (VPN); Least Privilege Access; User Identification and Password; and PIV Card. The system incorporates role-based access controls, least privilege access controls, and virtual private access controls. Access is limited to authorized personnel and requires a password and user ID before system access is granted. Records are maintained in a secured computer network behind HUD's firewall. The system sends and receives data through HUD Security File Transfer Protocol (SFTP), which encrypts the data. SSNs are encrypted during transmission to protect session information.

Physical Controls: Key cards; Security Guards; and Identification badges. Secure physical methods are used to ensure only authorized users have access to PII or HUD and its approved facilities. Access is controlled by key card, controlled access, security guards, and identification badges. Periodic security audits, regular monitoring of system users' behavior is conducted; Primary and recovery facilities control physical access to information system output devices to prevent unauthorized individuals from obtaining the output. Hard copies are stored in locked file cabinets in secured rooms with restricted access.

RECORD ACCESS PROCEDURES:

Individuals requesting records of themselves should address written inquiries to the Department of Housing Urban and Development, 451 7th Street SW Washington, DC 20410–0001. For verification, individuals should provide their full name, current address, and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

CONTESTING RECORD PROCEDURES:

The HUD rule for contesting the content of any record pertaining to the individual by the individual concerned is published in 24 CFR 16.8 or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals requesting notification of records of themselves should address written inquiries to the Department of Housing Urban Development, 451 7th Street SW, Washington, DC 20410–0001. For verification purposes, individuals should provide their full name, office or organization where assigned, if applicable, and current address and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Docket No. 71 FR 35443 (June 20, 2006), 79 FR 10825 (February 26, 2014).

LaDonne White,

Chief Privacy Officer, Office of Administration.

[FR Doc. 2023–14907 Filed 7–13–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–41]

30-Day Notice of Proposed Information Collection: Public Housing Capital Fund Amendments to the Annual Contributions Contract; OMB Control No.: 2577–NEW

AGENCY: Office of Policy Development and Research, Chief Data Officer, 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 an additional 30 days of public comment.

DATES: *Comments Due Date:* August 14, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. 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. Pollard.

SUPPLEMENTARY INFORMATION: The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on May 3, 2023 at 87 FR 27525.

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.

(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.

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.

Colette Pollard,

Chief Data Officer, Department Reports Management Officer, Office of Policy Development and Research.

[FR Doc. 2023–14970 Filed 7–13–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2023–N057; FF09E41000–234–FXES111609C0000; OMB Control Number 1018–0177]

Agency Information Collection Activities; Submission to the Office of Management and Budget; Policy Regarding Voluntary Prelisting Conservation Actions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew, without change, an information collection.

DATES: Interested persons are invited to submit comments on or before August 14, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of publication of this notice at *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. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference ''1018–0177'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access

telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 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.

On April 3, 2023, we published in the **Federal Register** (88 FR 19663) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on June 2, 2023. In an effort to increase public awareness of, and participation in, our public commenting processes associated with information collection requests, the Service also published the **Federal Register** *notice* on *Regulations.gov* (Docket No. FWS–HQ–ES–2023–0050) to provide the public with an additional method to submit comments (in addition to the typical *Info_Coll@fws.gov* email and U.S. mail submission methods). We received the following comments in response to that notice:

Comment 1: Email comment from B. Ker received April 3, 2023. The commenter did not address the information collection requirements.

Agency Response to Comment 1: No response is required.

Comment 2: Electronic comment received via *Regulations.gov* (FWS–HQ–ES–2023–0050–0002) from Richard Spotts on June 2, 2023. The commenter stated that voluntary conservation efforts were important but should not supersede or weaken FWS statutory and regulatory requirements. The commenter also stated that bolder conservation actions are urgently needed but did not address the information collection requirements.

Agency Response to Comment 2: While we agree that voluntary conservation actions should not weaken our statutory and regulatory requirements, the comment does not directly respond to the need for the information collection or our estimate of burden hours. Therefore, we took no action in response to this comment.

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 that your entire comment—including your personal identifying information—may be 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 Service is charged with implementing the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). The goal of the Act is to provide a means to conserve the ecosystems upon which listed species depend and a program for listed species conservation. Through our Candidate Conservation program, we encourage the public to take conservation actions for species prior to them being listed under the Act. Doing so may result in precluding the need to list a species, may result in listing a species as threatened instead of endangered, or, if a species becomes listed, may provide the basis for its recovery and eventual removal from the protections of the Act.

This policy provides incentives to landowners, government agencies, and others to carry out voluntary conservation actions for unlisted species. It allows the use of any benefits to the species from voluntary conservation actions undertaken prior to listing under the Act—by the person who undertook such actions or by third parties—to mitigate or offset the detrimental effects of other actions undertaken after listing. The policy requires participating States to track the voluntary conservation actions and provide this information to us on an annual basis. We require this information in order to provide the entities that have taken the conservation actions with proper credit that can later be used to mitigate for any detrimental actions they take after the species is listed.

We plan to collect the following information:

- Description of the prelisting conservation action being taken.
- Location of the action (does not include a specific address).
- Name of the entity taking the action and their contact information (email address only).
- Frequency of the action (ongoing for X years, or one-time implementation) and an indication if the action is included in a State Wildlife Action Plan.
- Any transfer to a third party of the mitigation or compensatory measure rights.

Each State that chooses to participate will collect this information from landowners, businesses and organizations, and Tribal, Federal, and local governments that wish to receive credit for voluntary prelisting conservation actions. States may collect this information via an Access database, Excel spreadsheet, or other database of their choosing and submit the information to the Fish and Wildlife Service (via email) annually. States will use this information to calculate the number of credits that the entity taking the conservation action will receive and will keep track of the credits and notify the entity of how much credit they have earned. The States will report the number of credits to the Service, and we will determine how many credits are needed by the entity to mitigate or offset the detrimental effects of other actions they take after the species is listed (assuming it is listed).

Additionally, on February 9, 2023, the Service published a proposed rule (RIN 1018–BF99; 88 FR 8380) to clarify the appropriate use of enhancement of survival permits and incidental take permits; clarify our authority to issue these permits for non-listed species without also including a listed species; simplify the requirements for enhancement of survival permits by combining safe harbor agreements and candidate conservation agreements with assurances into one agreement type, and include portions of our five-point policies for safe harbor agreements,

candidate conservation agreements with assurances, and habitat conservation plans in the regulations to reduce uncertainty. We also propose to make technical and administrative revisions to the regulations.

The goal of the rule is to reduce the time it takes for applicants to prepare and develop the required supporting documents, thus accelerating conservation implementation. The proposed regulatory changes are intended to reduce costs and time associated with negotiating and developing the required documents to support the applications. We anticipate that these improvements will encourage more individuals and companies to engage in these voluntary programs, thereby generating greater conservation results overall.

When the Service finalizes this rule, anticipated in late 2023, candidate conservation agreements with assurances (CCAAs) and safe harbor agreements will no longer be in place, and will be combined into one agreement type—conservation benefit agreements (CBAs). We will update the Policy Regarding Voluntary Prelisting Conservation Actions to replace all references to CCAAs with references to CBAs (for non-listed species). We do not anticipate this update to the policy to impact currently approved information collections.

Title of Collection: Policy Regarding Voluntary Prelisting Conservation Actions.

OMB Control Number: 1018–0177.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for new submissions, ongoing for recordkeeping requirements, and annually for reporting requirements.

Total Estimated Annual Nonhour Burden Cost: None.

Information collection requirement	Annual number of respondents	Average number of responses each	Annual number of responses	Average completion time per response (hours)	Estimated annual burden hours *
State-Developed Voluntary Conservation Action Program	1	1	1	320	320
Development of Conservation Strategy	1	1	1	200	200
Amendments to Conservation Strategy	1	1	1	16	16
Credit Agreement/Transfer of Credits	3	1	3	80	240
Annual Reports	3	1	3	20	60
State Recordkeeping Requirements	3	1	3	240	720
State Reports—Voluntary Prelisting Conservation Actions Taken Under Program	3	1	3	.25	1
Site-Level Agreements	1	1	1	100	100
Formal Agreements	1	1	1	4	4
Monitoring Reports	3	1	3	24	72
Site-Level Reports	3	1	3	24	72
Management Plans	1	1	1	120	120
Totals	24	.....	24	.....	1,925

* Rounded.

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.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2023–14943 Filed 7–13–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[234A2100DD/AAKC001030/A0A501010.999900]

Indian Gaming; Approval of Tribal-State Class III Gaming Compacts in the State of California (Federated Indians of Graton Rancheria, California & State of California)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Tribal-State Gaming Compact for Regulation of Class III Gaming between the Federated Indians of Graton Rancheria, California and State of California (Compact) governing class III gaming for the Federated Indians of Graton Rancheria (Tribe) in the State of California (State).

DATES: The compact takes effect on July 14, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2710 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Compact permits the Tribe to conduct class III gaming permitted in the State, including gaming devices, any banking or percentage card games, any devices authorized under state law to the California State Lottery, and off-track wagering on horse races. The Tribe is permitted to operate two gaming facilities on the Tribe's Indian lands, provided one of the gaming facilities has a primary purpose other

than gaming and operates no more than 50 gaming devices. The Compact term is for 25 years from the effective date. The Compact is approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023–14894 Filed 7–13–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS# 36173; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before July 1, 2023, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by July 31, 2023.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before July 1, 2023. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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. Nominations submitted by State or Tribal Historic Preservation Officers

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

COLORADO

Costilla County

''Sierras y Colores'' Mural, 318 Main St., San Luis, SG100009205

LOUISIANA

Lafayette Parish

Mills, Kennedy, and Hopkins Additions, Generally bounded by RR tracks, West 2nd, West Congress, and South St. Antoine Sts., Lafayette, SG100009214

Camp Claiborne Regimental Chapel, 710 Jefferson Blvd. Lafayette, SG100009215

Orleans Parish

Lincoln Beach, 13835 and 14000 Hayne Blvd., New Orleans, SG100009216

MARYLAND

Baltimore County

Glenn L. Martin Company Plant No. 2, 2800 Eastern Blvd., Middle River, SG100009218

MINNESOTA

Redwood County

Lower Sioux Agency (Boundary Increase), Address Restricted, Sherman Township vicinity, BC100009222

NEBRASKA

Douglas County

Leavenworth Park Commercial Historic District, (Streetcar-Era Commercial Development in Omaha, Nebraska MPS), 3114–3120 St Mary's Ave. and 3105–3512 Leavenworth St., Omaha, MP100009208

OHIO

Montgomery County

St. Paul Evangelical Lutheran Church and Parish Hall, 239 Wayne Ave., Dayton, SG100009223

TEXAS

Gregg County

Longview National Bank, 213 North Fredonia St., Longview, SG100009217

UTAH

Washington County

Sugarloaf Hillside Sign, Red Hills Pkwy., St. George, SG100009209

VIRGINIA

Loudoun County

Philomont Historic District, Jct. of VA 630 (JEB Stuart Rd.) and VA734 (Snickersville Tpk.), Philomont, SG100009206

WYOMING

Sweetwater County

Downtown Rock Springs Historic District (Boundary Increase), A portion of the southwest side of K St. northeast to its intersection with Pilot Butte Ave., then northeast along both sides of Pilot Butte Ave. to Elias Ave., Rock Springs vicinity, BC100009220

Additional documentation has been received for the following resources:

MINNESOTA

Redwood County

Lower Sioux Agency (Additional Documentation), Address Restricted, Sherman Township vicinity, AD70000308

OHIO

Hamilton County

Stowe, Harriet Beecher, House (Additional Documentation), 2950 Gilbert Ave., Cincinnati, AD70000497

TENNESSEE

Shelby County

Rayner, Eli, House (Additional Documentation), 1020 Rayner St., Memphis, AD77001292

Nominations submitted by Federal Preservation Officers:

The State Historic Preservation Officer reviewed the following nominations and responded to the Federal Preservation Officer within 45 days of receipt of the nominations and supports listing the properties in the National Register of Historic Places.

CALIFORNIA

Inyo County

Patsiata Tübiji Nüümü-na Awaedu Ananisudüheina (Patsiata Historic District), Address Restricted, Lone Pine vicinity, SG100009210

MONTANA

Beaverhead County

Wise River Ranger Station, Beaverhead-Deerlodge NF, Wise River Ranger District, Wise River vicinity, SG100009207

Authority: Section 60.13 of 36 CFR part 60.

Dated: July 6, 2023.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2023–14961 Filed 7–13–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Prohibited Transaction Class Exemption 1985–68 To Permit Employee Benefit Plans To Invest in Customer Notes of Employers

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-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 August 14, 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) 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; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) 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: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This class exemption, which was granted on April 3, 1985, and replaced Prohibited Transaction Exemption 79–9, describes the conditions under which a plan is permitted to acquire customer notes accepted by an employer of employees covered by the plan in the ordinary course of the employer's business activity and thus be exempt from the prohibited transaction restrictions, provided that the conditions of the exemption are met. The class exemption covers sales as well as contributions of customer notes by an employer to its plan. The customer notes must have been accepted by the employer in its primary business activity as the seller of tangible personal property that is being financed by the notes, so that the exemption does not apply to notes of an employer's affiliate. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 8, 2023 (88 FR 8317).

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–EBSA.

Title of Collection: Prohibited Transaction Class Exemption 1985–68 to Permit Employee Benefit Plans to Invest in Customer Notes of Employers.

OMB Control Number: 1210–0094.

Affected Public: Private Sector—Businesses or other for-profits; Not-for-profit institutions.

Total Estimated Number of Respondents: 1.

Total Estimated Number of Responses: 1.

Total Estimated Annual Time Burden: 1 hour.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2023–14908 Filed 7–13–23; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 23–072]

Name of Information Collection: Contractor and Subcontractor Compensation Plans

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by August 14, 2023.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 757–864–7998, or *b.edwards-bodmer@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA contracts and subcontracts over $500,000 may require submission of a total compensation plan explaining proposed salaries, wages, and fringe benefits.

II. Methods of Collection

NASA uses electronic methods to collect information from collection respondents.

III. Data

Title: Contractor and Subcontractor Compensation Plans.

OMB Number: 2700–0077.

Type of Review: Reinstatement.

Affected Public: Individuals.

Estimated Annual Number of Activities: 371.

Estimated Number of Respondents per Activity: 1.

Annual Responses: 371.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 742.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

William Edwards-Bodmer,

NASA PRA Clearance Officer.

[FR Doc. 2023–14898 Filed 7–13–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

47th Meeting of the National Museum and Library Services Board; Correction

AGENCY: Institute of Museum and Library Services (IMLS), National Foundation of the Arts and the Humanities (NFAH).

ACTION: Notice; correction.

SUMMARY: IMLS published a document in the **Federal Register** of June 26, 2023, concerning notice of the 47th National Museum and Library Services Board meeting on July 18th, 2023. Since then, the agency has updated its agenda.

FOR FURTHER INFORMATION CONTACT: Katherine Maas, Chief of Staff and Alternate Designated Federal Officer, (202) 653–4798; *kmaas@imls.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of June 26, 2023, in FR Doc. 2023–13421, on page 41421, at the bottom of the third column, please adjust the agenda to read:

I. Call to Order
II. Approval of Minutes of the 46th Meeting
III. Director's Welcome and Update
IV. Program Overview—Library Grants to State Program
V. IMLS 250—Preparing for the Upcoming 250th Anniversary of the United States
VI. Advancing Information Literacy
VII. National Medals for Museum and Library Services Program
VIII. Adjourn Meeting

Dated: July 11, 2023.

Brianna Ingram,

Paralegal Specialist.

[FR Doc. 2023–14978 Filed 7–13–23; 8:45 am]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of July 17, 24, 31, August 7, 14, 21, 2023. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of July 17, 2023

There are no meetings scheduled for the week of July 17, 2023.

Week of July 24, 2023—Tentative

There are no meetings scheduled for the week of July 24, 2023.

Week of July 31, 2023—Tentative

There are no meetings scheduled for the week of July 31, 2023.

Week of August 7, 2023—Tentative

There are no meetings scheduled for the week of August 7, 2023.

Week of August 14, 2023—Tentative

There are no meetings scheduled for the week of August 14, 2023.

Week of August 21, 2023—Tentative

There are no meetings scheduled for the week of August 21, 2023.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: July 12, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023–15092 Filed 7–12–23; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97870; File No. SR–NASDAQ–2023–018]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NOM Options 3 Rules

July 10, 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 June 27, 2023, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the 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 proposes to amend The Nasdaq Options Market LLC (''NOM'') Rules at Options 3, Options Trading Rules, at: Section 4 Entry and Display of Quotes; Section 5, Entry and Display of Orders; Section 7, Types of Orders and Order and Quote Protocols; and Section 15, Risk Protections. The Exchange also

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposes to amend Options 5, Section 4, Order Routing.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/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

NOM proposes to amend Options 3, Options Trading Rules, at: Section 4 Entry and Display of Quotes; Section 5, Entry and Display of Orders; Section 7, Types of Orders and Order and Quote Protocols; and Section 15, Risk Protections. The Exchange also proposes to amend Options 5, Section 4, Order Routing. Each change will be discussed below. The amendments proposed herein seek to codify the current System functionality. The proposed amendments will not result in System changes.

Option 3, Sections 4 and 5

The Exchange proposes to codify existing functionality that allows Market Makers to submit their quotes to the Exchange in block quantities as a single bulk message. In other words, a Market Maker may submit a single message to the Exchange, which may contain bids and offers in multiple series. The Exchange's current rules do not specify bulk messaging for orders. The Exchange has historically provided Market Makers with information regarding bulk messaging in its publicly available technical specifications.[3] To promote greater transparency, the Exchange is seeking to codify this functionality in its Rulebook. Specifically, the Exchange proposes to amend NOM Options 3, Section 4(b)(3) to memorialize that quotes may be submitted as a bulk message. The Exchange also proposes to add a definition of ''bulk message'' in new subparagraph (i) of Options 3, Section 4(b)(3), which will provide that a bulk message means a single electronic message submitted by a Market Maker to the Exchange which may contain a specified number of quotations as designated by the Exchange.[4] The bulk message, submitted via SQF,[5] may enter, modify, or cancel quotes. Bulk messages are handled by the System in the same manner as it handles a single quote message. MRX recently added bulk messages to MRX Options 3, Section 4(b)(3).[6] The proposed amendment to the Rulebook to add NOM Options 3, Section 4(b)(3) will not result in a System change.

The Exchange also proposes to amend NOM Options 3, Section 4(b)(6) to provide the following,

A quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. If, at the time of entry, a quote would cause a locked or crossed market violation or would cause a trade-through, violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) *as non-displayed,* and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.

Where a quote is re-priced to avoid a locked or crossed market, the best bid or offer will be non-displayed and the re-priced order will be displayed at a price that is one minimum trading increment inferior to the ABBO. A similar change is proposed for Options 3, Section 5(d). MRX recently amended Options 3, Section 4(b)(6) and Options 3, Section 5(d) to include this language.[7] At this time, the Exchange proposes to amend NOM's rule text to reflect that the actual price remains non-displayed in this scenario. The proposed amendment to the Rulebook to add NOM Options 3, Section 4(b)(6) will not result in a System change.

Similarly, the Exchange proposes to add a new NOM Options 3, Section 4(b)(7) to clarify that, today, NOM's System will automatically execute eligible quotes using the Exchange's displayed best bid and offer (''BBO'') or the Exchange's non-displayed order book (''internal BBO'')[8] if the best bid and/or offer on the Exchange has been repriced pursuant to Options 3, Section 5(d) and Options 3, Section 4(b)(6). This rule text seeks to codify the current System function and make clear that the internal BBO is comprised of both orders and quotes.[9] MRX recently amended Options 3, Section 4(b)(7) to include the same language.[10] At this time, the Exchange proposes to align NOM's rule text in Options 3, Section 4(b)(7) to MRX's rule text in Options 3, Section 4(b)(7). The proposed amendment to the Rulebook to add NOM Options 3, Section 4(b)(7) will not result in a System change.

Finally, the Exchange proposes to amend NOM Options 3, Section 5(c) to include a citation to Options 3, Section 4(b)(6) as the internal BBO is comprised of both orders and quotes, similar to MRX.[11]

The amendments proposed to Options 3, Sections 4 and 5 do not change the current System functionality.

Options 3, Section 7

The Exchange proposes to amend the ''Post-Only Order type at Options 3, Section 7(a)(9) to rename the order type ''Add Liquidity Order''. The Exchange believes the name better describes this order type. This is also the name of a similar order type on MRX.[12] The Exchange also proposes to capitalize the

[3] *See https://www.nasdaq.com/docs/2023/01/12/0054-Q23_SQF_8.2b%20akg_NAM.pdf* (specifying for bulk quoting of up to 200 quotes per quote block message). The specifications note in other places the manner in which a Participant can send such quote block messages.

[4] *Id.* As noted above, quote bulk messages can presently contain up to 200 quotes per message. This is the maximum amount that is permitted in a bulk message. The Exchange would announce any change to these specifications in an Options Technical Update distributed to all Participants.

[5] ''Specialized Quote Feed'' or ''SQF'' is an interface that allows Market Makers to connect, send, and receive messages related to quotes and Immediate-or-Cancel Orders into and from the Exchange. Features include the following: (1) options symbol directory messages (*e.g.,* underlying instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; and (8) opening imbalance messages. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. *See* Options 3, Section 7(e)(1)(B).

[6] *See* Securities Exchange Act, Release No. 95982 (October 4, 2022), 87 FR 61391 (October 11, 2022) (SR–MRX–2022–18) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules in Connection With a Technology Migration to Enhanced Nasdaq Functionality) (''SR–MRX–2022–18'').

[7] *See* Securities Exchange Act, Release No. 95807 (September 16, 2022), 87 FR 57933 (September 22, 2022) (SR–MRX–2022–16) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Rules in Connection With a Technology Migration to Enhanced Nasdaq Functionality) (''SR–MRX–2022–16'').

[8] The internal BBO refers to the Exchange's non-displayed book.

[9] The Exchange also proposes to re-number current Options 3, Section 4(b)(7) as (8).

[10] *See* SR–MRX–2022–16.

[11] *Id.*

[12] *See* MRX Options 7, Section 7(n).

term ''Opening Process'' which refers to NOM Options 3, Section 8.

The Exchange proposes to amend the description of Specialized Quote Feed or ''SQF'' within NOM Options 3, Section 7(e)(1)(B) to add rule text which states, ''Immediate-or-Cancel Orders entered into SQF are not subject to the Order Price Protection, Market Order Spread Protection, or Size Limitation Protection in Options 3, Section 15(a)(1), (a)(2), and (b)(2) respectively.'' This rule text is currently noted within Options 3, Section 7(b)(2) above. The Exchange is adding the same language into the description of SQF to provide a more complete description. The addition of this information would align the level of information of NOM's rule text to NOM's rule text at Supplementary Material .03(c) to Options 3, Section 7. The Exchange is proposing a similar amendment to Options 3, Section 7(e)(1)(D) regarding Quote Using Orders or ''QUO'' [13] to state that, ''Orders entered into QUO are not subject to the Order Price Protection or Size Limitation in Options 3, Section 15(a)(1) and (b)(2), respectively.'' All orders entered into QUO are not subject to the Order Price Protection or Size Limitation protections, not Immediate-or-Cancel Orders. Also, the Market Order Spread Protection is not applicable to QUO because QUO cannot be utilized to send Market Orders to the Exchange, only FIX may be utilized to send Market Orders. The proposed amendment to NOM Options 3, Section 7(e)(1)(B) and (D) will not result in System changes.

Options 3, Section 15

MRX recently amended its Order Price Protection (''OPP'') [14] rule.[15] MRX's OPP rule utilized different rule text to explain the OPP functionality than is currently on NOM. At this time, the Exchange proposes to amend NOM Options 3, Section 15(a)(1) to align NOM's rule text to MRX's rule text within Options 3, Section 15(a)(1)(A). Specifically, the Exchange proposes to remove the references to ''day limit, good til cancelled, and immediate or cancel orders'' and, instead, simply refer to ''Limit'' Orders as that order type accurately captures the scope of the orders subject to OPP. Further, the Exchange proposes to remove ''market orders'' from the next sentence since OPP only applies to limit orders. The Exchange also proposes to capitalize ''Opening'' and add Process in Options 2, Section 15(a)(1)(A) to refer to the Opening Process within Options 3, Section 8. The proposed amendment to Options 3, Section 15(a)(1) will not result in a System change.

Additionally, the Exchange proposes to amend its Acceptable Trade Range (''ATR'') Rule within NOM Options 3, Section 15(b)(1).[16] MRX recently amended its ATR rule.[17] MRX's ATR rule utilized different rule text to explain the ATR functionality. At this time, the Exchange proposes to amend Options 3, Section 15(b)(1)(A) to add the word ''quote'' in that same sentence, where it was omitted and also add the words ''after the Posting Period'' to explain when a new ATR would be calculated to provide more context to the rule.[18]

Additionally, similar to MRX Options 3, Section 15(a)(2)(A)(v) the Exchange proposes to add the following rule text within NOM Options 3, Section 15(b)(1)(C),

> There will be three categories of options for Acceptable Trade Range: (1) Penny Interval Program Options trading in one cent increments for options trading at less than $3.00 and increments of five cents for options trading at $3.00 or more, (2) Penny Interval Program Options trading in one-cent increments for all prices, and (3) Non-Penny Interval Program Options.

This is how NOM operates today. This rule text makes clear the application of NOM Options 3, Section 3 to the ATR rule by explicitly stating the Exchange's ability to set different ATR values by options category. These ATR values are set forth in NOM's System Settings document which is posted online.[19] The Exchange believes this rule text will add greater clarity to the ATR rule. The proposed amendment to Options 3, Section 15(b)(1) will not result in a System change.

The Exchange proposes to capitalize the words ''opening process'' at the end of Options 3, Section 15(c)(1) which refers to the Anti-Internalization functionality. The term refers to the process within Options 3, Section 8.

The Exchange proposes to and the words ''or quote'' to Options 3, Section 15(c)(3) which refers to the Post-Only Quoting Protection. The paragraph refers to order or quote throughout and was mistakenly omitted in one sentence.

Options 5, Section 4

Options 5, Section 4 describes the manner in which NOM routes orders. The Exchange proposes to amend NOM Options 5, Section 4(a) to eliminate the following rule text,

> The term ''System routing table'' refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice.

When ISE filed to amend its routing rules, it did not include this sentence.[20] At this time, the Exchange proposes to remove this unnecessary term that is not utilized elsewhere within Options 5, Section 4. Removing this rule text will harmonize NOM's Options 5, Section 4 rule with ISE's Options 5, Section 4(e). The proposed amendment to Options 5, Section 4(a) will not result in a System change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Section 6(b)(5) of the Act,[22] 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.

Option 3, Sections 4 and 5

The Exchange believes that its proposal to memorialize its bulk message functionality within Options 3, Section 4(b)(3) is consistent with the Act as it will codify existing functionality, thereby promoting transparency in the Exchange's rules

[13] ''Quote Using Orders'' or ''QUO'' is an interface that allows Market Makers to connect, send, and receive messages related to single-sided orders to and from the Exchange. Order Features include the following: (1) options symbol directory messages (*e.g.,* underlying); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) order messages; and (6) risk protection triggers and cancel notifications. Orders submitted by Market Makers over this interface are treated as quotes. Market Makers may only enter interest into QUO in their assigned options series.

[14] OPP prevents the execution of Limit Orders at prices outside pre-set parameters.

[15] *See* SR–MRX–2022–18.

[16] ATR is designed to guard against the System from experiencing dramatic price swings by preventing the immediate execution of quotes and orders beyond the thresholds set by the protection.

[17] *See* SR–MRX–2022–16.

[18] The Exchange also proposes technical amendments to capitalize ''the'' and add opening parentheses in two places.

[19] *https://www.nasdaq.com/docs/BXOptionsSystemSettings.*

[20] *See* Securities Exchange Act Release No. 94894 (May 18, 2022), 87 FR 30294 (May 12, 2022) (SR–ISE–2022–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Routing Functionality in Connection With a Technology Migration).

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

and reducing any potential confusion.[23] This functionality provides Market Makers with an additional tool to meet their various quoting obligations in a manner they deem appropriate, consistent with the purpose of the bulk message functionality to facilitate Market Makers' provision of liquidity. By providing Market Makers with additional control over the quotes they use to provide liquidity to the Exchange, this tool may benefit all investors through additional execution opportunities at potentially improved prices. Today, MRX offers this same functionality within Options 3, Section 4(b)(3). Further, the Exchange does not believe that the offering the bulk message functionality to only Market Makers would permit unfair discrimination. Market Makers play a unique and critical role in the options market by providing liquidity and active markets, and are subject to various quoting obligations which other market participants are not, including obligations to maintain active markets, update quotes in response to changed market conditions, to compete with other Market Makers in its appointed classes, and to provide intra-day quotes in its appointed classes.[24] Bulk message functionality provides Market Makers with a means to help them satisfy these obligations. The proposed amendment to the Rulebook to add NOM Options 3, Section 4(b)(3) will not result in a System change.

The Exchange's proposal to amend Options 3, Section 4(b)(6) to make clear that the actual price remains non-displayed during re-pricing is consistent with the Act and removes impediments to and perfects the mechanism of a free and open market and a national market system because it displays a re-priced order that does not lock or cross an away market. The rule text clearly explains that the best bid or offer will be non-displayed and the re-priced order will be displayed. A similar change is proposed for NOM Options 3, Section 5(d). MRX recently amended Options 3, Section 4(b)(6) and Options 3, Section 5(d) to include the same language.[25] The proposed change aligns NOM's rule text to MRX's rule text. The proposed amendment to the Rulebook to add NOM Options 3, Section 4(b)(6) will not result in a System change.

The Exchange's proposal to add a new Options 3, Section 4(b)(7) to clarify that, today, NOM's System will automatically execute eligible quotes using the Exchange's displayed best bid and offer (''BBO'') or the Exchange's non-displayed order book (''internal BBO'') if the best bid and/or offer on the Exchange has been repriced pursuant to Options 3, Section 5(d) and Options 3, Section 4(b)(6) is consistent with the Act and protects investors and the public interest. This rule text seeks to codify the current System function and make clear that the internal BBO is comprised or both orders and quotes, both of which are considered for price checks. MRX recently amended Options 3, Section 4(b)(7) to include this language.[26] The proposed change aligns NOM's rule text to MRX's rule text. The proposed amendment to the Rulebook to add NOM Options 3, Section 4(b)(7) will not result in a System change.

Options 3, Section 7

The Exchange's proposal to amend the name of the ''Post-Only Order type at Options 3, Section 7(a)(9) to rename the order type ''Add Liquidity Order'' is a non-substantive technical amendment that will align the name to that used on MRX.[27]

The Exchange's proposal to amend the description of SQF within Options 3, Section 7(e)(1)(B) and the description of QUO within Options 3, Section 7(e)(1)(D) is consistent with the Act as this rule text is currently noted within Options 3, Section 7(b)(2) above. The addition of this language into the description of SQF and QUO provides a more complete description of this protocol. The addition of this information also aligns the level of information with that offered on MRX for SQF within Supplementary Material .03(c) to Options 3, Section 7 and differentiates the information from QUO. All orders entered into QUO are not subject to the Order Price Protection or Size Limitation protections, not Immediate-or-Cancel Orders. Also, the Market Order Spread Protection is not applicable to QUO because QUO cannot be utilized to send Market Orders to the Exchange, only FIX may be utilized to send Market Orders. The proposed amendment to NOM Options 3, Section 7(e)(1)(B) will not result in a System change.

Options 3, Section 15

The Exchange's proposal to amend NOM Options 3, Section 15(a)(1) to align NOM's OPP rule text to MRX's OPP rule text within Options 3, Section 15(a)(1)(A) is consistent with the Act[28] because removing the references to ''day limit, good til cancelled, and immediate or cancel orders'' and, instead, referring to ''Limit'' Orders accurately captures the scope of the orders subject to OPP. This change would also make unnecessary the reference to market orders. The proposed amendment to Options 3, Section 15(a)(1) will not result in a System change.

The Exchange's proposal to amend the ATR Rule within Options 3, Section 15(b)(1) is consistent with the Act. MRX recently amended its ATR rule.[29] MRX's ATR rule utilized different rule text to explain the ATR functionality. Amending NOM Section 15(b)(1) to add the words ''after the Posting Period'' to explain when a new ATR would be calculated provides more context to the rule will provide greater context to the sentence. Additionally, adding the word ''quote'' in the one sentence where it is omitted will add clarity the sentence. The proposed amendment to Options 3, Section 15(b)(1) will not result in a System change. Also, adding rule text within NOM Options 3, Section 15(b)(1)(C) to make clear the Exchange's ability to set different ATR values by options category is consistent with the Act because the ATR risk protection limits the range of prices at which an order and quote trades and would take into account the minimum increment. The ability for the Exchange to set the ATR based on the increment allows the Exchange to set appropriate limits. The Exchange believes this rule text will add greater clarity to the ATR rule. The proposed amendment to Options 3, Section 15(b)(1) will not result in a System change.

Options 5, Section 4

Eliminating an unnecessary term in Options 5, Section 4(a) that is not utilized elsewhere within Options 5, Section 4 which is unnecessary is consistent with the Act as it will remove confusion. The proposed amendment to Options 5, Section 4(a) will not result in a System change.

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.

[23] As discussed above, this existing functionality is currently described in the Exchange's publicly available technical specifications. *See supra* note 3.

[24] *See* Options 2, Sections 4 and 5.

[25] *See* SR–MRX–2022–16.

[26] *Id.*

[27] *See* MRX Options 7, Section 7(n).

[28] MRX recently amended its Order Price Protection (''OPP'') rule. *See* SR–MRX–2022–18.

[29] *See* SR–MRX–2022–16.

Option 3, Sections 4 and 5

The Exchange believes that its proposal to memorialize its bulk message functionality within Options 3, Section 4(b)(3) does not impose an undue burden on intra-market competition. While the Exchange currently offers this functionality to Market Makers only, bulk messaging is intended to provide Market Makers with an additional tool to meet their various quoting obligations in a manner they deem appropriate. As such, the Exchange believes that this functionality may facilitate Market Makers' provision of liquidity, thereby benefiting all market participants through additional execution opportunities at potentially improved prices. Furthermore, while the Exchange will offer the proposed Post-Only Quote Configuration to Market Makers only, the proposed risk protection will enhance the ability of Market Makers to add liquidity and avoid removing liquidity from the Exchange's order book in the manner described above. Greater liquidity benefits all market participants by providing more trading opportunities and attracting greater participation by Market Makers. The Exchange believes that its proposal to memorialize its bulk message functionality within Options 3, Section 4(b)(3) does not impose an undue burden on inter-market competition as other options exchanges may adopt this functionality.

The Exchange's proposal to amend NOM's rules at Options 3, Section 4(b)(6) and Options 3, Section 4(b)(7) do not impose an undue burden on competition because all options markets must not trade-through other orders on their markets as well as away markets. The proposed change aligns NOM's rule text to MRX's rule text.

Options 3, Section 7

The Exchange's proposal to amend the name of the ''Post-Only Order type at Options 3, Section 7(a)(9) to rename the order type ''Add Liquidity Order'' is a non-substantive technical amendment that does not impose an undue burden on competition.

Amending the description of SQF within Options 3, Section 7(e)(1)(B) and the description of QUO within Options 3, Section 7(e)(1)(D) does not impose an undue burden on competition The addition of this language into the description of SQF and QUO provides a more complete description of this protocol.

Options 3, Section 15

The Exchange's proposal to amend NOM Options 3, Section 15(a)(1) to align NOM's OPP rule text to MRX's OPP rule text within Options 3, Section 15(a)(1)(A) does not impose an undue burden on competition because removing the references to ''day limit, good til cancelled, and immediate or cancel orders'' and, instead, referring to ''Limit'' Orders accurately captures the scope of the orders subject to OPP. This change would also make unnecessary the reference to market orders.

The Exchange's proposal to amend the ATR Rule within Options 3, Section 15(b)(1) does not impose an undue burden on competition. Amending NOM Section 15(b)(1) to add the words ''after the Posting Period'' to explain when a new ATR would be calculated provides more context to the rule will provide greater context to the sentence. Additionally, adding the word ''quote'' in the one sentence where it is omitted will add clarity the sentence. Adding rule text within NOM Options 3, Section 15(b)(1)(C) to make clear the Exchange's ability to set different ATR values by options category does not impose an undue burden on competition because the ability for the Exchange to set the ATR based on the increment allows the Exchange to set appropriate limits. The Exchange believes this rule text will add greater clarity to the ATR rule.

Options 5, Section 4

Eliminating an unnecessary reference within amend Options 5, Section 4(a) does not impose an undue burden on competition because the term is not utilized elsewhere within Options 5, Section 4.

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 foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[30] and subparagraph (f)(6) of Rule 19b–4 thereunder.[31]

[30] 15 U.S.C. 78s(b)(3)(A)(iii).

[31] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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–NASDAQ–2023–018 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–NASDAQ–2023–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also

will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2023–018 and should be submitted on or before August 4, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–14910 Filed 7–13–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–818, OMB Control No. 3235–0774]

Submission for OMB Review; Comment Request; Extension: Amendments to the National Market System Plan Governing the Consolidated Audit Trail

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'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in connection with amendments [1] adopted pursuant to the statutory authority provided by the Securities Exchange Act of 1934,[2] including Sections 11A(a)(3)(B),[3] 17(a),[4] 19(b),[5] and 23(a)[6] thereof, and pursuant to Rule 608(a)(2) and (b)(2),[7] to a National Market System (NMS) Plan filed with the Commission under Rule 613 (17 CFR 242.613), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

The amendments, as adopted, required two new collections of information:

a. *Implementation Plan.* The amendments require the Participants, within 30 calendar days following the effective date of the amendments, to prepare, file with the Commission, and make publicly available on a website a complete CAT implementation plan (''Implementation Plan'') that includes a detailed timeline for achieving various implementation milestones.

b. *Quarterly Progress Reports.* The amendments require the Participants, within 30 calendar days after the end of each calendar quarter, to prepare, file with the Commission, and make publicly available on a website a complete report (the ''Quarterly Progress Report'') that provides a detailed and up-to-date description of the progress made by the Participants toward each of the milestones identified in the Implementation Plan.

The one-time information collection associated with the Implementation Plan was completed by the Participants, so there will be no further burdens associated with the Implementation Plan. The Quarterly Progress Report information collection continues.

There are currently 25 Participants, who must complete four Quarterly Progress Reports per year. The Commission staff estimates that, on the average, most Quarterly Progress Reports require approximately 72 hours per Participant, and cost approximately $8,000 per Participant. The Commission staff estimates Participants spend a total of approximately 7,200 hours per year ($25 \times 4 \times 72$) and $800,000 per year ($25 \times 4 \times \$8{,}000$) complying with the rule.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by August 14, 2023 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: July 11, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–15000 Filed 7–13–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97871; File No. SR–Phlx–2023–27]

Self-Regulatory Organizations; Nasdaq Phlx LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx Options 3 and 4A Rules

July 10, 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 June 27, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rules at Options 3, Options Trading Rules, at: Section 4 Entry and Display of Quotes; Section 5, Entry and Display of Orders; Section 7, Types of Orders and Order and Quote Protocols; Section 8, Options Opening Process; Section 10, Electronic Execution Priority and Processing in the System; Section 14, Complex Orders; and Section 15, Risk Protections.

The Exchange also proposes to amend Phlx Options 4A, Sections 6, Position Limits, and Section 12, Terms of Index Options Contracts.

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

[32] 17 CFR 200.30–3(a)(12).

[1] *See* Securities Exchange Act Release No. 88890 (May 15, 2020), 85 FR 31322 (May 22, 2020) (File No. S7–13–19) (''Adopting Release'').

[2] *See* 15 U.S.C. 78a *et seq.*

[3] *See* 15 U.S.C. 78k–1(a)(3)(B).

[4] *See* 15 U.S.C. 78q(a).

[5] *See* 15 U.S.C. 78s(b).

[6] *See* 15 U.S.C. 78w(a).

[7] *See* 17 CFR 242.608(a)(2), (b)(2).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 amend Options 3, Options Trading Rules, at: Section 4 Entry and Display of Quotes; Section 5, Entry and Display of Orders; Section 7, Types of Orders and Order and Quote Protocols; Section 8, Options Opening Process; Section 10, Electronic Execution Priority and Processing in the System; Section 14, Complex Orders; and Section 15, Risk Protections. The amendments proposed to the Options 3 Rules seek to codify the current System functionality and will not result in System changes.

The Exchange also proposes to amend Phlx Options 4A, Sections 6, Position Limits, and Section 12, Terms of Index Options Contracts. Each change will be discussed below.

Option 3, Sections 4 and 5

The Exchange proposes to codify existing functionality that allows Market Makers to submit their quotes to the Exchange in block quantities as a single bulk message. In other words, a Market Maker may submit a single message to the Exchange, which may contain bids and offers in multiple series. The Exchange's current rules do not specify bulk messaging for orders. The Exchange has historically provided Market Makers with information regarding bulk messaging in its publicly available technical specifications.[3] To promote greater transparency, the Exchange is seeking to codify this functionality in its Rulebook. Specifically, the Exchange proposes to amend Phlx Options 3, Section 4(b)(3) to memorialize that quotes may be submitted as a bulk message. The Exchange also proposes to add a definition of ''bulk message'' in new subparagraph (i) of Options 3, Section 4(b)(3), which will provide that a bulk message means a single electronic message submitted by a Market Maker to the Exchange which may contain a specified number of quotations as designated by the Exchange.[4] The bulk message, submitted via SQF,[5] may enter, modify, or cancel quotes. Bulk messages are handled by the System in the same manner as it handles a single quote message. MRX recently added bulk messages to MRX Options 3, Section 4(b)(3).[6] The proposed amendment to the Rulebook to add Phlx Options 3, Section 4(b)(3) will not result in a System change.

The Exchange also proposes to amend Phlx Options 3, Section 4(b)(6) to provide the following,

A quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. If, at the time of entry, a quote would cause a locked or crossed market violation or would cause a trade-through, violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) *as non-displayed,* and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.

Where a quote is re-priced to avoid a locked or crossed market, the best bid or offer will be non-displayed and the re-priced order will be displayed at a price that is one minimum trading increment inferior to the ABBO. A similar change is proposed for Options 3, Section 5(d). MRX recently amended Options 3, Section 4(b)(6) and Options 3, Section 5(d) to include this language.[7] At this time, the Exchange proposes to amend Phlx's rule text to reflect that the actual price remains non-displayed in this scenario. The proposed amendment to the Rulebook to add Phlx Options 3, Section 4(b)(6) will not result in a System change.

Similarly, the Exchange proposes to add a new Phlx Options 3, Section 4(b)(7) to clarify that, today, Phlx's System will automatically execute eligible quotes using the Exchange's displayed best bid and offer (''BBO'') or the Exchange's non-displayed order book (''internal BBO'')[8] if the best bid and/or offer on the Exchange has been repriced pursuant to Options 3, Section 5(d) and Options 3, Section 4(b)(6). This rule text seeks to codify the current System function and make clear that the internal BBO is comprised of both orders and quotes.[9] MRX recently amended Options 3, Section 4(b)(7) to include the same language.[10] At this time, the Exchange proposes to align Phlx's rule text in Options 3, Section 4(b)(7) to MRX's rule text in Options 3, Section 4(b)(7). The proposed amendment to the Rulebook to add Phlx Options 3, Section 4(b)(7) will not result in a System change.

Finally, the Exchange proposes to amend Phlx Options 3, Section 5(c) to include a citation to Options 3, Section 4(b)(6) as the internal BBO is comprised of both orders and quotes, similar to MRX.[11]

The amendments proposed to Options 3, Sections 4 and 5 do not change the current System functionality.

Options 3, Section 7

The Exchange proposes to amend the description of Specialized Quote Feed or ''SQF'' within Phlx Options 3, Section 7(a)(i)(B) to add rule text which states, ''Immediate-or-Cancel Orders entered into SQF are not subject to the Order Price Protection, Market Order Spread Protection, or Size Limitation Protection in Options 3, Section 15(a)(1), (a)(2), and (b)(2) respectively.'' This rule text is currently noted within Options 3, Section 7(c)(2)(B). The Exchange is adding the same language into the description of SQF to provide

[3] *See https://www.nasdaq.com/docs/2023/01/12/0054-Q23_SQF_8.2b%20akg_NAM.pdf.* (specifying for bulk quoting of up to 200 quotes per quote block message). The specifications note in other places the manner in which a member or member organization can send such quote block messages.

[4] *Id.* As noted above, quote bulk messages can presently contain up to 200 quotes per message. This is the maximum amount that is permitted in a bulk message. The Exchange would announce any change to these specifications in an Options Technical Update distributed to all members and member organizations.

[5] ''Specialized Quote Feed'' or ''SQF'' is an interface that allows Lead Market Makers, Streaming Quote Traders (''SQTs'') and Remote Streaming Quote Traders (''RSQTs'') to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses into and from the Exchange. Features include the following: (1) options symbol directory messages (*e.g.,* underlying and complex instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Lead Market Maker, SQT or RSQT. Lead Market Makers, SQTs and RSQTs may only enter interest into SQF in their assigned options series. *See* Options 3, Section 7(a)(i)(B).

[6] *See* Securities Exchange Act, Release No. 95982 (October 4, 2022), 87 FR 61391 (October 11, 2022) (SR–MRX–2022–18) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules in Connection With a Technology Migration to Enhanced Nasdaq Functionality) (''SR–MRX–2022–18'').

[7] *See* Securities Exchange Act, Release No. 95807 (September 16, 2022), 87 FR 57933 (September 22, 2022) (SR–MRX–2022–16) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Rules in Connection With a Technology Migration to Enhanced Nasdaq Functionality) (''SR–MRX–2022–16'').

[8] The internal BBO refers to the Exchange's non-displayed book.

[9] The Exchange also proposes to re-number current Options 3, Section 4(b)(7) as (8).

[10] *See* SR–MRX–2022–16.

[11] *Id.*

a more complete description. The addition of this information would align the level of information of Phlx's rule text to Phlx's rule text at Options 3, Section 7(a)(i)(B). The proposed amendment to Phlx Options 3, Section 77(a)(i)(B) will not result in System changes.

The Exchange proposes to relocate, without amendment, the Legging Order type from Phlx Options 3, Section 14(f)(iii)(C) to Options 3, Section 7(b)(10) to place the order type with other simple order book order types.

Options 3, Section 8

The Exchange proposes to amend Phlx Options 3, Section 8(j)(3), which currently describes the determination of Opening Quote Range (''OQR'') boundaries in certain scenarios.[12] Specifically, the Exchange proposes to replace ''are marketable against the ABBO'' with ''cross the ABBO'' to precisely describe the specified scenario within this rule. The Exchange notes that this is not a System change, rather this amendment clarifies the applicability of the rule text. This change is identical to a change recently made on MRX at Options 3, Section 8(i)(3).[13] The proposed amendment to Phlx Options 3, Section 8(j)(3) will not result in a System change.

Next, the Exchange proposes to amend Phlx Options 3, Section 8(k)(D) to align Phlx's rule text with that of MRX Options 3, Section 8(j)(6)(i) by stating ''Pursuant to Options 3, Section 8(k)(C)(6), the System will re-price Do Not Route orders (that would otherwise have to be routed to the exchange(s) disseminating the ABBO for an opening to occur) to *the current away best offer (for bids) or the current away best bid (for offers) as non-displayed, and display at* a price that is one minimum trading increment inferior to the ABBO, and disseminate the re-priced DNR Order as part of the new PBBO.'' The proposed language more explicitly describes the manner in which the Exchange will re-price orders and would mirror rule text in Phlx Options 3, Section 4(b)(6). The proposed amendment to Phlx Options 3, Section 8(k)(D) will not result in a System change.

Options 3, Section 10

The Exchange proposes to amend Options 3, Section 10(a)(1)(C) to add a sentence which states that ''This participation entitlement will be considered after the Opening Process.'' The Directed Market Maker entitlement requires a Market Maker to quote at or better than the internal BBO or NBBO. The NBBO would not be available pre-opening. The Exchange proposes to add this language to provide clarity. The proposed amendment to Phlx Options 3, Section 10(a)(1)(C) will not result in a System change.

Options 3, Section 15

MRX recently amended its Order Price Protection (''OPP'') [14] rule.[15] MRX's OPP rule utilized different rule text to explain the OPP functionality than is currently on Phlx. At this time, the Exchange proposes to amend Phlx Options 3, Section 15(a)(1) to align Phlx's rule text to MRX's rule text within Options 3, Section 15(a)(1)(A). Specifically, the Exchange proposes to remove the references to ''Day Limit, Good til Cancelled, Immediate-or-Cancel and All-or-None Orders'' and, instead, simply refer to ''Limit'' Orders as that order type accurately captures the scope of the orders subject to OPP. Further, the Exchange proposes to remove ''Market Orders'' from the next sentence since OPP only applies to Limit Orders. The Exchange also proposes to capitalize ''Opening'' and add Process in Options 2, Section 15(a)(1)(A) to refer to the Opening Process within Options 3, Section 8. The proposed amendment to Options 3, Section 15(a)(1) will not result in a System change.

Additionally, the Exchange proposes to amend its Acceptable Trade Range (''ATR'') Rule within Phlx Options 3, Section 15(b)(1).[16] MRX recently amended its ATR rule.[17] MRX's ATR rule utilized different rule text to explain the ATR functionality. At this time, the Exchange proposes to amend Options 3, Section 15(b)(1)(A) to add the internal BBO concept described above with respect to Options 3, Sections 4 and 5. Where a quote is re-priced to avoid a locked or crossed market, the best bid or offer will be non-displayed and the re-priced order will be displayed at a price that is one minimum trading increment inferior to the ABBO. The best price on the order book could therefore be non-displayed. The addition of this language makes clear the manner in which the System calculates the Reference Price.

The Exchange proposes to amend Options 3, Section 15(b)(1)(B) to add the words ''after the Posting Period'' to explain when a new ATR would be calculated to provide more context to the rule. The Exchange also proposes to amend Options 3, Section 15(b)(1)(B) and (C) to add the word ''quote'' where it was omitted.

Additionally, similar to MRX Options 3, Section 15(a)(2)(A)(v) the Exchange proposes to add the following rule text within Phlx Options 3, Section 15(b)(1)(D),

There will be three categories of options for Acceptable Trade Range: (1) Penny Interval Program Options trading in one cent increments for options trading at less than $3.00 and increments of five cents for options trading at $3.00 or more, (2) Penny Interval Program Options trading in one-cent increments for all prices, and (3) Non-Penny Interval Program Options.

This is how Phlx operates today. This rule text makes clear the application of Phlx Options 3, Section 3 to the ATR rule by explicitly stating the Exchange's ability to set different ATR values by options category. These ATR values are set forth in Phlx's System Settings document which is posted online.[18] The Exchange believes this rule text will add greater clarity to the ATR rule. The proposed amendment to Options 3, Section 15(b)(1) will not result in a System change.

Options 4A, Sections 6 and 12

The Exchange no longer lists options on the Russell indexes. Specifically, the Exchange has not listed options on the Full Value Russell 2000®Options, Reduced Value Russell 2000®Options, Russell 3000®Index, Russell 3000®Value Index, Russell 3000®Growth Index, Russell 2500™ Index, Russell 2500™ Value Index, Russell 2500™ Growth Index, Russell 2000®Value Index, Russell 2000®Growth Index, Russell 1000®Index, Russell 1000®Value Index, Russell 1000®Growth Index, Russell Top 200®Index, Russell Top 200®Value Index, Russell Top 200®Growth Index, Russell MidCap®Index, Russell MidCap®Value Index, Russell MidCap®Growth Index, Russell Small Cap Completeness®Index, Russell Small Cap Completeness®Value Index and the Russell Small Cap Completeness®Growth Index (collectively ''Russell U.S. Indexes'') in several years. At this time, the Exchange

[12] OQR is an additional type of boundary used in the Opening Process, and is intended to limit the opening price to a reasonable, middle ground price, thus reducing the potential for erroneous trades during the Opening Process.

[13] *See* SR–MRX–2022–18.

[14] OPP prevents the execution of Limit Orders at prices outside pre-set parameters.

[15] *See* SR–MRX–2022–18.

[16] ATR is designed to guard against the System from experiencing dramatic price swings by preventing the immediate execution of quotes and orders beyond the thresholds set by the protection.

[17] *See* SR–MRX–2022–16.

[18] *https://www.nasdaq.com/docs/PHLXSystemSettings.*

proposes to remove the Russell Indexes from Options 4A, Sections 6(a)(i), (iii) and 6(c), as well as references within Options 4A, Section 12(a)(2) and Supplementary Material .01 and .03 of Options 4A, Section 12 because options on the Russell Indexes are no longer listed on Phlx.

The Exchange proposes to remove a reference to the Reduced Value Nasdaq 100® Index or ''MNX'' within Options 4A, Section 12(a)(2)(I). Phlx delisted MNX on April 7, 2017 and removed references to MNX in its rules.[19]

The Exchange proposes to remove the reference to ''Reduced value long term options, also known as LEAPS'' as this phrase is not necessary within Options 4A, Section 12(a)(2)(J). Options 4A, Section 12(b)(2) addresses Long-Term Option Series or ''LEAPS'' including those for certain reduced value index options such as the Micro Index Long Term Options Series.

The Exchange proposes to modify Options 4A, Section 12(a)(5) to remove Phlx's Gold/Silver Sector℠ Index or ''XAU''℠.[20] Today, XAU has an American-style[21] expiration and is currently reflected as having a European-style[22] expiration in Options 4A, Section 12(a)(5). In 2021, Phlx amended Options 4A, Section 12 to reflect XAU as a having a European-tyle expiration;[23] the change was incorrect. XAU was originally filed as having an American-style exercise and not a European-style-exercise.[24] The Exchange proposes to re-letter the remaining subparagraphs within Options 4A, Section 12(b)(5).

At this time, the Exchange proposes to add the Phlx Gold/Silver Index to proposed new Options 4A, Section (a)(7) which would state,

''*American-Style Exercise.*'' American-style index options, some of which may be A.M.-settled as provided in subparagraph (e) or P.M.-settled as provided for in paragraph (f), are approved for trading on the Exchange on the following indexes:.

The Exchange would list Phlx Gold/Silver Index within subparagraph (i) and would list Phlx's Semiconductor Sector℠ Index or ''SOX''[25] within subparagraph (ii). Currently, SOX is not listed as either having a European-style or American-style exercise within Options 4A, Section 12. SOX has an American-style expiration[26] and the Exchange proposes to list the index as such.

Next, the Exchange proposes to amend Options 4A, Section 12(e)(II) to remove the Phlx Gold/Silver Sector Index from the list of a.m.-settled options. In 2021, Phlx amended Options 4A, Section 12 to reflect XAU as a having an a.m.-settlement;[27] the change was incorrect. The Phlx Gold/Silver Sector Index has always been a p.m.-settled index option[28] and the Exchange proposes to list the index as such. The Exchange proposes to re-letter the remaining subparagraphs within Options 4A, Section 12(e)(II).

At this time, the Exchange proposes to add the Phlx Gold/Silver Sector Index to the list of p.m.-settled indexes within Options 4A, Section 12(f).

Finally, the Exchange proposes to add a hyphen to the term ''Nasdaq 100'' within Options 4A, Sections 6 and 12 where the hyphen is missing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[29] in general, and furthers the objectives of Section 6(b)(5) of the Act,[30] 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.

Option 3, Sections 4 and 5

The Exchange believes that its proposal to memorialize its bulk message functionality within Options 3, Section 4(b)(3) is consistent with the Act as it will codify existing functionality, thereby promoting transparency in the Exchange's rules and reducing any potential confusion.[31] This functionality provides Market Makers with an additional tool to meet their various quoting obligations in a manner they deem appropriate, consistent with the purpose of the bulk message functionality to facilitate Market Makers' provision of liquidity. By providing Market Makers with additional control over the quotes they use to provide liquidity to the Exchange, this tool may benefit all investors through additional execution opportunities at potentially improved prices. Today, MRX offers this same functionality within Options 3, Section 4(b)(3). Further, the Exchange does not believe that the offering the bulk message functionality to only Market Makers would permit unfair discrimination. Market Makers play a unique and critical role in the options market by providing liquidity and active markets, and are subject to various quoting obligations which other market participants are not, including obligations to maintain active markets, update quotes in response to changed market conditions, to compete with other Market Makers in its appointed classes, and to provide intra-day quotes in its appointed classes.[32] Bulk message functionality provides Market Makers with a means to help them satisfy these obligations. The proposed amendment to the Rulebook to add Phlx Options 3, Section 4(b)(3) will not result in a System change.

The Exchange's proposal to amend Options 3, Section 4(b)(6) to make clear that the actual price remains non-displayed during re-pricing is consistent with the Act and removes impediments to and perfects the mechanism of a free and open market and a national market system because it displays a re-priced order that does not lock or cross an away market. The rule text clearly explains that the best bid or offer will

[19] *See* Securities Exchange Act Release No. 80474 (April 17, 2017), 82 FR 18795 (April 21, 2017) (SR–Phlx–2017–30).

[20] Phlx's Gold/Silver Sector℠ Index or ''XAU''℠ is a p.m.-settled capitalization-weighted index composed of the stocks of widely held U.S. listed companies involved in the gold/silver mining industry.

[21] American-style exercise permits option holders to exercise their options on any Exchange business day up to and including the last business day immediately prior to the expiration date.

[22] European-style exercise permits option holders only to exercise their options on the expiration date.

[23] *See* Securities Exchange Act Release No. 93898 (January 4, 2022), 87 FR1238 (January 10, 2022) (SR–Phlx–2021–76) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Options 4A, Sections 4 and 14, Related to Index Options, and Amend Other Phlx Rules).

[24] *See* Securities Exchange Act Release No. 20437 (December 2, 1983), 48 FR 55229 (December 9, 1983) (SR–Phlx–83–17). *See also* Securities Exchange Act Release Nos. 37123 (April 18, 1996), 61 FR 18554 (April 25, 1996) (SR–Phlx–96–03); 43070 (July 25, 2000), 65 FR 47551 (August 2, 2000) (SR–Phlx–00–69); and 64549 (May 26, 2011), 76 FR 32004 (June 2, 2011) (SR–Phlx–2011–46).

[25] Phlx's Semiconductor Sector℠ Index or ''SOX''℠ is an a.m.-settled modified market capitalization-weighted index composed of companies primarily involved in the design, distribution, manufacture, and sale of semiconductors.

[26] *See* Securities Exchange Act Release No. 61539 (February 18, 2010), 75 FR 8765 (February 25, 2010) (SR–Phlx–2010–20).

[27] *See* Securities Exchange Act Release No. 93898 (January 4, 2022), 87 FR1238 (January 10, 2022) (SR–Phlx–2021–76) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Options 4A, Sections 4 and 14, Related to Index Options, and Amend Other Phlx Rules).

[28] *See* Securities Exchange Act Release Nos. 37123 (April 18, 1996), 61 FR 18554 (April 25, 1996) (SR–Phlx–96–03); 43070 (July 25, 2000), 65 FR 47551 (August 2, 2000) (SR–Phlx–00–69); and 64549 (May 26, 2011), 76 FR 32004 (June 2, 2011) (SR–Phlx–2011–46).

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

[31] As discussed above, this existing functionality is currently described in the Exchange's publicly available technical specifications. *See supra* note 3.

[32] *See* Options 2, Sections 4 and 5.

be non-displayed and the re-priced order will be displayed. A similar change is proposed for Phlx Options 3, Section 5(d). MRX recently amended Options 3, Section 4(b)(6) and Options 3, Section 5(d) to include the same language.[33] The proposed change aligns Phlx's rule text to MRX's rule text. The proposed amendment to the Rulebook to add Phlx Options 3, Section 4(b)(6) will not result in a System change.

The Exchange's proposal to add a new Options 3, Section 4(b)(7) to clarify that, today, Phlx's System will automatically execute eligible quotes using the Exchange's displayed best bid and offer (''BBO'') or the Exchange's non-displayed order book (''internal BBO'') if the best bid and/or offer on the Exchange has been repriced pursuant to Options 3, Section 5(d) and Options 3, Section 4(b)(6) is consistent with the Act and protects investors and the public interest. This rule text seeks to codify the current System function and make clear that the internal BBO is comprised or both orders and quotes, both of which are considered for price checks. MRX recently amended Options 3, Section 4(b)(7) to include this language.[34] The proposed change aligns Phlx's rule text to MRX's rule text. The proposed amendment to the Rulebook to add Phlx Options 3, Section 4(b)(7) will not result in a System change.

Options 3, Section 7

The Exchange's proposal to amend the description of SQF within Options 3, Section 7(e)(1)(B) is consistent with the Act as this rule text is currently noted within Options 3, Section 7(a)(i)(B). The addition of this language into the description of SQF provides a more complete description of this protocol. The addition of this information also aligns the level of information with that offered on MRX for SQF within Options 3, Section 7(e)(1)(B). The proposed amendment to Phlx Options 3, Section 7(e)(1)(B) will not result in a System change.

The Exchange's proposal to relocate, without amendment, the Legging Order type from Phlx Options 3, Section 14(f)(iii)(C) to Options 3, Section 7(b)(10) is a non-substantive amendment that will place the order type with other simple order book order types.

Options 3, Section 8

The Exchange's proposal to amend Phlx Options 3, Section 8(j)(3) to replace ''are marketable against the ABBO'' with ''cross the ABBO'' is consistent with the Act as the proposed new language precisely describes the specified scenario within in this rule. The Exchange notes that this is not a System change, rather this amendment clarifies the applicability of the rule text. This change is identical to a change recently made on MRX at Options 3, Section 8(i)(3).[35]

The Exchange's proposal to amend Phlx Options 3, Section 8(k)(D) to align Phlx's rule text with that of MRX Options 3, Section 8(j)(6)(i) is consistent with the Act as the proposed language more explicitly describes the manner in which the Exchange will re-price orders and would mirror rule text in Phlx Options 3, Section 4(b)(6). The proposed amendment to Phlx Options 3, Section 8(k)(D) will not result in a System change.

Options 3, Section 10

The Exchange's proposal to amend Options 3, Section 10(a)(1)(C) to add a sentence which states that ''This participation entitlement will be considered after the Opening Process'' is consistent with the Act because the NBBO would not be available pre-opening. The Exchange proposes to add this language to provide clarity. The proposed amendment to Phlx Options 3, Section 10(a)(1)(C) will not result in a System change.

Options 3, Section 15

The Exchange's proposal to amend Phlx Options 3, Section 15(a)(1) to align Phlx's OPP rule text to MRX's OPP rule text within Options 3, Section 15(a)(1)(A) is consistent with the Act[36] because removing the references to ''Day Limit, Good til Cancelled, Immediate-or-Cancel and All-or-None Orders'' and, instead, referring to ''Limit'' Orders accurately captures the scope of the orders subject to OPP. This change would also make unnecessary the reference to Market Orders. The proposed amendment to Options 3, Section 15(a)(1) will not result in a System change.

The Exchange's proposal to amend the ATR Rule within Options 3, Section 15(b)(1) is consistent with the Act. MRX recently amended its ATR rule.[37] MRX's ATR rule utilized different rule text to explain the ATR functionality. Amending Options 3, Section 15(b)(1)(A) to add the internal BBO concept similar to language proposed for Options 3, Sections 4 and 5 is consistent with the Act. Where a quote is re-priced to avoid a locked or crossed market, the best bid or offer will be non-displayed and the re-priced order will be displayed at a price that is one minimum trading increment inferior to the ABBO. The best price on the order book could therefore be non-displayed. The addition of this language makes clear the manner in which the System calculates the Reference Price.

Amending Phlx Section 15(b)(1) to add the words ''after the Posting Period'' to explain when a new ATR would be calculated provides more context to the rule will provide greater context to the sentence. Additionally, adding the word ''quote'' in Options 3, Section 15(b)(1)(B) and (C), where it is omitted, will add clarity. The proposed amendment to Options 3, Section 15(b)(1) will not result in a System change. Also, adding rule text within Phlx Options 3, Section 15(b)(1)(D) to make clear the Exchange's ability to set different ATR values by options category is consistent with the Act because the ATR risk protection limits the range of prices at which an order and quote trades and would take into account the minimum increment. The ability for the Exchange to set the ATR based on the increment allows the Exchange to set appropriate limits. The Exchange believes this rule text will add greater clarity to the ATR rule. The proposed amendment to Options 3, Section 15(b)(1) will not result in a System change.

Options 4A, Sections 6 and 12

The Exchange's proposal to remove the Russell Indexes from Options 4A, Sections 6(a)(i), (iii) and 6(c), as well as references within Options 4A, Section 12(a)(2) and Supplementary Material .01 and .03 of Options 4A, Section 12 is consistent with the Act and protect investors and the public interest because options on the Russell Indexes are no longer listed on Phlx.

The Exchange's proposal to remove a reference to the Reduced Value Nasdaq 100® Index or ''MNX'' within Options 4A, Section 12(a)(2)(I) is consistent with the Act because Phlx delisted MNX on April 7, 2017[38] and no longer trades MNX.

The Exchange's proposal to remove the reference to ''Reduced value long term options, also known as LEAPS'' is consistent with the Act because Options 4A, Section 12(b)(2) addresses Long-Term Option Series or ''LEAPS'' including those for certain reduced

[33] *See* SR–MRX–2022–16.

[34] *Id.*

[35] *See* SR–MRX–2022–18.

[36] MRX recently amended its Order Price Protection (''OPP'') rule. *See* SR–MRX–2022–18.

[37] *See* SR–MRX–2022–16.

[38] *See* Securities Exchange Act Release No. 80474 (April 17, 2017), 82 FR 18795 (April 21, 2017) (SR–Phlx–2017–30).

value index options such as the Micro Index Long Term Options Series.

The Exchange's proposal to modify Options 4A, Section 12(a)(5) to XAU from Options 4A, Section 12(a)(5) and add it to proposed new Options 4A, Section (a)(7), relating to American-style exercise is consistent with the Act and protect investors and the public interest because it would reflect the indexes correct exercise style. XAU was originally filed as having an American-style exercise and not a European-style-exercise.[39]

The Exchange's proposal to list SOX within proposed new Options 4A, Section (a)(7) is consistent with the Act and protect investors and the public interest because it would reflect the indexes exercise style. SOX has an American-style expiration[40] and the Exchange proposes to list the index as such.

The Exchange's proposal to amend Options 4A, Section 12(e)(II) to remove XAU from the list of a.m.-settled options and add it to the list of p.m.-settled indexes within Options 4A, Section 12(f) is consistent with the Act and protect investors and the public interest because it would reflect the indexes correct settlement style. XAU has always been a p.m.-settled index option.[41]

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.

Option 3, Sections 4 and 5

The Exchange believes that its proposal to memorialize its bulk message functionality within Options 3, Section 4(b)(3) does not impose an undue burden on intra-market competition. While the Exchange currently offers this functionality to Market Makers only, bulk messaging is intended to provide Market Makers with an additional tool to meet their various quoting obligations in a manner they deem appropriate. As such, the Exchange believes that this functionality may facilitate Market Makers' provision of liquidity, thereby benefiting all market participants through additional execution opportunities at potentially improved prices. Furthermore, while the Exchange will offer the proposed Post-Only Quote Configuration to Market Makers only, the proposed risk protection will enhance the ability of Market Makers to add liquidity and avoid removing liquidity from the Exchange's order book in the manner described above. Greater liquidity benefits all market participants by providing more trading opportunities and attracting greater participation by Market Makers. The Exchange believes that its proposal to memorialize its bulk message functionality within Options 3, Section 4(b)(3) does not impose an undue burden on inter-market competition as other options exchanges may adopt this functionality.

The Exchange's proposal to amend Phlx's rules at Options 3, Section 4(b)(6) and Options 3, Section 4(b)(7) do not impose an undue burden on competition because all options markets must not trade-through other orders on their markets as well as away markets. The proposed change aligns Phlx's rule text to MRX's rule text.

Options 3, Section 7

Amending the description of SQF within Options 3, Section 7(e)(1)(B) does not impose an undue burden on competition The addition of this language into the description of SQF provides a more complete description of this protocol.

The Exchange's proposal to relocate, without amendment, the Legging Order type from Phlx Options 3, Section 14(f)(iii)(C) to Options 3, Section 7(b)(10) is a non-substantive amendment that will place the order type with other simple order book order types.

Options 3, Section 8

The Exchange's proposal to amend Phlx Options 3, Section 8(j)(3) to replace ''are marketable against the ABBO'' with ''cross the ABBO'' does not impose an undue burden on competition, rather this proposed new language precisely describes the specified scenario within in this rule.

The Exchange's proposal to amend Phlx Options 3, Section 8(k)(D) to align Phlx's rule text with that of MRX Options 3, Section 8(j)(6)(i) does not impose an undue burden on competition, rather the proposed language more explicitly describes the manner in which the Exchange will re-price orders and would mirror rule text in Phlx Options 3, Section 4(b)(6).

Options 3, Section 10

The Exchange's proposal to amend Options 3, Section 10(a)(1)(C) to add a sentence which states that ''This participation entitlement will be considered after the Opening Process'' is consistent with the Act because the NBBO would not be available pre-opening. The Exchange proposes to add this language to provide clarity. The proposed amendment to Phlx Options 3, Section 10(a)(1)(C) will not result in a System change.

Options 3, Section 15

The Exchange's proposal to amend Phlx Options 3, Section 15(a)(1) to align Phlx's OPP rule text to MRX's OPP rule text within Options 3, Section 15(a)(1)(A) does not impose an undue burden on competition because removing the references to ''Day Limit, Good til Cancelled, Immediate-or-Cancel and All-or-None Orders'' and, instead, referring to ''Limit'' Orders accurately captures the scope of the orders subject to OPP. This change would also make unnecessary the reference to Market Orders.

The Exchange's proposal to amend the ATR Rule within Options 3, Section 15(b)(1) does not impose an undue burden on competition. Amending Options 3, Section 15(b)(1)(A) to add the internal BBO concept similar to language proposed for Options 3, Sections 4 and 5 does not impose an undue burden on competition. Where a quote is re-priced to avoid a locked or crossed market, the best bid or offer will be non-displayed and the re-priced order will be displayed at a price that is one minimum trading increment inferior to the ABBO. The best price on the order book could therefore be non-displayed. The addition of this language makes clear the manner in which the System calculates the Reference Price.

Amending Phlx Section 15(b)(1) to add the words ''after the Posting Period'' to explain when a new ATR would be calculated provides more context to the rule will provide greater context to the sentence. Additionally, adding the word ''quote'' in Options 3, Section 15(b)(1)(B) and (C), where it is omitted, will add clarity. Adding rule text within Phlx Options 3, Section 15(b)(1)(D) to make clear the Exchange's ability to set different ATR values by options category does not impose an undue burden on competition because the ability for the Exchange to set the ATR based on the increment allows the Exchange to set appropriate limits. The

[39] *See* Securities Exchange Act Release No. 20437 (December 2, 1983), 48 FR 55229 (December 9, 1983) (SR–Phlx–83–17). *See also* Securities Exchange Act Release Nos. 37123 (April 18, 1996), 61 FR 18554 (April 25, 1996) (SR–Phlx–96–03); 43070 (July 25, 2000), 65 FR 47551 (August 2, 2000) (SR–Phlx–00–69); and 64549 (May 26, 2011), 76 FR 32004 (June 2, 2011) (SR–Phlx–2011–46).

[40] *See* Securities Exchange Act Release No. 61539 (February 18, 2010), 75 FR 8765 (February 25, 2010) (SR–Phlx–2010–20).

[41] *See* Securities Exchange Act Release Nos. 37123 (April 18, 1996), 61 FR 18554 (April 25, 1996) (SR–Phlx–96–03); 43070 (July 25, 2000), 65 FR 47551 (August 2, 2000) (SR–Phlx–00–69); and 64549 (May 26, 2011), 76 FR 32004 (June 2, 2011) (SR–Phlx–2011–46).

Exchange believes this rule text will add greater clarity to the ATR rule.

Options 4A, Sections 6 and 12

The Exchange's proposal to remove the Russell Indexes from Options 4A, Sections 6(a)(i), (iii) and 6(c), as well as references within Options 4A, Section 12(a)(2) and Supplementary Material .01 and .03 of Options 4A, Section 12 does not impose an undue burden on competition because no Phlx member or member organization would be able to trade Russell Indexes.

The Exchange's proposal to remove a reference to the Reduced Value Nasdaq 100® Index or ''MNX'' within Options 4A, Section 12(a)(2)(I) does not impose an undue burden on competition because Phlx delisted MNX on April 7, 2017 [42] and no member or member organization may trade MNX.

The Exchange's proposal to remove the reference to ''Reduced value long term options, also known as LEAPS'' does not impose an undue burden on competition because all members and member organizations may trade LEAPs on certain reduced value index options such as the Micro Index Long Term Options Series pursuant to Options 4A, Section 12(b)(2).

The Exchange's proposal to modify Options 4A, Section 12(a)(5) to XAU from Options 4A, Section 12(a)(5) and add it to proposed new Options 4A, Section (a)(7), relating to American-style exercise does not impose an undue burden on competition because it would reflect the indexes correct exercise style. All Phlx members and member organizations would be able to transact XAU with an American-style exercise. The Exchange's proposal to list SOX within proposed new Options 4A, Section (a)(7) does not impose an undue burden on competition because it would reflect the indexes exercise style. All Phlx members and member organizations would be able to transact SOX with an American-style exercise. The Exchange's proposal to amend Options 4A, Section 12(e)(II) to remove XAU from the list of a.m.-settled options and add it to the list of p.m.-settled indexes within Options 4A, Section 12(f) does not impose an undue burden on competition because it would reflect the indexes correct settlement style. All Phlx members and member organizations would be able to transact XAU with a p.m.-settlement.

[42] *See* Securities Exchange Act Release No. 80474 (April 17, 2017), 82 FR 18795 (April 21, 2017) (SR–Phlx–2017–30).

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 foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [43] and subparagraph (f)(6) of Rule 19b–4 thereunder.[44]

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–Phlx–2023–27 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–2023–27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–Phlx–2023–27 and should be submitted on or before August 4, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–14911 Filed 7–13–23; 8:45 am]

BILLING CODE 8011–01–P

[43] 15 U.S.C. 78s(b)(3)(A)(iii).

[44] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[45] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–524, OMB Control No. 3235–0582]

Submission for OMB Review; Comment Request; Extension: Form N–PX

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (''Commission'')

has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

On November 2, 2022, the Commission adopted rule and form amendments (''Amendments'') that would enhance the information funds report on Form N–PX and make that information easier to analyze.[1] The Commission also adopted a new rule that would require an institutional investment manager subject to section 13(f) of the Securities Exchange Act of 1934 (''Exchange Act'') to report annually on Form N–PX how it voted proxies relating to executive compensation matters, as required by section 14A of the Exchange Act. The Amendments require funds (and, for executive compensation matters, institutional investment managers) to (i) identify voting matters using language from the issuer's form of proxy (with certain exceptions for issuers who are not subject to the Commission's proxy rules) and categorize their votes from a list of categories; (ii) disclose quantitative information regarding the number of votes cast (or instructed to be cast) and the number of shares not voted because they are out on loan; and (iii) file reports in an XML structured data language using a standardized format. In addition, the Amendments included changes to Forms N–1A, N–2, and N–3 that require funds, if they have a website, to disclose that their proxy voting records are publicly available on or through their websites, free of charge, and to make this information available on or through its website as soon as reasonably practicable after filing a report on Form N–PX with the Commission.

The purpose of Form N–PX is to meet the filing and disclosure requirements of rules under the Act and also to enable funds to provide investors with information necessary to evaluate overall patterns in the manager's voting behavior. This information collection is primarily for the use and benefit of investors. The information filed with the Commission also permits the verification of compliance with securities law requirements and assures the public availability and dissemination of the information. Due to the Amendments, Form N–PX will also be used by institutional investment managers to meet the filing and disclosure requirements of section 14A under the Exchange Act.

The table below summarizes our estimates associated with the amendments to Form N–PX that the Amendments address:

BILLING CODE 8011–01–P

[1] Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers, Investment Company Release No. 34745 (November 2, 2022) [87 FR 78770 (Dec. 22, 2022)] (''Adopting Release'').

FORM N-PX PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours[1]		Wage rate[2]	Internal time costs	Annual external cost burden
Funds Holding Equity Securities						
Estimated annual burden of current Form N-PX per response		7.2	×	$400[3]	$2,880	$1,000
Estimated initial burden to accommodate new reporting requirements	36	12	×	$349[4]	$4,188	$500
Additional estimated annual burden associated with amendments to Form N-PX		12	×	$349[5]	$4,188	$1,000
Website availability requirement[6]		0.5	×	$272[7]	$136	
Estimated number of annual responses[8]		× 5,496			× 5,496	× 5,496
Total annual burden		188,490			$67,737,479	$14,865,142
Funds Not Holding Equity Securities						
Estimated annual burden of current Form N-PX per response		0.17	×	$400[3]	$68	
Additional estimated annual burden associated with amendments to Form N-PX						
Estimated number of annual responses[8]		× 2,588			× 2,588	
Total annual burden		440			$176,005	
Funds of Funds						
Estimated annual burden of current Form N-PX per response		1	×	$400[3]	$400	$100
Additional estimated annual burden associated with amendments to Form N-PX		0.5	×	$400[3]	$200	$100
Website availability requirement[6]		0.5	×	$272[6]	$136	
Estimated number of annual responses[8]		× 1,619			× 1,619	× 1,619
Total annual burden		3,238			$1,191,584	$323,800
Institutional Investment Managers						
Changes to systems to accommodate new reporting requirements	45	15	×	$349[9]	$5,235	$500
Estimated annual burden associated with Form		7.5	×	$343[10]	$2,573	$2,000

N-PX filing requirement			
Estimated number of annual responses	× 8,381	× 8,381	× 8,381
Total annual burden	188,572	$65,438,848	$20,952,500
Total Burden			
Currently Approved Burden	47,984		$17,657,958
Additional Burden Associated with Amendments	332,757		$18,483,484
Total Burden	380,741		$36,141,445

Certain products and sums do not tie due to rounding.

1. Includes initial burden estimates amortized over a three-year period.
2. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted annually to account for the effects of inflation, with the last adjustment before the adoption of the Amendments occurring in early 2022. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.
3. Represents the estimated hourly wage rate of a compliance attorney.
4. Represents the blended estimated hourly wage rates of a programmer and a compliance attorney and includes, *inter alia*, the costs of obtaining from service providers data on the number of shares on loan but not recalled. In the case of the final estimates, the blended hourly rate is based on 18 hours for a programmer at $297 per hour and 18 hours for a compliance attorney at $400 per hour.
5. Represents the blended estimated hourly wage rates of a programmer and a compliance attorney. In the case of the final estimates, the blended hourly rate is based on 6 hours for a programmer at $297 per hour and 6 hours for a compliance attorney at $400 per hour.
6. While the Amendments will require funds to disclose that their proxy voting records both are available on fund websites and will be delivered to investors upon request, the Form N-PX PRA estimates includes only the burdens associated with website posting. Funds' registration forms currently require them to disclose that they either make their proxy voting records available on their websites or deliver them upon request. We understand most funds deliver proxy voting records upon request and, therefore, the burdens of delivery upon request are already included in the information collection burdens of each relevant registration form.
7. Represents the estimated hourly wage rate of a webmaster.
8. These estimates are conducted for each fund portfolio, not for each filing, and are an average estimate across all Form N-PX reporting persons. In certain cases, a single Form N-PX filing will report the proxy voting records of multiple fund portfolios. In those circumstances, the reporting person will bear the burden associated with each fund portfolio it reported. This average estimate takes into account higher costs for funds filing reports for multiple portfolios without assuming any economies of scale that multiple-portfolio fund complexes may be able to achieve.
9. Represents the blended estimated hourly wage rates of a programmer and a compliance attorney. In the case of the final estimates, the blended hourly rate is based on 22.5 hours for a programmer at $297 per hour and 22.5 hours for a compliance attorney at $400 per hour.
10. Represents the blended estimated hourly wage rates of a programmer and a compliance attorney. In the case of the final estimates, the blended hourly rate is based on 3 hours for a programmer at $297 per hour and 4.5 hours for a compliance attorney at $400 per hour.

BILLING CODE 8011–01–C

The table above summarizes our PRA initial and ongoing annual burden estimates associated with Form N–PX, as amended. In the aggregate, we estimate the total annual burden to comply with amended Form N–PX to be 380,741 hours, with an average external cost of $36,141,445.

Compliance with Form N–PX is mandatory. Responses to the collection of information requirements will not be kept confidential.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by August 14, 2023 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov*.

Dated: July 11, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–14998 Filed 7–13–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–808, OMB Control No. 3235–0740]

Submission for OMB Review; Comment Request; Extension: Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

In accordance with the requirements of Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (12 U.S.C. 5452), the Commission joined with the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Bureau of Consumer Financial Protection, and the National Credit Union Administration (Agencies) to develop Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies (Joint Standards), which were issued through an interagency policy statement published in the **Federal Register** on June 15, 2015. To facilitate the collection of information envisioned by the Joint Standards, the Commission developed a form entitled the ''Diversity Self-Assessment Tool for Entities Regulated by the SEC'' (formerly the ''Diversity Assessment Report'').

The Diversity Self-Assessment Tool (1) asks for general information about the respondent; (2) includes a checklist and questions relating to the policies and practices set forth in the Joint Standards; (3) requests data related to workforce diversity and supplier diversity; and (4) provides respondents with the opportunity to describe their successful policies and practices for promoting diversity and inclusion.

The information collection is voluntary. The Commission may use information submitted to monitor progress and trends in the financial services industry regarding diversity and inclusion and to identify and highlight diversity and inclusion policies and practices that have been successful. In addition, the Commission may publish information submitted, such as leading practices, in a form that does not identify a particular entity or disclose confidential business information. Further, the Commission may share information with other Agencies, when appropriate, to support coordination of efforts and to avoid duplication.

Title of Collection: Joint Standards for Assessing Diversity Policies and Practices.[1]

Type of Review: Request for a Non-Substantive Change to an Existing Approved Information Collection.

Frequency of Response: Biennially.

Estimated Number of Respondents: 260.

Estimated Burden Hours per Respondent: 8 hours; 4 hours annualized.

Estimated Total Annual Burden Hours: 2,080; 1,040 annualized. Since the last approval of this information collection, we have adjusted the burden hours per respondent based on a reduction in the number of items in this information collection.

Proposed Revisions: The SEC proposes to amend the Diversity Self-Assessment Tool to: (1) change the name of the information collection from the ''Diversity Assessment Report'' to the ''Diversity Self-Assessment Tool''; (2) allow firms to consent to allowing the SEC to publish the name of consenting firms having submitted a Diversity Self-Assessment Tool; (3) shorten the Diversity Self-Assessment Tool by combining and removing some items; (4) add clarifying language to items; and (5) shorten items for brevity. A draft of the proposed revised Diversity Self-Assessment Tool can be viewed at *https://www.sec.gov/files/omwi-diversity-self-assessment-tool.pdf.*

On May 11, 2023, the Commission published a notice in the **Federal Register** (88 FR 30352) of its intention to request an extension of this currently approved collection of information and allowed the public 60 days to submit comments. The Commission received no comments.

Written comments continue to be invited on: (a) whether this 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 imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to *Lindsay.M.Abate@omb.eop.gov;* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: July 11, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–14999 Filed 7–13–23; 8:45 am]

BILLING CODE 8011–01–P

[1] The title of the currently approved collection—Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies— has been shortened.

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17988 and #17989; NORTH DAKOTA Disaster Number ND–00110]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of North Dakota

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 State of North Dakota (FEMA–4717–DR), dated 07/05/2023.

Incident: Flooding.

Incident Period: 04/10/2023 through 05/06/2023.

DATES: Issued on 07/05/2023.

Physical Loan Application Deadline Date: 09/05/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 04/05/2024.

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 07/05/2023, 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 Counties:

Barnes, Burke, Dickey, Dunn, Golden Valley, Grand Forks, Hettinger, Lamoure, McHenry, Mercer, Morton, Mountrail, Nelson, Pembina, Ransom, Richland, Sargent, Steele, Towner, Walsh, Wells

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 17988 6 and for economic injury is 17989 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–15005 Filed 7–13–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17992 and #17993; MAINE Disaster Number ME–00066]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Maine

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 State of Maine (FEMA–4719–DR), dated 07/06/2023.

Incident: Severe Storm and Flooding.

Incident Period: 04/30/2023 through 05/01/2023.

DATES: Issued on 07/06/2023.

Physical Loan Application Deadline Date: 09/05/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 04/08/2024.

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 07/06/2023, 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 Counties: Franklin, Kennebec, Knox, Lincoln, Oxford, Sagadahoc, Somerset, Waldo

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 17992 6 and for economic injury is 17993 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–15004 Filed 7–13–23; 8:45 am]

BILLING CODE 8026–09–P

SURFACE TRANSPORTATION BOARD

30-Day Notice of Intent To Seek Extension of Approval of Collection: Dispute Resolution Procedures Under the Fixing America's Surface Transportation Act

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for an extension of the collection of ''FAST Act'' Dispute Resolution Procedures, as described below.

DATES: Comments on this information collection should be submitted by August 14, 2023.

ADDRESSES: Written comments should be identified as ''Paperwork Reduction Act Comments, Surface Transportation Board, FAST Act Dispute Resolution Procedures.'' Written comments for the proposed information collection should be submitted via *www.reginfo.gov/public/do/PRAMain.* This information collection can be accessed by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. As an alternative, written comments may be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Michael J. McManus, Surface Transportation Board Desk Officer: via email at *oira_submission@omb.eop.gov;* by fax at (202) 395–1743; or by mail to Room 10235, 725 17th Street NW, Washington, DC 20503.

Please also direct all comments to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, or to *PRA@stb.gov*. When submitting comments, please refer to ''Paperwork Reduction Act Comments, FAST Act Dispute Resolution Procedures.'' For further information regarding this collection, contact Michael Higgins, Deputy Director, Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC), at (866) 254–1792 (toll-free) or 202–245–0238, or by emailing to *rcpa@stb.gov.* Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Board previously published a notice about this collection in the **Federal Register** (88 FR 30829 (May 12, 2023)). That notice allowed for a 60-day public review and

comment period. No comments were received.

Comments are requested concerning: (1) the accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collection

Title: FAST Act Dispute Resolution Procedures.

OMB Control Number: 2140–0036.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Parties seeking the Board's informal assistance under Fixing America's Surface Transportation Act, Public Law 114–94 (signed Dec. 4, 2015) (FAST Act).

Number of Respondents: Approximately three.

Estimated Time per Response: One hour.

Frequency: On occasion.

Total Burden Hours (*annually including all respondents*): Three hours (estimated hours per response (1) × total number of responses (3)).

Total Annual ''Non-Hour Burden'' Cost (such as start-up and mailing costs): There are no non-hourly burden costs for this collection.

Needs and Uses: Title XI of the FAST Act, entitled ''Passenger Rail Reform and Investment Act of 2015,'' gives the Board authority to resolve cost allocation and access disputes between the National Railroad Passenger Corporation (Amtrak), the states, and potential non-Amtrak operators of intercity passenger rail service. The FAST Act directs the Board to establish procedures for the resolution of these disputes, ''which may include the provision of professional mediation services.'' 49 U.S.C. 24712(c)(2), 24905(c)(4). Under 49 CFR 1109.5, the Board provides that parties to a dispute involving the State-Sponsored Route Committee or the Northeast Corridor Committee may, by a letter submitted to OPAGAC, may request the Board's informal assistance in securing outside professional mediation services. The letter shall include a concise description of the issues for which outside professional mediation services are sought. The collection by the Board of these request letters enables the Board to meet its statutory duty under the FAST Act.

Under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Section 3507(b) of the PRA requires, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: July 10, 2023.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2023–14941 Filed 7–13–23; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

30-Day Notice of Intent To Seek Extension of Approval: Report of Fuel Cost, Consumption, and Surcharge Revenue

ACTION: Notice and request for comments.

AGENCY: Surface Transportation Board.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for an extension of the collection of the Report of Fuel Cost, Consumption, and Surcharge Revenue, as described below.

DATES: Comments on this information collection should be submitted by August 14, 2023.

ADDRESSES: Written comments should be identified as ''Paperwork Reduction Act Comments, Surface Transportation Board, Report of Fuel Cost, Consumption, and Surcharge Revenue.'' Written comments for the proposed information collection should be submitted via *www.reginfo.gov/public/do/PRAMain.* This information collection can be accessed by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. As an alternative, written comments may be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Michael J. McManus, Surface Transportation Board Desk Officer: via email at *oira_submission@omb.eop.gov;* by fax at (202) 395–1743; or by mail to Room 10235, 725 17th Street NW, Washington, DC 20503.

Please also direct all comments to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, or to *PRA@stb.gov.* When submitting comments, please refer to ''Paperwork Reduction Act Comments, Report of Fuel Cost, Consumption, and Surcharge Revenue.'' For further information regarding this collection, contact Pedro Ramirez at (202) 245–0333 or *pedro.ramirez@stb.gov.* Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Board previously published a notice about this collection in the **Federal Register** (88 FR 30830 (May 12, 2023)). That notice allowed for a 60-day public review and comment period. No comments were received.

Comments are requested concerning: (1) the accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collection

Title: Report of Fuel Cost, Consumption, and Surcharge Revenue.

OMB Control Number: 2140–0014.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Class I [large] railroads.

Number of Respondents: Seven.

Estimated Time per Response: One hour.

Frequency: Quarterly.

Total Burden Hours (annually including all respondents): 28.

Total ''Non-hour Burden'' Cost: None identified. Filings are submitted electronically to the Board.

Needs and Uses: Under 49 U.S.C. 10702, the Board has the authority to address the reasonableness of a rail

carrier's practices. This information collection regarding fuel cost, consumption, and surcharge revenues permits the Board to monitor the current fuel surcharge practices of the Class I carriers. Failure to collect this information would impede the Board's ability to fulfill its statutory responsibilities. The Board has authority to collect information about rail costs and revenues under 49 U.S.C. 11144 and 11145.

Under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Section 3507(b) of the PRA requires, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: July 10, 2023.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2023–14940 Filed 7–13–23; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36712]

Carolina Coastal Railway, Inc.—Acquisition Exemption—Line of Clinton Industrial Switching District, Inc., d/b/a Clinton Terminal Railroad Company

Carolina Coastal Railway, Inc. (CLNA), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to acquire approximately 3.53 miles of rail line between milepost 199.0 in Moltonville, NC, and the end of the track at milepost 202.53 in Clinton, NC (the Line), from Clinton Industrial Switching District, Inc., d/b/a Clinton Terminal Railroad Company (CTR), also a Class III rail carrier.

The verified notice states that CLNA will acquire the Line from CTR pursuant to an Asset Purchase Agreement entered into on June 28, 2023.[1] CLNA intends to operate the Line as a CLNA division, under a separate trade name and reporting marks.

CLNA represents that: (1) the Line does not connect with the existing rail lines of CLNA or the lines of any rail carrier in the CLNA corporate family; (2) the transaction is not part of a series of anticipated transactions that would result in such a connection; and (3) the transaction does not involve a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2). Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

The transaction may be consummated on or after July 30, 2023, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than July 21, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36712, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on CLNA's representative, Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

According to CLNA, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov*.

Decided: July 11, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2023–14982 Filed 7–13–23; 8:45 am]

BILLING CODE 4915–01–P

[1] A redacted version of the agreement was filed with the verified notice of exemption. An unredacted version was filed concurrently under seal, along with a motion for protective order pursuant to 49 CFR 1104.14(b). That motion will be addressed in a separate decision.

SURFACE TRANSPORTATION BOARD

30-Day Notice of Intent To Seek Extension of Approval: Petitions for Declaratory Orders and Petitions for Relief Not Otherwise Specified

ACTION: Notice and request for comments.

AGENCY: Surface Transportation Board.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for extensions of the collections regarding petitions for declaratory orders and petitions for relief not otherwise specified, as described below.

DATES: Comments on these information collections should be submitted by August 14, 2023.

ADDRESSES: Written comments should be identified as ''Paperwork Reduction Act Comments, Surface Transportation Board, Petitions for Declaratory Orders and Petitions for Relief Not Otherwise Specified.'' Written comments for the proposed information collection should be submitted via *www.reginfo.gov/public/do/PRAMain.* This information collection can be accessed by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. As an alternative, written comments may be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Michael J. McManus, Surface Transportation Board Desk Officer: via email at *oira_submission@omb.eop.gov;* by fax at (202) 395–1743; or by mail to Room 10235, 725 17th Street NW, Washington, DC 20503.

Please also direct all comments to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street, SW, Washington, DC 20423–0001, or to *PRA@stb.gov.* When submitting comments, please refer to ''Paperwork Reduction Act Comments, Petitions for Declaratory Orders and Petitions for Relief Not Otherwise Specified.'' For further information regarding this collection, contact Michael Higgins, Deputy Director, Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC), at (866) 254–1792 (toll-free) or 202–245–0238, or by

emailing to *rcpa@stb.gov.* Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Board previously published a notice about this collection in the **Federal Register** (88 FR 30827 (May 12, 2023)). That notice allowed for a 60-day public review and comment period. No comments were received.

For each collection, comments are requested concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collections

Collection Number 1

Title: Petitions for declaratory orders.

OMB Control Number: 2140–0031.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Affected shippers, railroads, communities, and other stakeholders that choose to seek a declaratory order from the Board to terminate a controversy or remove uncertainty.

Number of Respondents: Approximately eight.

Estimated Time per Response: 180 hours.

Frequency: On occasion. In calendar years 2020–2022, approximately 12 petitions for declaratory orders were filed with the Board per year.

Total Burden Hours (annually including all respondents): 2,160 hours (estimated hours per petition (180) × total number of petitions (12)).

Total ''Non-Hour Burden'' Cost: None identified. Filings are submitted electronically to the Board.

Needs and Uses: Under 5 U.S.C. 554(e) and 49 U.S.C. 1321, the Board may issue a declaratory order to terminate a controversy or remove uncertainty. Because petitions for declaratory orders can encompass a broad range of issues and types of requests, the Board does not prescribe specific instructions for their filing. The collection by the Board regarding petitions for declaratory orders that parties choose to file enables the Board to meet its statutory duty to regulate the rail industry.

Collection Number 2

Title: Petitions for relief not otherwise provided.

OMB Control Number: 2140–0030.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Affected shippers, railroads, communities, and other stakeholders that seek to address issues under the Board's jurisdiction that are not otherwise specifically provided for under the Board's other regulatory provisions.

Number of Respondents: Approximately four.

Estimated Time per Response: 25 hours.

Frequency: On occasion. In calendar years 2020–2022, approximately four petitions of this type were filed with the Board per year.

Total Burden Hours (annually including all respondents): 100 hours (estimated hours per petition (25) × total number of petitions (4)).

Total ''Non-Hour Burden'' Cost: None identified. Filings are submitted electronically to the Board.

Needs and Uses: Under 49 U.S.C. 1321 and 49 CFR part 1117 (the Board's catch-all petition provision), shippers, railroads, and the public in general may seek relief (such as waiver of the Board's regulations) not otherwise specifically provided for under the Board's other regulatory provisions. Under section 1117.1, such petitions should contain three items: (a) a short, plain statement of jurisdiction, (b) a short, plain statement of petitioner's claim, and (c) request for relief. The collection by the Board of these petitions that parties choose to file enables the Board to more fully meet its statutory duty to regulate the rail industry.

Under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Section 3507(b) of the PRA requires, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: July 10, 2023.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2023–14942 Filed 7–13–23; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 526 (Sub-No. 18)]

Notice of Railroad-Shipper Transportation Advisory Council Vacancy

AGENCY: Surface Transportation Board (Board).

ACTION: Notice of vacancy on the Railroad-Shipper Transportation Advisory Council (RSTAC) and solicitation of nominations.

SUMMARY: The Board hereby gives notice of a vacancy on RSTAC for an at-large (public interest) representative. The Board seeks nominations for candidates to fill this vacancy.

DATES: Nominations are due on August 14, 2023.

ADDRESSES: Nominations may be submitted via e-filing on the Board's website at *www.stb.gov.* Submissions will be posted to the Board's website under Docket No. EP 526 (Sub-No. 18).

FOR FURTHER INFORMATION CONTACT: Gabriel Meyer at (202) 245–0150. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

SUPPLEMENTARY INFORMATION: The Board, created in 1996 to take over many of the functions previously performed by the Interstate Commerce Commission, exercises broad authority over transportation by rail carriers, including regulation of railroad rates and service (49 U.S.C. 10701–47, 11101–24), the construction, acquisition, operation, and abandonment of rail lines (49 U.S.C. 10901–07), as well as railroad line sales, consolidations, mergers, and common control arrangements (49 U.S.C. 10902, 11323–27).

The ICC Termination Act of 1995 (ICCTA), enacted on December 29, 1995, established RSTAC to advise the Board's Chair; the Secretary of Transportation; the Committee on Commerce, Science, and Transportation of the Senate; and the Committee on Transportation and Infrastructure of the House of Representatives with respect to rail transportation policy issues RSTAC considers significant. RSTAC focuses on issues of importance to small shippers and small railroads, including car supply, rates, competition, and procedures for addressing claims.

ICCTA instructs RSTAC to endeavor to develop private sector mechanisms to prevent, or identify and address, obstacles to the most effective and efficient transportation system practicable. The members of RSTAC also prepare an annual report concerning RSTAC's activities. RSTAC is not subject to the Federal Advisory Committee Act.

RSTAC's 15 appointed members consist of representatives of small and large shippers, and small and large railroads. These members are appointed by the Chair. In addition, members of the Board and the Secretary of Transportation serve as ex officio members. Of the 15 appointed members, nine are voting members and are appointed from senior executive officers of organizations engaged in the railroad and rail shipping industries. At least four of the voting members must be representatives of small shippers as determined by the Chair, and at least four of the voting members must be representatives of Class II or III railroads. The remaining voting member has traditionally been an at-large representative. The other six members—three representing Class I railroads and three representing large shipper organizations—serve in a nonvoting, advisory capacity, but may participate in RSTAC deliberations.

Meetings of RSTAC are required by statute to be held at least semi-annually. RSTAC typically holds meetings quarterly at the Board's headquarters in Washington, DC, although some meetings are held virtually or in other locations.

The members of RSTAC receive no compensation for their services and are required to provide for the expenses incidental to their service, including travel expenses. Currently, RSTAC members have elected to submit annual dues to pay for RSTAC expenses.

RSTAC members must be citizens of the United States and represent as broadly as practicable the various segments of the railroad and rail shipper industries. They may not be full-time employees of the United States Government. According to revised guidance issued by the Office of Management and Budget, it is permissible for federally registered lobbyists to serve on advisory committees, such as RSTAC, as long as they do so in a representative capacity, rather than an individual capacity. *See Revised Guidance on Appointment of Lobbyists to Fed. Advisory Comms., Bds., & Comm'ns,* 79 FR 47,482 (Aug. 13, 2014). Members of RSTAC are appointed to serve in a representative capacity.

Each RSTAC member is appointed for a term of three years. No member will be eligible to serve in excess of two consecutive terms. However, a member may serve after the expiration of his or her term until a successor has taken office.

Due to the expiration of an RSTAC member's term, a vacancy exists for an at-large (public interest) representative. Nominations for candidates to fill the vacancy should be submitted in letter form, identifying the name of the candidate, providing a summary of why the candidate is qualified to serve on RSTAC, and containing representations that the candidate is willing to serve as an RSTAC member effective immediately upon appointment. Candidates may nominate themselves. The Chair is committed to having a committee reflecting diverse communities and viewpoints and strongly encourages the nomination of candidates from diverse backgrounds. RSTAC candidate nominations should be filed with the Board by August 14, 2023. Members selected to serve on RSTAC are chosen at the discretion of the Board Chair. Please note that submissions will be posted on the Board's website under Docket No. EP 526 (Sub-No. 18) and can also be obtained by contacting the Office of Public Assistance, Governmental Affairs, and Compliance at *RCPA@stb.gov* or (202) 245–0238.

Authority: 49 U.S.C. 1325.

Decided: July 10, 2023.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2023–14967 Filed 7–13–23; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Availability of the Record of Decision for the Little Cottonwood Canyon Project in Utah and Final Federal Agency Actions

AGENCY: Federal Highway Administration (FHWA), Department of Transportation, Utah Department of Transportation (UDOT).

ACTION: Notice of Availability and Notice of Limitations on Claims for Judicial Review of Actions by UDOT and Other Federal Agencies.

SUMMARY: The FHWA, on behalf of UDOT, is issuing this notice to announce the availability of the Record of Decision (ROD) for the Little Cottonwood Canyon Project, State Route 210 (SR–210), Wasatch Boulevard through the Town of Alta, in Salt Lake County, Utah. In addition, this notice is being issued to announce actions taken by UDOT that are final Federal agency actions related to the project referenced above. Those actions grant licenses, permits and/or approvals for the project. The ROD provides details on the Selected Alternative for the proposed improvements.

DATES: This decision became operative on June 29, 2023. By this notice, FHWA, on behalf of UDOT, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before December 11, 2023. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Carissa Watanabe, Environmental Program Manager, UDOT Environmental Services, P.O. Box 143600, Salt Lake City, UT 84114; (503) 939–3798; email: *cwatanabe@utah.gov.* UDOT's normal business hours are 8 a.m. to 5 p.m. (Mountain Time Zone), Monday through Friday, except State and Federal holidays.

SUPPLEMENTARY INFORMATION: The environmental review, consultation, and other actions required by applicable Federal environmental laws for this action are being, or have been, carried out by UDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding (MOU) dated May 26, 2022, and executed by FHWA and UDOT. Actions taken by UDOT on FHWA's behalf pursuant to 23 U.S.C. 327 constitute Federal agency actions for purposes of Federal law. Notice is hereby given that UDOT has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the Little Cottonwood Canyon project in the State of Utah.

UDOT's purpose for this project is to substantially improve roadway safety, reliability, and mobility on SR–210 from Fort Union Boulevard through the town of Alta for all users on SR–210. UDOT has selected Gondola Alternative B as the selected primary alternative (which includes tolling as a travel demand management strategy) with phased implementation of components of the Enhanced Bus Service Alternative. Gondola Alternative B includes a gondola alignment from a proposed development south of North Little

Cottonwood Road and east of the La Caille restaurant to both the Snowbird and Alta ski resorts. The Gondola Alternative B includes a 2,500-space parking structure at the base station, a new base station access road, and roadway improvements to SR–210. UDOT will implement the following components of the Enhanced Bus Service Alternative: Improved and Increased Bus Service, Resort Bus Stops and a Bus Maintenance and Storage Facility. UDOT has selected the following sub-alternatives as supporting elements: the Five-lane Alternative on Wasatch Boulevard Alternative; Snow Sheds with Realigned Road Alternative; Trailhead Improvements and No Roadside Parking within ¼ mile of Trailheads Alternative; No Winter Parking Alternative; and the Gravel Pit Mobility Hub.

The project will be constructed in three phases. Phase 1 will consist of Improved and Increased Bus Service, a mobility hub at the gravel pit, and bus stops at the Snowbird and Alta ski resorts. To make the bus service attractive to use, tolling will be implemented to coincide with the start of the bus service in Phase 1. The No Winter Parking Alternative will be implemented after bus service is operating, and would continue while the Gondola Alternative B is operating. Phase 2 will involve constructing the Snow Sheds with Realigned Road Alternative, the Wasatch Boulevard Alternative, and Trailhead Improvements and No Roadside Parking within ¼ Mile of Trailheads Alternative. Phase 2 implementation will depend on available funding. Phase 3 will involve constructing Gondola Alternative B and its supporting infrastructure (base station parking and access roads). Phase 3 implementation will depend on available funding.

The project is identified in UDOT's adopted 2023–2028 State Transportation Improvement Program as project number 17374 with funding identified for final design and construction of Phase 1 elements. The project is also included in the Wasatch Front Regional Council's (WFRC) 2023–2050 Wasatch Front Regional Transportation Plan approved in May 2023 and the WFRC 2023–2028 Transportation Improvement Program (Amendment Nine).

The actions by UDOT, and the laws under which such actions were taken, are described in the EIS approved on August 15, 2022, and the ROD (Record of Decision for Little Cottonwood Canyon Project, State Route 210 (SR–210), Wasatch Boulevard through the Town of Alta, in Cottonwood Heights, Sandy, the Town of Alta and Salt Lake County, Utah, Project No. S–R299(281)) approved on June 29, 2023, and other documents in the UDOT project records. The ROD is available for review at the UDOT Central Complex, 4501 South 2700 West, Salt Lake City, Utah. In addition, the EIS and ROD documents can be viewed and downloaded from the project website at *https://littlecottonwoodeis.udot.utah.gov/.* This notice applies to the EIS, the ROD, and all other UDOT and federal agency decisions and other actions with respect to the project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to the following laws (including their implementing regulations):

1. *General:* National Environmental Policy Act [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]; MAP–21, the Moving Ahead for Progress in the 21st Century Act [Pub. L. 112–141].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712]; The Bald and Golden Eagle Protection Act [16 U.S.C. 668].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377]; Coastal Zone Management Act [16 U.S.C. 1451–1465]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f) –300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(M, 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986; Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].

9. *Noise:* Federal-Aid Highway Act of 1970, Public Law 91–605 [84 Stat. 1713]; [23 U.S.C. 109(h) & (i)].

10. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 139 (*l*)(1))

Issued on: July 11, 2023.

Ivan Marrero,

Division Administrator, Federal Highway Administration, Salt Lake City, Utah.

[FR Doc. 2023–14992 Filed 7–13–23; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2023–0026]

Agency Information Collection Activities; Notice and Request for Comment; Examining Distraction and Driver Monitoring Systems To Improve Driver Safety

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on a request for approval of a new information collection.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for a new information collection. Before a Federal agency can collect certain information from the public, it must

receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes a collection of information for which NHTSA intends to seek OMB approval titled ''Examining Distraction and Driver Monitoring Systems to Improve Driver Safety.''

DATES: Comments must be submitted on or before September 12, 2023.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA-2023–0026 through any of the following methods:

- *Electronic submissions:* Go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail or Hand Delivery:* Docket Management, 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. To be sure someone is there to help you, please call (202) 366–9322 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to 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.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *https://www.transportation.gov/privacy.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact: Thomas Fincannon, Office of Vehicle Safety Research, Human Factors/Engineering Integration Division NSR–310, West Building, W46–447, 1200 New Jersey Ave. SE, Washington, DC 20590; *thomas.fincannon@dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (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) how to enhance the quality, utility, and clarity of the information to be collected; and (d) how 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, *e.g.* permitting electronic submission of responses. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB.

Title: Examining Distraction and Driver Monitoring Systems to Improve Driver Safety.

OMB Control Number: New.

Form Number(s): NHTSA Form 1718: Online Eligibility Questionnaire; NHTSA Form 1719: Karolinska Sleepiness Scale; NHTSA Form 1720 Sleep Food Intake; and NHTSA Form 1721: End of Visit Release Statement.

Type of Request: New information collection.

Type of Review: Requested: Regular.

Requested Expiration Date of Approval: Three years from date of approval.

Summary of the Collection of Information:

NHTSA proposes to collect information from the public as part of a study to improve NHTSA's understanding of the differences in approaches to driver state detection and the potential safety impacts of driver monitoring systems (DMS). DMS refers to in-vehicle technology that can detect driver state and interact with the driver through the human-machine interface (the user interface that connects the driver to the vehicle). For example, a DMS that detects drowsiness may display an icon on the dashboard, such as a coffee cup, accompanied by a sound to alert the driver that drowsiness is present.

This study contains two tracks to assess DMS, and subjects may participate in Track A, Track B, or both. This allows for a balance between understanding how driver state detection changes within a diverse testing sample and within an individual across driver states. The overall sample will contain 80 data sets. To achieve this, 120 subjects are anticipated to be enrolled due to attrition across tracks. Each track will have 40 completed data sets. Thus, the total sample size is anticipated to be 68 subjects and will include subjects that completed Track A only (n = 28), Track B only (n = 28), and those that completed both tracks (n = 12). Track A will evaluate the ability of the DMS to assess distraction and Track B will evaluate the ability of the DMS to assess both drowsiness alone and distraction while drowsy.

NHTSA proposes to collect information from licensed drivers about their age, sex, driver license status, sleep and driving habits, and general health history to determine eligibility for the study. Those interested in participating will be asked about their ability to adhere to various requirements of the protocol (*e.g.,* abstain from caffeine) and availability for a study appointment. Those who participate in the study will come to the University of Iowa Driving Safety Research Institute (DSRI), home of the National Advanced Driving Simulator (NADS). Both tracks involve a consent process, breath alcohol measurement, facial shape measurement, standing and seated height measurement, training presentation, a familiarization drive in the driving simulator, and sleepiness ratings before and after each study drive as well as approximately every 30 minutes during a waiting period. Both tracks also involve taking a digital image of the face so that researchers can obtain RGB values to assess skin tone variability. Track A only involves one study drive that occurs while the subject is alert and distracted. In Track B, subjects will be asked about their sleep and food intake (to confirm they have not consumed caffeine since 1:00 p.m., that they were awake by 7:00 a.m., and that they have consumed no other substances that could influence driving) prior to an overnight driving session that involves three study drives. The

first drive occurs while alert. The next two drives are counterbalanced and will occur while drowsy (at least 14 hours awake and having sleepiness ratings indicating drowsiness) and while drowsy and distracted. Simulator data will be used to evaluate the ability of the DMS to assess driver state.

Respondents will volunteer for the study by responding to an internet ad or via solicitation for volunteers from the DSRI subject registry. Only potential subjects in the registry meeting inclusion criteria will be contacted. Respondents will be asked a series of questions to determine eligibility to participate in the study. The questionnaire covers both Track A and Track B so respondents don't have to complete the questionnaire more than once and so researchers can ensure a subset of respondents meet criteria for both tracks. Criteria for both studies are largely the same; differences are related to ability to attend visits of a specified length, willingness to adhere to different protocol elements, and sleep habits (needed only for Track B). A research team member will answer all questions the respondent may have and schedule eligible respondents who wish to participate for a session at the DSRI.

Description of the Need for the Information and Proposed Use of the Information:

NHTSA was established by the Highway Safety Act of 1970 (23 U.S.C. 101) to carry out a Congressional mandate to reduce deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. As part of this mandate, NHTSA is authorized to conduct research as a foundation for the development of traffic safety programs.

In 2013, NHTSA published the final version of the Visual-Manual NHTSA Driver Distraction Guidelines for In-Vehicle Electronic Devices. In the decade since, vehicle technologies and interfaces have evolved and a substantial amount of new research on the topic of driver distraction has been conducted. As a result, NHTSA requires a rigorous and thorough review to update the current state of knowledge on driver distraction, attention management, and distraction/risk assessment. DMS are currently deployed in many production vehicles. Current production systems use different data sources, including driver-facing cameras, vehicle inputs (*e.g.,* steering wheel torque), driving performance (*e.g.,* lane departures), and other measures (*e.g.,* time on task). Future production systems are also likely to use physiological sensors (*e.g.,* heart rate) as tools to identify driver state more accurately.

DMS could play a variety of roles in vehicles, including detecting and alerting drivers to distraction, drowsiness, or impairment, and then adjusting the vehicle technology to meet the needs of the driver or providing support in particular situations. It is important for NHTSA to be able to discern the differences in approaches to state detection to understand the potential safety impacts of DMS. This requires a comparison of various sensor approaches to driver state monitoring and the development of a test protocol for different DMS methodologies. The overall objective is to develop and deliver a methodology that will assess the ability of DMS to accurately determine driver state by collecting data to support a full assessment of the factors associated with DMS and modeling driver state based on sensor data in a driving simulator.

Affected Public: Individuals aged 18+ from Eastern Iowa and the surrounding areas who have volunteered to take part in driving studies will be contacted for participation. They will be randomized evenly by sex, though some imbalance will be permitted to be inclusive of individuals who do not identify on the binary. Efforts will be made to enroll a diverse age sample that broadly represents the age of the driving population and includes those at greater risk of crashing (*e.g.,* less than 25 years of age and greater than 65 years of age). Additional efforts will be made to enroll individuals with diverse skin tones, oversampling those who rate themselves higher on the Fitzpatrick Skin Type Scale. Businesses are ineligible for the sample and will not be contacted.

Estimated Number of Respondents: 600.

Study pre-screening is done via online questionnaire. It is estimated that 600 individuals may begin the pre-screening questionnaire. After pre-screening, it is estimated that 300 individuals could be potentially eligible and require contact to be scheduled or to confirm eligibility requirements are met. It is estimated that 120 individuals will be enrolled to complete 80 total data sets (anticipated breakdown of Track A only = 28, Track B only = 28, both = 12).

Frequency: Once.

This is a one-time collection of information. The initial pre-screening time is roughly 15 minutes and can be done at the respondents' convenience using a device of their choosing. The only requirement is an internet connection to access the online pre-screening. Not all who begin this pre-screening will complete the form in its entirety, and not everyone will meet study criteria. Those who meet study criteria could be scheduled for Track A, Track B, or both.

Estimated Total Annual Burden Hours: 700 hours.

The total estimated burden for the study is 700 hours. Track A contributes 117 hours, and Track B contributes 473 hours. Online pre-screening and visit reminders contribute 110 hours.

Estimated Total Annual Burden Cost: The respondents will not incur any reporting or recordkeeping cost from the information collection. Respondents will incur a one-time cost for local travel to and from DSRI, which is estimated not to exceed approximately $39.30 (based on the standard mileage rate for business-related driving in 2023 and a round trip distance of 60 miles). These transportation costs are offset by subject compensation. For respondents in Track B, who will not be permitted to walk, bike, or drive when leaving DSRI, an additional $70 will be provided to offset the costs of finding alternative transportation.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29A.

Tim John Johnson,

Acting Associate Administrator, Vehicle Safety Research.

[FR Doc. 2023–14949 Filed 7–13–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Open Meeting: Community Development Advisory Board

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Community Development Advisory Board (the Advisory Board), which provides advice to the Director of the Community Development Financial Institutions Fund (CDFI Fund). This meeting will be conducted virtually. A link to view the meeting can be found at the top of *www.cdfifund.gov/cdab*.

DATES: The meeting will be held from 2:00 p.m. to 3:00 p.m. Eastern Time on Monday, July 31, 2023.

Submission of Written Statements: Participation in the discussions at the meeting will be limited to Advisory Board members, Department of the Treasury staff, and certain invited guests. Anyone who would like to have the Advisory Board consider a written statement must submit it by 5:00 p.m. Eastern Time on Friday, July 21, 2023. Send electronic statements to *AdvisoryBoard@cdfi.treas.gov*.

In general, the CDFI Fund will make all statements available in their original format, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers, for virtual public inspection and copying. The CDFI Fund is open on official business days between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time. You can make arrangements to virtually inspect statements by emailing *AdvisoryBoard@cdfi.treas.gov*. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Bill Luecht, Senior Advisor, Office of Legislative and External Affairs, CDFI Fund; (202) 653–0322 (this is not a toll-free number); or *AdvisoryBoard@cdfi.treas.gov*. Other information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund's website at *http://www.cdfifund.gov*.

SUPPLEMENTARY INFORMATION: Section 104(d) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325), which created the CDFI Fund, established the Advisory Board. The charter for the Advisory Board has been filed in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. 1001 *et seq.*), and with the approval of the Secretary of the Treasury.

The function of the Advisory Board is to advise the Director of the CDFI Fund (who has been delegated the authority to administer the CDFI Fund) on the policies regarding the activities of the CDFI Fund. The Advisory Board does not advise the CDFI Fund on approving or declining any particular application for monetary or non-monetary awards.

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. 1009 and the regulations thereunder, Bill Luecht, Designated Federal Officer of the Advisory Board, has ordered publication of this notice that the Advisory Board will convene an open meeting, which will be conducted virtually, from 2:00 p.m. to 3:00 p.m. Eastern Time on Monday, July 31, 2023. Members of the public who wish to view the meeting must register upon entering the meeting. The link to view the meeting can be found at the top of *www.cdfifund.gov/cdab*.

The Advisory Board meeting will include a report from the Chair of a recently formed CDFI Certification subcommittee to the full Advisory Board.

Authority: 12 U.S.C. 4703.

Marcia Sigal,

Acting Director, Community Development Financial Institutions Fund.

[FR Doc. 2023–14960 Filed 7–13–23; 8:45 am]

BILLING CODE 4810–70–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 updates to the identifying information of one person currently included in OFAC's Specially Designated Nationals and Blocked Persons List (SDN List).

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://ofac.treasury.gov*).

Notice of OFAC Actions

On July 11, 2023, OFAC updated the entry on the SDN List for the following person, whose property and interests in property subject to U.S. jurisdiction continue to be blocked under the relevant sanctions authority listed below.

Individual:

1. IVANOV, Nikolayevich Andrey (Cyrillic: ИВАНОВ, Николаевич Андрей), House - 113A, Ust-Labinskiy 352303, Russia; House - 36/ APPT - 3, Kolomna 140415, Russia; Moskovskaya Oblast, Russia; DOB 13 Apr 1983; nationality Russia; citizen Russia; Gender Male; Identification Number M0381 (Russia); alt. Identification Number B90381 (Russia) (individual) [RUSSIA-EO14024] (Linked To: PRIGOZHIN, Yevgeniy Viktorovich).

-to-

IVANOV, Andrey Nikolayevich (Cyrillic: ИВАНОВ, Андрей Николаевич), House - 113A, Ust-Labinskiy 352303, Russia; House - 36/ APPT - 3, Kolomna 140415, Russia; Moskovskaya Oblast, Russia; DOB 13 Apr 1983; nationality Russia; citizen Russia; Gender Male; Identification Number M0381 (Russia); alt. Identification Number B90381 (Russia) (individual) [RUSSIA-EO14024] (Linked To: PRIGOZHIN, Yevgeniy Viktorovich).

Designated pursuant to section 1(a)(vii) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation," 86 FR 20249, 3 CFR, 2021 Comp., p. 542 (Apr. 15, 2021) (E.O. 14024), for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Yevgeniy Prigozhin, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Dated: July 11, 2023.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–14964 Filed 7–13–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request on Tax-Exempt Organization Complaint (Referral)

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 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 IRS is soliciting comments concerning the collection of information related to the tax-exempt organization complaint (referral) form.

DATES: Written comments should be received on or before September 12, 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–New—Form 13909. Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317–5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tax-Exempt Organization Complaint (Referral).

OMB Number: 1545-New.

Document Number: 13909.

Abstract: This request covers the taxpayer burden with Form 13909, *Tax-Exempt Organization Complaint (Referral).* Form 13909 is used by individuals to submit a complaint about tax-exempt organizations. The information provided on this form will help the Internal Revenue Service (IRS) determine if there has been a violation of federal tax law.

Current Actions: Request for OMB approval of an existing Information Collection (IC) tool in use without a proper OMB approval number.

Type of Review: Existing IC in use that does not contain an OMB control number.

Affected Public: Not-for-profit institutions, and Federal, State, local or tribal governments.

Estimated Number of Respondents: 8,000.

Estimated Time per Respondent: 46 min.

Estimated Total Annual Burden Hours: 6,400.

The following paragraph applies to all 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 if 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.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: July 10, 2023.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2023–14954 Filed 7–13–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Government Securities: Call for Large Position Reports

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Notice of call for Large Position Reports.

SUMMARY: The U.S. Department of the Treasury (Treasury) called for the submission of Large Position Reports by entities whose positions in the Treasury Bill of June 8, 2023 equaled or exceeded $10.2 billion as of Friday, April 28, 2023, or Friday, May 5, 2023. This Bill has CUSIP 912796ZP7 and was originally auctioned as a 182-Day (*i.e.,* 26-Week) Bill on December 5, 2022, and issued on December 8, 2022, with a maturity date of June 8, 2023. This Bill was subsequently reopened as a 91-Day (*i.e.,* 13-Week) Bill on March 6, 2023, and issued on March 9, 2023.

DATES: Reports must be received by 12 p.m. Eastern Time on Monday, July 17, 2023.

ADDRESSES: Reports may be submitted using Treasury's webform (available at*https://www.treasurydirect.gov/laws-and-regulations/gsa/lpr-form/*). Reports may also be faxed to Treasury at (202) 504–3788 if a reporting entity has difficulty using the webform.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena, John Garrison, or Kevin Hawkins; Government Securities Regulations Staff, Department of the Treasury, at 202–504–3632 or *govsecreg@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION: In a public announcement issued on July 11, 2023, and in this **Federal Register** notice, Treasury called for Large Position Reports from entities whose positions in the Treasury Bill of June 8, 2023 (CUSIP 912796ZP7) equaled or exceeded $10.2 billion as of Friday, April 28, 2023, or Friday, May 5, 2023. Entities must submit separate reports for each reporting date on which their positions equaled or exceeded the $10.2 billion reporting threshold. Entities with positions in this Treasury Bill below the reporting threshold are not required to submit Large Position Reports.

This call for Large Position Reports is pursuant to Treasury's large position reporting rules under the Government Securities Act regulations (17 CFR part 420), promulgated pursuant to 15 U.S.C. 78o–5(f). Reports must be received by Treasury before 12:00 p.m. Eastern Time on Monday, July 17, 2023, and must include the required positions and administrative information.

The public announcement, a copy of a sample Large Position Report which appears in Appendix B of the rules at 17 CFR part 420, supplementary formula guidance, and a series of training modules are available at *https://www.treasurydirect.gov/laws-and-regulations/gsa/lpr-reports/.*

Non-media questions about Treasury's large position reporting rules and the submission of Large Position Reports should be directed to Treasury's Government Securities Regulations Staff at (202) 504–3632 or *govsecreg@fiscal.treasury.gov.*

The collection of large position information has been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB Control Number 1530–0064.

Joshua Frost,

Assistant Secretary for Financial Markets.

[FR Doc. 2023–15006 Filed 7–13–23; 8:45 am]

BILLING CODE 4810–AS–P

FEDERAL REGISTER

Vol. 88 Friday,
No. 134 July 14, 2023

Part II

Environmental Protection Agency

40 CFR Part 52
Air Quality State Implementation Plans; Approvals and Promulgations: California; 1997 Annual Fine Particulate Matter Serious and Clean Air Act Section 189(d) Nonattainment Area Requirements; San Joaquin Valley, CA; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0263; FRL–10941–01–R9]

Air Quality State Implementation Plans; Approvals and Promulgations: California; 1997 Annual Fine Particulate Matter Serious and Clean Air Act Section 189(d) Nonattainment Area Requirements; San Joaquin Valley, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of state implementation plan (SIP) revisions submitted by the State of California to meet Clean Air Act (CAA or ''Act'') requirements for the 1997 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS or ''standards'') in the San Joaquin Valley $PM_{2.5}$ nonattainment area. Specifically, the EPA is proposing to approve those portions of the submitted SIP revisions as they pertain to the Serious nonattainment area and CAA section 189(d) requirements for the 1997 annual $PM_{2.5}$ NAAQS, except for the requirement for contingency measures. In addition, the EPA is proposing to approve 2020 and 2023 motor vehicle emissions budgets and the trading mechanism for use in transportation conformity analyses for the 1997 annual $PM_{2.5}$ NAAQS. The EPA will accept comments on this proposed rule during a 30-day public comment period.

DATES: Any comments on this proposal must be received by August 14, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2023–0263 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (*e.g.,* audio or video) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ashley Graham, Geographic Strategies and Modeling Section (AIR–2–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3877, or by email at *graham.ashleyr@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. Background for Proposed Action

A. $PM_{2.5}$ NAAQS

Under section 109 of the CAA, the EPA has established NAAQS for certain pervasive air pollutants (referred to as ''criteria pollutants'') and conducts periodic reviews of the NAAQS to determine whether the EPA should revise or establish new NAAQS to protect public health.

On July 18, 1997, the EPA revised the NAAQS for particulate matter by establishing new NAAQS for particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$).[1] The EPA established primary and secondary annual and 24-hour standards for $PM_{2.5}$.[2] The EPA set the annual primary and secondary standards at 15.0 micrograms per cubic meter (μg/m^3) based on a three-year average of annual mean $PM_{2.5}$ concentrations, and set the 24-hour primary and secondary standards at 65 μg/m^3 based on the three-year average of the 98th percentile of 24-hour $PM_{2.5}$ concentrations at each monitoring site within an area.[3] Collectively, we refer herein to the 1997 annual and 24-hour $PM_{2.5}$ NAAQS as the ''1997 $PM_{2.5}$ NAAQS'' or ''1997 $PM_{2.5}$ standards.''

On October 17, 2006, the EPA revised the level of the 24-hour $PM_{2.5}$ NAAQS to 35 μg/m^3,[4] and on January 15, 2013, the EPA revised the level of the primary annual $PM_{2.5}$ NAAQS to 12.0 μg/m^3.[5] Even though the EPA lowered the 24-hour and annual $PM_{2.5}$ NAAQS, the 1997 24-hour $PM_{2.5}$ NAAQS remain in effect and the 1997 primary annual $PM_{2.5}$ NAAQS remains in effect in areas designated nonattainment for that NAAQS.[6]

The EPA established each of the $PM_{2.5}$ NAAQS after considering substantial evidence from numerous health studies demonstrating that serious health effects are associated with exposures to $PM_{2.5}$ concentrations above these levels. Epidemiological studies have shown statistically significant correlations between elevated $PM_{2.5}$ levels and premature mortality. Other important health effects associated with $PM_{2.5}$ exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity dates), changes in lung function and increased respiratory

[1] 62 FR 38652.

[2] For a given air pollutant, ''primary'' NAAQS are those determined by the EPA as requisite to protect the public health, allowing an adequate margin of safety, and ''secondary'' standards are those determined by the EPA as requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. See CAA section 109(b).

[3] 40 CFR 50.7.

[4] 71 FR 61144.

[5] 78 FR 3086.

[6] 40 CFR 50.13(d).

symptoms, and new evidence for more subtle indicators of cardiovascular health. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children.[7]

$PM_{2.5}$ can be particles emitted by sources directly into the atmosphere as a solid or liquid particle (''primary $PM_{2.5}$'' or ''direct $PM_{2.5}$''), or can be particles that form in the atmosphere as a result of various chemical reactions from $PM_{2.5}$ precursor emissions emitted by sources (''secondary $PM_{2.5}$''). The EPA has identified the precursors of $PM_{2.5}$ to be oxides of nitrogen (''NO_X''), sulfur oxides (''SO_X''), volatile organic compounds (''VOC''), and ammonia.[8]

B. San Joaquin Valley $PM_{2.5}$ Designations, Classifications, and SIP Revisions

Following promulgation of a new or revised NAAQS, the EPA is required under CAA section 107(d) to designate areas throughout the nation as attainment, nonattainment, or unclassifiable for the NAAQS. Effective April 5, 2005, the EPA established the initial air quality designations for the 1997 annual and 24-hour $PM_{2.5}$ NAAQS, using air quality monitoring data for the three-year periods of 2001–2003 and 2002–2004.[9] The EPA designated the San Joaquin Valley as nonattainment for both the 1997 annual $PM_{2.5}$ NAAQS (15.0 $\mu g/m^3$) and the 1997 24-hour $PM_{2.5}$ NAAQS (65 $\mu g/m^3$).[10]

The San Joaquin Valley $PM_{2.5}$ nonattainment area encompasses over 23,000 square miles and includes all or part of eight counties: San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings, and the valley portion of Kern.[11] The area is home to four million people and is one of the nation's leading agricultural regions. Stretching over 250 miles from north to south and averaging 80 miles wide, it is partially enclosed by the Coast Mountain range to the west, the Tehachapi Mountains to the south, and the Sierra Nevada range to the east. Under State law, the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or ''District'') has primary responsibility for developing plans to provide for attainment of the NAAQS in this area. The District works cooperatively with the California Air Resources Board (CARB) in preparing attainment plans. Authority for regulating sources under State jurisdiction in the San Joaquin Valley is split under State law between the District, which has responsibility for regulating stationary and most area sources, and CARB, which has responsibility for regulating most mobile sources.

At the time of the initial designations for the 1997 $PM_{2.5}$ NAAQS, the EPA interpreted the CAA to require implementation of the NAAQS under the general nonattainment plan requirements of subpart 1.[12] Under subpart 1, states were required to submit nonattainment plan SIP submissions within three years of the effective date of designations, that, among other things, provided for implementation of reasonably available control measures (RACM), reasonable further progress (RFP), contingency measures, and a modeled attainment demonstration showing attainment of the NAAQS as expeditiously as practicable but no later than five years from the designation (in this instance, no later than April 5, 2010) unless the state justified an attainment date extension of up to five years.[13]

Between 2007 and 2011, California submitted six nonattainment plan and supporting SIP revisions to address nonattainment area planning requirements for the 1997 $PM_{2.5}$ NAAQS in the San Joaquin Valley,[14] which we refer to collectively as the ''2008 $PM_{2.5}$ Plan.'' On November 9, 2011, the EPA approved the portions of the 2008 $PM_{2.5}$ Plan, as revised in 2009 and 2011, that addressed attainment of the 1997 $PM_{2.5}$ NAAQS in the San Joaquin Valley nonattainment area, except for the attainment contingency measures, which we disapproved.[15] We also granted the State's request to extend the attainment deadline for the 1997 $PM_{2.5}$ NAAQS in the San Joaquin Valley to April 5, 2015.[16]

Following a January 4, 2013 decision of the U.S. Court of Appeals for the D.C. Circuit remanding the EPA's 2007 implementation rule for the 1997 $PM_{2.5}$ NAAQS,[17] the EPA published a final rule on June 2, 2014, classifying the San Joaquin Valley as a ''Moderate'' nonattainment area for the 1997 $PM_{2.5}$ NAAQS under subpart 4, part D of title I of the Act.[18] In that action, the EPA acknowledged that states must meet both subpart 1 and subpart 4 requirements in nonattainment plan SIP submissions for the 1997 24-hour and annual $PM_{2.5}$ NAAQS and provided states with additional time to supplement or withdraw and resubmit any pending nonattainment plan SIP submissions.

Effective May 7, 2015, the EPA reclassified the San Joaquin Valley as a ''Serious'' nonattainment area for the 1997 $PM_{2.5}$ NAAQS based on our determination that the State could not practicably attain these NAAQS in the San Joaquin Valley nonattainment area by the latest statutory Moderate area attainment date, *i.e.,* April 5, 2015.[19] Upon reclassification as a Serious area, the State became subject to the requirement of CAA section 188(c)(2) to attain the 1997 $PM_{2.5}$ NAAQS as expeditiously as practicable but no later than ten years after designation, *i.e.,* by no later than December 31, 2015. California submitted its Serious area plan for the 1997 $PM_{2.5}$ NAAQS for the San Joaquin Valley in two submissions dated June 25, 2015, and August 13, 2015, including a request under section 188(e) to extend the attainment date for the 1997 24-hour $PM_{2.5}$ NAAQS by three years (to December 31, 2018) and to extend the attainment date for the 1997 annual $PM_{2.5}$ NAAQS by five years (to December 31, 2020). On February 9, 2016, the EPA proposed to approve most of the Serious area plan and to grant the State's request for extensions of the December 31, 2015 attainment date.[20] However, on October 6, 2016, after considering public comments, the EPA denied California's request for these extensions of the attainment dates.[21] Consequently, on November 23, 2016, the EPA determined that the San Joaquin Valley had failed to attain the 1997 24-hour and annual $PM_{2.5}$ NAAQS

[7] EPA, Air Quality Criteria for Particulate Matter, No. EPA/600/P–99/002aF and EPA/600/P–99/002bF, October 2004.

[8] For example, see 72 FR 20586, 20589 (April 25, 2007).

[9] 70 FR 944 (January 5, 2005).

[10] 40 CFR 81.305.

[11] For a precise description of the geographic boundaries of the San Joaquin Valley nonattainment area, see 40 CFR 81.305.

[12] 72 FR 20586.

[13] CAA sections 172(a)(2), 172(c)(1), 172(c)(2), and 172(c)(9).

[14] 76 FR 69896, n. 2 (November 9, 2011).

[15] Id. at 69924.

[16] Id.

[17] *Natural Resources Defense Council* v. *EPA,* 706 F.3d. 428 (D.C. Cir. 2013) (''*NRDC*''). In *NRDC,* the court held that the EPA erred in implementing the 1997 $PM_{2.5}$ standards solely pursuant to the general implementation requirements of subpart 1, without also considering the requirements specific to nonattainment areas for particles less than or equal to 10 μm in diameter (PM_{10}) in subpart 4, part D of title I of the CAA. The court reasoned that the plain meaning of the CAA requires implementation of the 1997 $PM_{2.5}$ standards under subpart 4 because $PM_{2.5}$ falls within the statutory definition of PM_{10} and is thus subject to the same statutory requirements as PM_{10}. The court remanded the rule, without vacatur, and instructed the EPA ''to repromulgate these rules pursuant to Subpart 4 consistent with this opinion.''

[18] 79 FR 31566.

[19] 80 FR 18528 (April 7, 2015).

[20] 81 FR 6936. California's request for extension of the Serious Area attainment date for the San Joaquin Valley accompanied its Serious Area attainment plan for the 1997 $PM_{2.5}$ NAAQS and related motor vehicle emission budgets, submitted June 25, 2015 and August 13, 2015, respectively.

[21] 81 FR 69396.

by the December 31, 2015 Serious area attainment date.[22] This determination triggered a requirement for California to submit a new SIP submission for the 1997 24-hour and annual $PM_{2.5}$ NAAQS for the San Joaquin Valley that satisfies the requirements of CAA section 189(d). The statutory deadline for this additional SIP submission was December 31, 2016. The EPA did not finalize the actions proposed on February 9, 2016, with respect to the submitted Serious area plan.[23]

On December 6, 2018, the EPA determined that California had failed to submit a complete section 189(d) attainment plan for the 1997 24-hour and annual $PM_{2.5}$ NAAQS, among other required SIP submissions for the San Joaquin Valley, by the statutory deadlines.[24] This finding, which became effective on January 7, 2019, triggered clocks under CAA section 179(a) for the application of emissions offset sanctions 18 months after the finding, and highway funding sanctions 6 months thereafter, unless the EPA affirmatively determined that the State made a complete SIP submission addressing the identified failure to submit deficiencies.[25] The finding also triggered the obligation under CAA section 110(c) for the EPA to promulgate a federal implementation plan no later than two years after the finding, unless the State has submitted, and the EPA has approved, the required SIP submission.[26]

On May 10, 2019, CARB submitted the ''2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards,'' adopted by the SJVUAPCD on November 15, 2018, and by CARB on January 24, 2019 (''2018 $PM_{2.5}$ Plan'').[27] The 2018 $PM_{2.5}$ Plan addresses the Serious area nonattainment plan and CAA section 189(d) requirements for the 1997 24-hour and annual $PM_{2.5}$ NAAQS, among other requirements for the 2006 and 2012 $PM_{2.5}$ NAAQS.[28] The 2018 $PM_{2.5}$ Plan incorporates by reference the ''San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan'' (''Valley State SIP Strategy''), a related plan adopted by CARB on October 25, 2018, and submitted to the EPA with the 2018 $PM_{2.5}$ Plan on May 10, 2019.[29] CARB clarified in its submittal letter that the 2018 $PM_{2.5}$ Plan superseded past submissions to the EPA that the agency had not yet acted on for the 1997 $PM_{2.5}$ NAAQS, including the 2015 Serious area attainment plan submissions.[30] On June 24, 2020, the EPA issued a letter finding these submissions complete and terminating the sanctions clocks under CAA section 179(a).[31]

On January 28, 2022, the EPA approved those portions of the 2018 $PM_{2.5}$ Plan that pertain to the 1997 24-hour $PM_{2.5}$ NAAQS, except for the contingency measure element, which the EPA disapproved.[32] As part of that action, the EPA also finalized a determination that the San Joaquin Valley attained the 1997 24-hour $PM_{2.5}$ NAAQS by the applicable attainment date of December 31, 2020 and that therefore the requirement for contingency measures no longer applies in the San Joaquin Valley nonattainment area for the 1997 24-hour $PM_{2.5}$ NAAQS.[33] Because the EPA found that the State has satisfied its planning obligations for the San Joaquin Valley with respect to the 1997 24-hour $PM_{2.5}$ NAAQS, this proposed action addresses only the requirements for the 1997 annual $PM_{2.5}$ NAAQS.

On July 22, 2021, the EPA proposed to partially approve and partially disapprove portions of the 2018 $PM_{2.5}$ Plan that address attainment of the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley nonattainment area.[34] The EPA proposed to approve the 2013 base year emissions inventories and disapprove the attainment demonstration and related elements, including the comprehensive precursor demonstration, five percent annual emissions reductions demonstration, best available control measures (BACM) demonstration, RFP demonstration, quantitative milestones, and motor vehicle emission budgets established for 2017, 2020, and 2023. We proposed to disapprove the attainment demonstration and related elements because certified air quality data were available that established that the San Joaquin Valley area did not attain the 1997 annual $PM_{2.5}$ NAAQS by December 31, 2020, as projected in the 2018 $PM_{2.5}$ Plan. The EPA also proposed to disapprove the contingency measures element because of several identified deficiencies, including that the measure did not address the potential for failures to meet RFP, to meet a quantitative milestone, or to submit a quantitative milestone report.[35] On November 26, 2021, the EPA finalized the partial approval and partial disapproval of the 2018 $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS as proposed.[36]

As a result of the November 26, 2021 disapprovals, California was required to develop and submit a revised attainment plan for the San Joaquin Valley area that addresses the applicable CAA requirements, including the Serious area plan requirements and the requirements of CAA section 189(d), for the 1997 annual $PM_{2.5}$ NAAQS. In accordance with sections 179(d)(3) and 172(a)(2) of the CAA, the revised plan must demonstrate attainment of these NAAQS as expeditiously as practicable and no later than 5 years from the date of the EPA's prior determination that the area failed to attain (*i.e.,* by November 23, 2021), except that the EPA may extend the attainment date to a date no later than 10 years from the date of this determination (*i.e.,* to November 23, 2026), ''considering the severity of nonattainment and the availability and feasibility of pollution control measures.'' [37]

On November 8, 2021, CARB submitted the ''Attainment Plan Revision for the 1997 Annual $PM_{2.5}$ Standard'' (''15 $\mu g/m^3$ SIP Revision''), adopted by the SJVUAPCD on August 19, 2021, and adopted by CARB on September 23, 2021.[38] In the letter

[22] 81 FR 84481.

[23] 81 FR 69396, 69400.

[24] 83 FR 62720.

[25] Id. at 62723.

[26] Id.

[27] Letter dated May 9, 2019, from Richard Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region 9.

[28] The EPA previously acted on those portions of the 2018 $PM_{2.5}$ Plan that pertain to the 2006 24-hour $PM_{2.5}$ NAAQS (except for contingency measures) (85 FR 44192, July 22, 2020), and Moderate area planning requirements for the 2012 annual $PM_{2.5}$ NAAQS and 2006 24-hour $PM_{2.5}$ NAAQS contingency measures (86 FR 67343, November 26, 2021). On December 29, 2021, the EPA proposed action on those portions of the plan that pertain to the Serious area requirements for the 2012 annual $PM_{2.5}$ NAAQS (86 FR 74310). On October 5, 2022, the EPA issued a supplemental proposal with respect to the Serious area requirements for the 2012 $PM_{2.5}$ NAAQS (87 FR 60494), and on October 27, 2022, California withdrew those portions of the plan that pertained to those requirements (letter dated October 27, 2022, from Steven S. Cliff, Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region IX).

[29] Id.

[30] The 2015 Serious area attainment plan submissions include the ''2015 Plan for the 1997 Standard'' (submitted by CARB on June 25, 2015) and motor vehicle emission budgets (submitted by CARB August 13, 2015)

[31] Letter dated June 24, 2020, from Elizabeth J. Adams, Director, Air and Radiation Division, EPA Region IX, to Richard Corey, Executive Officer, CARB, Subject: ''RE: Completeness Finding for State Implementation Plan (SIP) Submissions for San Joaquin Valley for the 1997, 2006, and 2012 Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) and Termination of Clean Air Act (CAA) Sanction Clocks.''

[32] 87 FR 4503 (January 28, 2022).

[33] Id at 4506.

[34] 86 FR 38652.

[35] Id. at 38669.

[36] 86 FR 67329.

[37] 81 FR 84481, 84482 (final EPA action determining that the San Joaquin Valley had failed to attain the 1997 $PM_{2.5}$ NAAQS by the December 31, 2015, Serious area attainment date).

[38] Letter dated November 8, 2021, from Richard W. Corey, Executive Officer, CARB, to Deborah Jordan, Acting Regional Administrator, EPA Region

accompanying the submission, CARB clarifies that the 15 μg/m³ SIP Revision amends the 2018 $PM_{2.5}$ Plan and addresses all CAA requirements for the 1997 annual $PM_{2.5}$ NAAQS except for contingency measures, which CARB stated it will address at a later date.[39]

II. Summary and Completeness Review of the San Joaquin Valley $PM_{2.5}$ Plan

We are proposing action on those portions of the 15 μg/m³ SIP Revision, 2018 $PM_{2.5}$ Plan, and Valley State SIP Strategy that pertain to the 1997 annual $PM_{2.5}$ NAAQS. Herein, we refer to these three submissions collectively as the ''SJV $PM_{2.5}$ Plan'' or ''Plan.'' The SJV $PM_{2.5}$ Plan addresses Serious area nonattainment plan and CAA section 189(d) requirements for the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley, including the State's demonstration that the area will attain the 1997 annual $PM_{2.5}$ NAAQS by December 31, 2023.

A. 2018 $PM_{2.5}$ Plan and 15 μg/m³ SIP Revision

CARB and the District describe the 15 μg/m³ SIP Revision as an ''administrative revision'' to the 2018 $PM_{2.5}$ Plan that ''has been prepared as a streamlined document that utilizes the existing emissions inventory, air quality analysis and modeling from the *2018 $PM_{2.5}$ Plan*.'' [40] In its submission of the 15 μg/m³ SIP Revision to the EPA, the State included a redline strikeout version highlighting the updates that were made relative to the 2018 $PM_{2.5}$ Plan submitted on May 10, 2019, as well as final versions of those sections that were revised relative to the 2018 $PM_{2.5}$ Plan.

The State updated the following portions of the 2018 $PM_{2.5}$ Plan and resubmitted them to the EPA as the 15 μg/m³ SIP Revision to address both the Serious area requirements in CAA section 189(b) and the CAA section 189(d) requirements for the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley: (i) Chapter 4 (''Attainment Strategy for $PM_{2.5}$''); (ii) Chapter 5 (''Demonstration of Federal Requirements for 1997 $PM_{2.5}$ Standards''); (iii) Appendix D (''Mobile Source Control Measure Analyses''); (iv) Appendix H (''RFP, Quantitative Milestones, and Contingency''); and (v) Appendix K (''Modeling Attainment Demonstration''). The November 8, 2021 submittal package also included CARB's ''Staff Report, Proposed SIP Revision for the 15 ug/m3 Annual $PM_{2.5}$ Standard for the San Joaquin Valley,'' release date August 13, 2021 (''August 2021 Staff Report''),[41] and the State's and District's board resolutions adopting the 15 μg/m³ SIP Revision (CARB Resolution 21–21 and SJVUAPCD Governing Board Resolution 21–08–13).[42]

The portions of the Plan that address the requirements for the 1997 annual $PM_{2.5}$ NAAQS and that the State did not revise relative to the 2018 $PM_{2.5}$ Plan include: (i) Appendix A (''Ambient $PM_{2.5}$ Data Analysis''); (ii) Appendix B (''Emissions Inventory''); (iii) Appendix C (''Stationary Source Control Measure Analyses''); (iv) Appendix G (''Precursor Demonstration''); (v) Appendix I (''New Source Review and Emission Reduction Credits''); (vi) Appendix J (''Modeling Emission Inventory''); and (vii) Appendix L (''Modeling Protocol''). The May 10, 2019 submittal package also included CARB's ''Staff Report, Review of the San Joaquin Valley 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards,'' release date December 21, 2018 (''December 2018 Staff Report''); [43] and the State's and District's board resolutions adopting the 2018 $PM_{2.5}$ Plan (CARB Resolution 19–1 and SJVUAPCD Governing Board Resolution 18–11–16).[44]

As noted above, the 2018 $PM_{2.5}$ Plan incorporates by reference the Valley State SIP Strategy. For the purposes of this action, the relevant portions of the Valley State SIP Strategy are the mobile source control measure commitments associated with the quantitative milestones for the 1997 annual $PM_{2.5}$ NAAQS.

B. Procedural Requirements for SIPs and SIP Revisions

CAA sections 110(a)(1) and (2) and 110(l) require each state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submission of a SIP or SIP revision to the EPA. To meet this requirement, every SIP submission should include evidence that the State provided adequate public notice and an opportunity for a public hearing consistent with the EPA's implementing regulations in 40 CFR 51.102.

Both the District and CARB satisfied the applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption and submission of the 2018 $PM_{2.5}$ Plan and 15 μg/m³ SIP Revision. The District provided public notice and opportunity for public comment prior to its November 15, 2018 public hearing on and adoption of the 2018 $PM_{2.5}$ Plan.[45] CARB also provided public notice and opportunity for public comment prior to its January 24, 2019 public hearing on and adoption of the 2018 $PM_{2.5}$ Plan.[46] Subsequently, the District provided public notice and opportunity for public comment prior to its August 19, 2021 public hearing on and adoption of the 15 μg/m³ SIP Revision.[47] CARB also provided public notice and opportunity for public comment prior to its September 23, 2021 public hearing on and adoption of the 15 μg/m³ SIP Revision.[48] The SIP submissions include proof of publication of notices for the respective public hearings. They also include copies of the written and oral comments received during the State's and District's public review processes and the agencies' responses thereto.[49] [50] Therefore, we find that the

9. The 15 μg/m³ SIP Revision was developed jointly by CARB and the District.

[39] Id. at 1.

[40] 15 μg/m³ SIP Revision, p. 5.

[41] CARB's August 2021 Staff Report includes CARB's review of, among other things, the control strategy in the 15 μg/m³ SIP Revision and assessment of the differences between the emissions inventories in the Plan and updated inventories more recently developed by CARB.

[42] CARB Resolution 21–21, ''San Joaquin Valley State Implementation Plan Revision for the 15 μg/m³ Annual $PM_{2.5}$ Standard,'' September 23, 2021, and SJVUAPCD Governing Board Resolution 21–08–13, ''Adopting the San Joaquin Valley Unified Air Pollution Control District *Proposed Attainment Plan Revision For the 1997 Annual $PM_{2.5}$ Standard*,'' August 19, 2021.

[43] Letter dated December 11, 2019, from Richard Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region 9, transmitting the December 2018 Staff Report. The December 2018 Staff Report includes CARB's review of, among other things, the 2018 $PM_{2.5}$ Plan's control strategy and attainment demonstration.

[44] CARB Resolution 19–1, ''2018 $PM_{2.5}$ State Implementation Plan for the San Joaquin Valley,'' January 24, 2019, and SJVUAPCD Governing Board Resolution 18–11–16, ''Adopting the [SJVUAPCD] 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards,'' November 15, 2018.

[45] SJVUAPCD, ''Notice of Public Hearing for Adoption of Proposed 2018 $PM_{2.5}$ Plan for the 1997, 2006, and 2012 Standards,'' October 16, 2018, and SJVUAPCD Governing Board Resolution 18–11–16.

[46] CARB, ''Notice of Public Meeting to Consider the 2018 $PM_{2.5}$ State Implementation Plan for the San Joaquin Valley,'' December 21, 2018, and CARB Resolution 19–1.

[47] SJVUAPCD, ''Notice of Public Hearing: Adopt Attainment Plan Revision for the 1997 Annual $PM_{2.5}$ Standard,'' July 20, 2021, and SJVUAPCD Governing Board Resolution 21–08–13.

[48] CARB, ''Notice of Public Meeting to Hear an Update on the 2018 $PM_{2.5}$ State Implementation Plan for the San Joaquin Valley and Consider a State Implementation Plan Revision for the 15 μg/m³ Annual $PM_{2.5}$ Standard,'' September 23, 2021, and CARB Resolution 21–21.

[49] CARB, ''Board Meeting Comments Log,'' March 29, 2019; J&K Court Reporting, LLC, ''Meeting, State of California Air Resources Board,'' January 24, 2019 (transcript of CARB's public hearing), and 2018 $PM_{2.5}$ Plan, Appendix M (''Summary of Significant Comments and Responses'').

[50] CARB, ''Board Meeting Comments Log,'' September 23, 2021; J&K Court Reporting, LLC,

Continued

2018 $PM_{2.5}$ Plan and 15 μg/m³ SIP Revision meet the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l) and 40 CFR 51.102.

CAA section 110(k)(1)(B) requires the EPA to determine whether a SIP submission is complete within 60 days of receipt. This section also provides that any plan that the EPA has not affirmatively determined to be complete or incomplete will become complete by operation of law six months after the date of submission. The EPA's SIP completeness criteria are found in 40 CFR part 51, Appendix V.

We have reviewed the 15 μg/m³ SIP Revision for completeness and find that it meets the completeness criteria in 40 CFR part 51 Appendix V. On May 8, 2022, the 15 μg/m³ SIP Revision was deemed complete by operation of law under CAA section 110(k)(1)(B). The 2018 $PM_{2.5}$ Plan and Valley State SIP Strategy became complete by operation of law on November 10, 2019, and the EPA subsequently issued a letter making an affirmative completeness finding and terminating the sanctions clocks under CAA section 179(a) on June 24, 2020.[51]

III. Clean Air Act Requirements for $PM_{2.5}$ Serious Area Plans and for Serious $PM_{2.5}$ Areas That Fail To Attain

A. Requirements for $PM_{2.5}$ Serious Area Plans

Upon reclassification of a Moderate nonattainment area as a Serious nonattainment area under subpart 4 of part D, title I of the CAA, the Act requires the state to make a SIP submission that addresses the following Serious nonattainment area requirements:[52]

1. A comprehensive, accurate, current inventory of actual emissions from all sources of $PM_{2.5}$ and $PM_{2.5}$ precursors in the area (CAA section 172(c)(3));

2. Provisions to assure that BACM, including best available control technology (BACT), for the control of direct $PM_{2.5}$ and $PM_{2.5}$ precursors shall be implemented no later than four years after the area is reclassified (CAA section 189(b)(1)(B)), unless the state elects to make an optional precursor demonstration that the EPA approves authorizing the state not to regulate one or more of these pollutants;

3. A demonstration (including air quality modeling) that the plan provides for attainment as expeditiously as practicable but no later than the end of the tenth calendar year after designation as a nonattainment area (*i.e.,* December 31, 2015, for the San Joaquin Valley for the 1997 $PM_{2.5}$ NAAQS);

4. Plan provisions that require RFP (CAA section 172(c)(2));

5. Quantitative milestones that are to be achieved every three years until the area is redesignated attainment and that demonstrate RFP toward attainment by the applicable date (CAA section 189(c));

6. Provisions to assure that control requirements applicable to major stationary sources of $PM_{2.5}$ also apply to major stationary sources of $PM_{2.5}$ precursors, except where the state demonstrates to the EPA's satisfaction that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the standard in the area (CAA section 189(e));

7. Contingency measures to be implemented if the area fails to meet RFP or to attain by the applicable attainment date (CAA section 172(c)(9)); and

8. A revision to the nonattainment new source review (NSR) program to lower the applicable ''major stationary source'' [53] thresholds from 100 tons per year (tpy) to 70 tpy (CAA section 189(b)(3)).

A state's Serious area plan must also satisfy the requirements for Moderate area plans in CAA section 189(a), to the extent the state has not already met those requirements in the Moderate area plan submitted for the area. In addition, the Serious area plan must meet the general requirements applicable to all SIP submissions under section 110 of the CAA, including the requirement to provide necessary assurances that the implementing agencies have adequate personnel, funding, and authority under section 110(a)(2)(E); and the requirements concerning enforcement provisions in section 110(a)(2)(C).

B. Requirements for Serious $PM_{2.5}$ Areas That Fail To Attain

In the event that a Serious area fails to attain the $PM_{2.5}$ NAAQS by the applicable attainment date, CAA section 189(d) requires that ''the State in which such area is located shall, after notice and opportunity for public comment, submit within 12 months after the applicable attainment date, plan revisions which provide for attainment of the . . . standard . . .'' An attainment plan under section 189(d) must, among other things, demonstrate expeditious attainment of the NAAQS within the time period provided under CAA section 179(d)(3) and provide for annual reductions in emissions of direct $PM_{2.5}$ or a $PM_{2.5}$ plan precursor pollutant within the area of not less than five percent per year from the most recent emissions inventory for the area until attainment.[54]

In addition to the requirement to submit control measures providing for a five percent reduction in emissions of certain pollutants on an annual basis, the EPA interprets CAA section 189(d) as requiring a state to submit an attainment plan that includes the same basic statutory plan elements that are required for other attainment plans.[55] Specifically, a state must submit to the EPA its plan to meet the requirements of CAA section 189(d) in the form of a complete attainment plan submission that includes the following elements:[56]

1. A comprehensive, accurate, current inventory of actual emissions from all sources of $PM_{2.5}$ and $PM_{2.5}$ precursors in the area;

2. A Serious area plan control strategy that ensures that BACM, including BACT, for the control of direct $PM_{2.5}$ and $PM_{2.5}$ precursors are implemented in the area, unless the state elects to make an optional precursor demonstration that the EPA approves authorizing the state not to regulate one or more of these pollutants;

3. Additional measures (beyond those already adopted in previous nonattainment plan SIP submissions for the area as RACM/RACT, BACM/BACT, and most stringent measures (MSM) (if applicable)[57]) that provide for attainment of the NAAQS as expeditiously as practicable and, from the date of such submission until attainment, demonstrate that the plan will, at a minimum, achieve an annual five percent reduction in emissions of direct $PM_{2.5}$ or any $PM_{2.5}$ plan precursor;

4. A demonstration (including air quality modeling) that the plan provides

''Videoconference Meeting, State of California Air Resources Board,'' September 23, 2021 (transcript of CARB's public hearing).

[51] Letter dated June 24, 2020, from Elizabeth J. Adams, Director, Air and Radiation Division, EPA Region IX, to Richard Corey, Executive Officer, CARB, Subject: ''RE: Completeness Finding for State Implementation Plan (SIP) Submissions for San Joaquin Valley for the 1997, 2006, and 2012 Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) and Termination of Clean Air Act (CAA) Sanction Clocks.''

[52] 40 CFR 51.1003(b)(1); 81 FR 58010, 58074–58075 (August 24, 2016).

[53] For any Serious area, the terms ''major source'' and ''major stationary source'' include any stationary source that emits or has the potential to emit at least 70 tons per year of $PM_{2.5}$. CAA section 189(b)(3) and 40 CFR 51.165(a)(1)(iv)(A)(*1*)(*vii*) and (*viii*) (defining ''major stationary source'' in Serious $PM_{2.5}$ nonattainment areas).

[54] CAA section 189(d), 40 CFR 51.1004(a)(3), 40 CFR 51.1010(c).

[55] 81 FR 58010, 58098.

[56] 40 CFR 51.1003(c)(1).

[57] MSM is applicable if the EPA has previously granted an extension of the attainment date under CAA section 188(e) for the nonattainment area and NAAQS at issue.

for attainment of the NAAQS at issue as expeditiously as practicable;

5. Plan provisions that require RFP;

6. Quantitative milestones that the state is to meet every three years until the area is redesignated attainment and that demonstrate RFP toward attainment by the applicable date;

7. Contingency measures to be implemented if the state fails to meet any requirement concerning RFP or quantitative milestones or to attain the NAAQS at issue by the applicable attainment date; and

8. Provisions to assure that control requirements applicable to major stationary sources of $PM_{2.5}$, also apply to major stationary sources of $PM_{2.5}$ precursors, except where the state demonstrates to the EPA's satisfaction that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS at issue in the area.

A state's section 189(d) plan submission must demonstrate attainment as expeditiously as practicable, and no later than 5 years from the date of the EPA's determination that the area failed to attain, except that the Administrator may extend the attainment date to no later than 10 years from the failure to attain determination, consistent with sections 179(d)(3) and 172(a)(2) of the CAA.[58]

A state with a Serious $PM_{2.5}$ nonattainment area that fails to attain the NAAQS by the applicable Serious area attainment date must also address any statutory requirements applicable to Moderate and Serious nonattainment area plans under CAA sections 172 and 189 of the CAA to the extent that those requirements have not already been met.[59] Because the EPA has not previously approved a SIP submission for the San Joaquin Valley as meeting the subpart 4 RACM Moderate area planning requirements under CAA section 189 for the 1997 annual $PM_{2.5}$ NAAQS, the EPA is evaluating relevant portions of the SJV $PM_{2.5}$ Plan for compliance with this requirement. In addition, as discussed above, the EPA has not previously approved a SIP submission for the San Joaquin Valley as meeting the Serious area planning requirements under CAA section 189(b)(1) for the 1997 annual $PM_{2.5}$ NAAQS. Some Serious area planning requirements operate on a timeline that is based on the outermost statutory Serious area attainment date of the end of the tenth calendar year following the area's designation to nonattainment. Because section 189(d) requires a state to address any applicable Serious area requirements that the state has not already met in the area, and the section 189(d) obligations do not come into effect until an area has failed to attain the NAAQS by the Serious area attainment date, the EPA is evaluating any previously unmet Serious area planning obligations based on the current, applicable attainment date appropriate under section 189(d), and not the original Serious area attainment date.[60]

The EPA provided its preliminary views on the CAA's requirements for particulate matter plans under part D, title I of the Act in the following guidance documents: (1) ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (''General Preamble'');[61] (2) ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental'';[62] and (3) ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (''General Preamble Addendum'').[63] More recently, in an August 24, 2016 final rule entitled, ''Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements'' (''$PM_{2.5}$ SIP Requirements Rule''), the EPA established regulatory requirements and provided further interpretive guidance on the statutory SIP requirements that apply to areas designated nonattainment for the $PM_{2.5}$ NAAQS.[64] We discuss these regulatory requirements and interpretations of the Act as appropriate in our evaluation of the SJV $PM_{2.5}$ Plan that follows.

IV. Review of the San Joaquin Valley $PM_{2.5}$ Plan for the 1997 Annual $PM_{2.5}$ NAAQS

The EPA is evaluating the SJV $PM_{2.5}$ Plan against the Serious area requirements for the 1997 annual $PM_{2.5}$ NAAQS and the section 189(d) requirements for the 1997 annual $PM_{2.5}$ NAAQS, as laid out in Section III of this document. Many requirements for both a Serious area plan and a section 189(d) plan are structured around the relevant statutory attainment date. The latest statutory Serious area attainment date for the San Joaquin Valley area was December 31, 2015.[65] On November 23, 2016, the EPA determined that the area failed to attain by the Serious area attainment date.

For the purposes of the section 189(d) requirements, the attainment date is the date by which a state can attain the NAAQS as expeditiously as practicable, but no later than 5 years from the publication date of the final determination of failure to attain, except that the EPA may extend the attainment date to a date no later than 10 years from the date of the determination (*i.e.,* to November 23, 2026), ''considering the severity of nonattainment and the availability and feasibility of pollution control measures.''[66] The SJV $PM_{2.5}$ Plan projects that attainment will be achieved by December 31, 2023, approximately seven years after the determination of failure to attain. The EPA is proposing to approve the SJV $PM_{2.5}$ Plan's attainment date in this action.

When the State submitted the 2018 $PM_{2.5}$ Plan in 2019, the State withdrew its previous Serious area plan that it had developed to meet the December 31, 2015 Serious area attainment date. Because the State submitted the 2018 $PM_{2.5}$ Plan and subsequent 15 $\mu g/m^3$ SIP Revision after the EPA's finding that the area had failed to attain by the applicable Serious area attainment date, the State could not demonstrate that the area would attain by the Serious area attainment date, nor could it address other requirements based on this attainment date, such as RFP and quantitative milestones, because many of the relevant dates had already passed. As described in Section III of this document, in a section 189(d) plan, a state must address any statutory requirements applicable to Moderate and Serious nonattainment area plans to the extent that it has not already met those requirements, but the EPA

[58] 81 FR 84481, 84482.

[59] 81 FR 58010, 58098.

[60] See, *e.g.,* 86 FR 53150 (September 24, 2021) and 87 FR 4503 (January 28, 2022) (proposed and final actions evaluating a previously unmet Serious area planning obligation based on the applicable attainment date under section 189(d), not the original Serious area attainment date).

[61] 57 FR 13498 (April 16, 1992).

[62] 57 FR 18070 (April 28, 1992).

[63] 59 FR 41998 (August 16, 1994).

[64] 81 FR 58010.

[65] As discussed in Section I.B of this proposal, California submitted its Serious area plan for the 1997 annual $PM_{2.5}$ NAAQS in two submissions dated June 25, 2015 and August 13, 2015, including a request under section 188(e) to extend the attainment date for the 1997 annual $PM_{2.5}$ NAAQS by five years (to December 31, 2020). On October 6, 2016, the EPA denied the request for an extension, but did not finalize action on the Serious area plan submissions. Accordingly, the Serious area attainment date remained unchanged: as expeditiously as practicable but no later than December 31, 2015.

[66] CAA section 172(a)(2) and 179(d)(3); 81 FR 84481, 84482. The determination of failure to attain published on November 23, 2016.

believes that it should base this evaluation on the current applicable attainment date under section 189(d). For example, it would be illogical to require a state to submit a Serious area modeled attainment demonstration that provided for attainment by December 31, 2015, after the EPA has already determined based on monitoring data that the state failed to attain by such date.

For the purposes of our evaluation of the Serious area plan requirements, although the State is required to submit a Serious area plan and it must structure such a plan based on the Serious area attainment date, it would serve no purpose to evaluate the SJV $PM_{2.5}$ Plan against the now-passed Serious area attainment date by which the area has already failed to attain. For example, RFP and quantitative milestones normally are dependent upon the attainment date. Accordingly, because the State must still meet all Serious area plan requirements, even if doing so later in conjunction with the section 189(d) plan and its later attainment date, we will evaluate the State's compliance with the Serious area plan requirements in light of the later section 189(d) attainment date, as appropriate. Where the State in the SJV $PM_{2.5}$ Plan applies the section 189(d) attainment date to a Serious area requirement, we will note the statutory Serious area timeline and accept the submission in fulfillment of the State's Serious area plan obligation but evaluate the submission in light of the section 189(d) attainment date.

A. Emissions Inventories

1. Statutory and Regulatory Requirements

CAA section 172(c)(3) requires that each SIP include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the nonattainment area. The EPA discussed the emissions inventory requirements that apply to $PM_{2.5}$ nonattainment areas in the $PM_{2.5}$ SIP Requirements Rule and codified these requirements in 40 CFR 51.1008.[67] The EPA has also issued guidance concerning emissions inventories for $PM_{2.5}$ nonattainment areas.[68]

The base year emissions inventory for a Serious area attainment plan or a CAA section 189(d) plan must provide a state's best estimate of actual emissions from all sources of the relevant pollutants in the area, *i.e.,* all emissions that contribute to the formation of a particular NAAQS pollutant. For the $PM_{2.5}$ NAAQS, the base year inventory must include direct $PM_{2.5}$ emissions, separately reported filterable and condensable $PM_{2.5}$ emissions,[69] and emissions of all chemical precursors to the formation of secondary $PM_{2.5}$, *i.e.,* nitrogen oxides (NO_X), sulfur dioxide (SO_2), volatile organic compounds (VOC), and ammonia.[70]

The emissions inventory base year for a Serious area attainment plan must be one of the three years for which monitoring data were used to reclassify the area to Serious, or another technically appropriate year justified by the state in its Serious area SIP submission.[71] The emissions inventory base year for a Serious $PM_{2.5}$ nonattainment area subject to CAA section 189(d) must be one of the three years for which the EPA used monitored data to determine that the area failed to attain the $PM_{2.5}$ NAAQS by the applicable Serious area attainment date, or another technically appropriate year justified by the state in its Serious area SIP submission.[72]

A state's SIP submission must include documentation explaining how it calculated emissions data for the inventory. In estimating mobile source emissions, a state should use the latest emissions models and planning assumptions available at the time the SIP is developed.

In addition to the base year inventory submitted to meet the requirements of CAA section 172(c)(3), the state must also submit a projected attainment year inventory and emissions projections for each RFP milestone year.[73] These future emissions projections are necessary components of the attainment demonstrations required under CAA sections 189(b)(1) and 189(d) and the demonstration of RFP required under section 172(c)(2).[74] Emissions projections for future years (referred to in the Plan as ''forecasted inventories'') should account for, among other things, the ongoing effects of economic growth and adopted emissions control requirements. The state's SIP submission should include documentation to explain how the state calculated the emissions projections. Where a state chooses to allow new major stationary sources or major modifications to use emissions reduction credits (ERCs) that were generated through shutdown or curtailed emissions units occuring before the base year of an attainment plan, the projected emissions inventory used to develop the attainment demonstration must explicitly include the emissions from such previously shutdown or curtailed emissions units.[75]

2. Summary of the State's Submission

The State included summaries of the planning emissions inventories for direct $PM_{2.5}$ and $PM_{2.5}$ precursors (NO_X, SO_X,[76] VOC,[77] and ammonia) and the documentation for the inventories for the San Joaquin Valley $PM_{2.5}$ nonattainment area in Appendix B (''Emissions Inventory'') and Appendix I (''New Source Review and Emission Reduction Credits'') of the 2018 $PM_{2.5}$ Plan. In addition, Appendix J (''Modeling Emission Inventory'') of the 2018 $PM_{2.5}$ Plan contains inventory documentation specific to the air quality modeling inventories.

CARB and District staff worked together to develop the emissions inventories for the San Joaquin Valley $PM_{2.5}$ nonattainment area. The District worked with operators of the stationary facilities in the nonattainment area to develop the stationary source emissions estimates. The responsibility for developing emissions estimates for area sources such as agricultural burning and paved road dust was shared by the District and CARB. CARB staff developed the emissions inventories for both on-road and non-road mobile sources.[78]

The SJV $PM_{2.5}$ Plan includes winter (24-hour) average and annual average daily emissions inventories for the 2013 base year, which CARB derived from the 2012 emissions inventory, and

[67] 81 FR 58010, 58098–58099.

[68] ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' U.S. EPA, May 2017 (''Emissions Inventory Guidance''), available at *https://www.epa.gov/air-emissions-inventories/air-emissions-inventory-guidance-implementation-ozone-and-particulate.*

[69] The Emissions Inventory Guidance identifies the types of sources for which the EPA expects states to provide condensable PM emissions inventories. Emissions Inventory Guidance, Section 4.2.1 (''Condensable PM Emissions''), pp. 63–65.

[70] 40 CFR 51.1008(b)(1) and (c)(1).

[71] 40 CFR 51.1008(b)(1).

[72] 40 CFR 51.1008(c)(1).

[73] 40 CFR 51.1008 and 51.1012. See also Emissions Inventory Guidance, Section 3 (''SIP Inventory Requirements and Recommendations'').

[74] 40 CFR 51.1004, 51.1008, 51.1011, and 51.1012.

[75] 40 CFR 51.165(a)(3)(ii)(C)(1).

[76] The SJV $PM_{2.5}$ Plan generally uses ''sulfur oxides'' or ''SO_X'' in reference to SO_2 as a precursor to the formation of $PM_{2.5}$. We use SO_X and SO_2 interchangeably throughout this document.

[77] The SJV $PM_{2.5}$ Plan generally uses ''reactive organic gasses'' or ''ROG'' in reference to VOC as a precursor to the formation of $PM_{2.5}$. We use ROG and VOC interchangeably throughout this document.

[78] The EPA regulations refer to ''non-road'' vehicles and engines whereas CARB regulations refer to ''Other Mobile Sources'' or ''off-road'' vehicles and engines. These terms refer to the same types of vehicles and engines. We refer herein to such vehicles and engines as ''non-road'' sources.

estimated emissions for forecasted years from 2017 through 2028, as developed as part of the 2018 $PM_{2.5}$ Plan for the attainment and RFP demonstrations for the 1997, 2006, and 2012 $PM_{2.5}$ NAAQS.[79] In this proposal, we are evaluating those winter average and annual average emissions inventories necessary to support the Serious area and CAA section 189(d) nonattainment plans for the 1997 annual $PM_{2.5}$ NAAQS, *i.e.,* the 2013 base year inventory, forecasted inventories for the RFP milestone years of 2017, 2020, 2023 (attainment year), and 2026 (post-attainment milestone year), and additional forecasted emissions inventories for 2018, 2019, 2021, and 2022 to support the five percent annual emissions reduction demonstration as required by CAA section 189(d). Each inventory includes emissions from stationary, area, on-road, and non-road sources.

The State selected 2013 for the base year emissions inventory, building on the 2012 actual emissions inventory and considering available air quality data, trends, and field studies.[80] Specifically, the State worked with local air districts and selected 2012 for the actual emissions inventory as it aligned with the 2012 data collection year of the Multiple Air Toxics Exposure Study IV (MATES IV) [81] of the South Coast Air Quality Management District (SCAQMD) and to maintain consistency across various California air quality plans.[82] The State then projected the 2013 base year emissions inventory (also referred to as the planning emissions inventory), presented in Appendix B of the 2018 $PM_{2.5}$ Plan, from that 2012 actual emissions inventory. The State developed the modeling emissions inventory from the base year emissions inventory, and conducted its base case modeling using 2013 for several reasons: Analysis of air quality trends, adjusted for meteorology, that indicated 2013 as a year conducive to ozone and $PM_{2.5}$ formation; availability of research-grade measurements of two significant pollution episodes in the DISCOVER–AQ field study of January to February 2013; and the relatively high design values for 2013, making it a conservative choice for attainment modeling.[83]

CARB developed the base year inventories for stationary sources using actual emissions reports from facility operators. The State developed the base year emissions inventory for area sources using the most recent models and methodologies available at the time the State was developing the 2018 $PM_{2.5}$ Plan.[84] The Plan also includes background, methodology, and inventories of condensable and filterable $PM_{2.5}$ emissions from stationary point and non-point combustion sources that are expected to generate condensable $PM_{2.5}$.[85]

CARB used EMFAC2014 to estimate on-road motor vehicle emissions based on transportation activity data from the 2017 Transportation Improvement Plan (2017 TIP) adopted by the transportation planning agencies in the San Joaquin Valley.[86] EMFAC2014 was the latest EPA-approved version of California's mobile source emission factor model for estimating tailpipe, brake, and tire wear emissions from on-road mobile sources that was available during the State's and District's development of the emissions inventories in the 2018 $PM_{2.5}$ Plan.[87] Re-entrained paved road dust emissions were calculated using a CARB methodology consistent with the EPA's AP–42 road dust methodology.[88] CARB also provided emissions inventories for non-road equipment, including aircraft, trains, recreational boats, construction equipment, and farming equipment, among others. CARB uses a suite of category-specific models to estimate non-road emissions for many categories and, where a new model was not available, used the OFFROAD2007 model.[89]

CARB developed the emissions forecasts by applying growth and control profiles to the base year inventory. CARB's mobile source emissions projections take into account predicted activity rates and vehicle fleet turnover by vehicle model year and adopted controls.[90] In addition, the Plan states that the District is providing for use of pre-base year ERCs as offsets by accounting for such ERCs in the projected 2025 emissions inventory.[91] The 2018 $PM_{2.5}$ Plan identifies growth factors, control factors, and estimated offset use between 2013 and 2025 for direct $PM_{2.5}$, NO_X, SO_X, and VOC emissions by source category and lists all pre-base year ERCs issued by the District for PM_{10}, NO_X, SO_X, and VOC emissions, by facility.[92]

Table 1 provides a summary of the winter (24-hour) average inventories in tons per day (tpd) of direct $PM_{2.5}$ and $PM_{2.5}$ precursors for the 2013 base year. Table 2 provides a summary of annual

[79] 2018 $PM_{2.5}$ Plan, Appendix B, pp. B–18 to B–19. The winter average daily planning inventory corresponds to the months of November through April, when daily ambient $PM_{2.5}$ concentrations are typically highest. The base year inventory is from the California Emissions Inventory Development and Reporting System and future year inventories were estimated using the California Emission Projection Analysis Model (CEPAM), 2016 SIP Baseline Emission Projections, version 1.05.

[80] 2018 $PM_{2.5}$ Plan, Appendix L, pp. 11–12.

[81] Additional information on the MATES IV study performed in 2012 is available at: *https://www.aqmd.gov/home/air-quality/air-quality-studies/health-studies/mates-iv.* SCAQMD performed the subsequent MATES V study in 2018 and issued the MATES V final report in August 2021. See *https://www.aqmd.gov/home/air-quality/air-quality-studies/health-studies/mates-v,* and ''MATES V, Multiple Air Toxics Exposure Study in the South Coast AQMD, Final Report,'' SCAQMD, August 2021.

[82] 2018 $PM_{2.5}$ Plan, Appendix B, p. B–18

[83] 2018 $PM_{2.5}$ Plan, Appendix L, p. 12. The State presents further information in the ''APPENDIX: San Joaquin Valley $PM_{2.5}$ SIP (2018)'' of Appendix L and highlights that 2013 was one of the worst years in the decade preceding 2018 for $PM_{2.5}$ pollution in the San Joaquin Valley, underscoring its use as a conservative base year for attainment modeling.

[84] 2018 $PM_{2.5}$ Plan, Appendix B, Section B.2 (''Emissions Inventory Summary and Methodology'').

[85] Id. at B–42 to B–44.

[86] 2018 $PM_{2.5}$ Plan, Appendix D, p. D–123.

[87] 80 FR 77337 (December 14, 2015). EMFAC is short for *Em*ission *FAC*tor. The EPA announced the availability of the EMFAC2014 model, effective on the date of publication in the **Federal Register,** for use in state implementation plan development and transportation conformity in California. Upon that action, EMFAC2014 was required to be used for all new regional emissions analyses and CO, PM_{10}, and $PM_{2.5}$ hot-spot analyses that were started on or after December 14, 2017, which was the end of the grace period for using the prior mobile source emissions model, EMFAC2011. On August 15, 2019, the EPA approved EMFAC2017, a revision to the mobile source emissions model (84 FR 41717). The grace period for new regional emissions analyses began on August 15, 2019, and ended on August 16, 2021, while the grace period for hot-spot analyses began on August 15, 2019, and ended on August 17, 2020. Id. at 41720. On November 15, 2022, the EPA approved EMFAC2021, a subsequent revision to the mobile source emissions model (87 FR 68483). The grace period for new regional emissions analyses began on November 15, 2022, and ends on November 15, 2024, while the grace period for hot-spot analyses began on November 15, 2022, and ends on November 15, 2023. Id. at 68487–68488.

[88] 2018 $PM_{2.5}$ Plan, Appendix B, p. B–28. AP–42 has been published since 1972 as the primary source of the EPA's emission factor information and is available at *https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors.* It contains emission factors and process information for more than 200 air pollution source categories. A source category is a specific industry sector or group of similar emitting sources. The emission factors have been developed and compiled from source test data, material balance studies, and engineering estimates. The EPA released an update to AP–42 in January 2011 that revised the equation for estimating paved road dust emissions based on an updated data regression that included new emissions tests results. 76 FR 6328 (February 4, 2011). CARB used the revised 2011 AP–42 methodology in developing on-road mobile source emissions; see *https://www.arb.ca.gov/ei/areasrc/fullpdf/full7-9_2016.pdf.*

[89] 2018 $PM_{2.5}$ Plan, Appendix B, pp. B–38 through B–40. The EPA regulations refer to ''non-road'' vehicles and engines whereas CARB regulations refer to ''Other Mobile Sources'' or ''off-road'' vehicles and engines. These terms refer to the same types of vehicles and engines. We refer herein to such vehicles and engines as ''non-road'' sources.

[90] Id. at B–18 and B–19.

[91] 2018 $PM_{2.5}$ Plan, Appendix I, pp. I–1 to I–5.

[92] Id. at tables I–1 to I–5.

average inventories of direct $PM_{2.5}$ and $PM_{2.5}$ precursors for the 2013 base year. For the purposes of this proposal, these annual average inventories provide the bases for our evaluation of the precursor demonstration, control measure analysis, attainment demonstration, RFP demonstration, and the motor vehicle emission budgets (''budgets'') in the SJV $PM_{2.5}$ Plan with respect to the Serious area and CAA section 189(d) requirements for the 1997 annual $PM_{2.5}$ NAAQS.

TABLE 1—SAN JOAQUIN VALLEY WINTER AVERAGE EMISSIONS INVENTORY FOR DIRECT $PM_{2.5}$ AND $PM_{2.5}$ PRECURSORS FOR THE 2013 BASE YEAR

[tpd]

Category	Direct $PM_{2.5}$	NO_X	SO_X	VOC	Ammonia
Stationary Sources	8.5	35.0	6.9	86.6	13.9
Area Sources	41.4	11.5	0.5	156.8	291.5
On-Road Mobile Sources	6.4	188.7	0.6	51.1	4.4
Non-Road Mobile Sources	4.4	65.3	0.3	27.4	0.0
Totals [a]	60.8	300.5	8.4	321.9	309.8

Source: 2018 $PM_{2.5}$ Plan, Appendix B, tables B–1 to B–5.
[a] Totals reflect disaggregated emissions and may not add exactly as shown here due to rounding.

TABLE 2—SAN JOAQUIN VALLEY ANNUAL AVERAGE EMISSIONS INVENTORY FOR DIRECT $PM_{2.5}$ AND $PM_{2.5}$ PRECURSORS FOR THE 2013 BASE YEAR

[tpd]

Category	Direct $PM_{2.5}$	NO_X	SO_X	VOC	Ammonia
Stationary Sources	8.8	38.6	7.2	87.1	13.9
Area Sources	41.5	8.1	0.3	153.4	310.9
On-Road Mobile Sources	6.4	183.1	0.6	49.8	4.4
Non-Road Mobile Sources	5.8	87.4	0.3	33.8	0.0
Totals [a]	62.5	317.2	8.5	324.1	329.2

Source: 2018 $PM_{2.5}$ Plan, Appendix B, tables B–1 to B–5.
[a] Totals reflect disaggregated emissions and may not add exactly as shown here due to rounding.

CARB explains in its August 2021 Staff Report that although it has updated the emissions inventories since development of the 2018 $PM_{2.5}$ Plan, the 15 $\mu g/m^3$ SIP Revision ''uses the same inventory as the one in the 2018 $PM_{2.5}$ Plan, which it amends, for consistency.'' To support this approach, CARB included in its August 2021 Staff Report comparisons between the estimated annual NO_X and $PM_{2.5}$ emissions in the 2013 base year inventory developed using EMFAC2014 with those developed using the more recent EPA-approved version of EMFAC, EMFAC2017. CARB subsequently provided similar comparisons for the 2020 RFP and 2023 attainment years, as well as comparisons with emissions derived using EMFAC2021.[93] Table 3 shows the comparisons between on-road mobile source emissions derived using EMFAC2014, EMFAC2017, and EMFAC2021 for NO_X and $PM_{2.5}$ in 2013, 2020, and 2023.

TABLE 3—ON-ROAD MOBILE SOURCE NO_X AND DIRECT $PM_{2.5}$ EMISSIONS DERIVED USING EMFAC2014, EMFAC2017, AND EMFAC2021

[tpd]

	NO_X			Direct $PM_{2.5}$		
	2013	2020	2023	2013	2020	2023
EMFAC2014	183.1	96.9	57.9	6.5	3.4	3.2
EMFAC2017	170.0	89.3	61.2	6.8	4.0	3.3
EMFAC2021	193.5	84.4	54.9	6.1	2.3	1.8
EMFAC2017/EMFAC2014	93%	92%	106%	106%	116%	105%
EMFAC2021/EMFAC2014	106%	87%	95%	95%	66%	56%

Source: CARB's March 2022 EMFAC Clarification.

CARB determined that $PM_{2.5}$ emissions estimates for 2013 derived using EMFAC2017 are approximately six percent higher than estimates derived using EMFAC2014, and that NO_X emissions estimates for 2013

[93] Email dated March 29, 2022, from Nesamani Kalandiyur, CARB, to Karina O'Connor et al., EPA Region IX, Subject: ''RE: EMFAC Discussion,'' (''March 2022 EMFAC Clarification''). The email also includes model results for the 2026 post-attainment milestone year. CARB initially released EMFAC2021 v1.0.0 on January 15, 2021. CARB released an updated version, EMFAC2021 v1.0.1, on April 30, 2021, and the EPA approved the use of EMFAC2021 for use in SIP development on November 15, 2022 (87 FR 68483).

derived using EMFAC2017 are seven percent lower than the emissions estimates derived using EMFAC2014. On-road $PM_{2.5}$ and NO_X estimates derived using EMFAC2021 are five percent lower and six percent higher, respectively, in 2013 as compared with estimates from EMFAC2014. In the 2023 attainment year, on-road $PM_{2.5}$ and NO_X emissions estimates derived using EMFAC2017 are approximately 5 percent and 6 percent higher, respectively, than estimates derived using EMFAC2014, whereas on-road $PM_{2.5}$ and NO_X emissions estimates derived using EMFAC2021 are approximately 44 percent and 5 percent lower, respectively, than in EMFAC2014.

Based on these model results, CARB concludes that the differences in emissions derived using the different EMFAC model versions are not significant enough to affect the modeled attainment demonstration in the 15 μg/m³ SIP Revision.

3. The EPA's Review of the State's Submission

As part of our July 22, 2021 proposed and November 26, 2021 final rules,[94] we reviewed the emissions inventories in the 2018 $PM_{2.5}$ Plan that pertain to the 1997 annual $PM_{2.5}$ NAAQS and the emissions inventory estimation methodologies used by California for consistency with CAA requirements and the EPA's guidance. We found that the inventories were based on the most current and accurate information available to the State and District at the time they were developing the 2018 $PM_{2.5}$ Plan and inventories, including the latest version of California's mobile source emissions model that had been approved by the EPA at the time, EMFAC2014. We also found that the inventories comprehensively address all source categories in the San Joaquin Valley $PM_{2.5}$ nonattainment area and are consistent with the EPA's inventory guidance. In our November 26, 2021 final action, we approved the 2013 base year emissions inventories in the 2018 $PM_{2.5}$ Plan as meeting the requirements of CAA section 172(c)(3) and 40 CFR 51.1008 for purposes of both the Serious area and the CAA section 189(d) attainment plans for the 1997 annual $PM_{2.5}$ NAAQS.[95]

For purposes of evaluating the 15 μg/m³ SIP Revision, we have reviewed the additional information comparing the emissions derived using EMFAC2014, EMFAC2017, and EMFAC2021 that was provided by CARB in its August 2021 Staff Report and subsequent email transmittal. The State modeled reductions of direct $PM_{2.5}$ and NO_X on-road mobile emissions and calculated the sensitivity of the $PM_{2.5}$ design value per tpd of emissions.[96] The EPA used those sensitivity results with the EMFAC emissions estimates to assess the effects of the various EMFAC model version results on the attainment demonstration in the Plan. We are proposing to find that although NO_X and $PM_{2.5}$ emissions estimates in the 2023 attainment year are slightly higher in EMFAC2017 than in EMFAC2014, the effect on $PM_{2.5}$ concentrations is small enough that the attainment demonstration in the 15 μg/m³ SIP Revision remains valid.[97] Furthermore, more up-to-date emissions information from EMFAC2021 indicates lower emissions of NO_X and $PM_{2.5}$ in the attainment year, indicating that the attainment modeling results derived using EMFAC2014 are conservative and that the 2023 attainment year design values are expected to be lower than those modeled in the Plan.

With respect to future year emissions projections in the 15 μg/m³ SIP Revision, we have reviewed the growth and control factors and are proposing to find them acceptable and thus conclude that the future baseline emissions projections in the SJV $PM_{2.5}$ Plan, which reflect ongoing emissions reductions from existing (*i.e.,* ''baseline'') control measures as discussed in Section IV.C.2.a, reflect appropriate calculation methods and the latest planning assumptions. Also, as a general matter, the EPA will approve a SIP submission that takes emissions reduction credit for a control measure only where the EPA has approved the measure as part of the SIP. Thus, for example, to take credit for the emissions reductions from newly adopted or amended District rules for stationary sources, the related rules must be approved by the EPA into the SIP. Table 2 of the EPA's ''Technical Support Document, San Joaquin Valley $PM_{2.5}$ Plan Revision for the 1997 Annual $PM_{2.5}$ NAAQS,'' April 2023 (''EPA's 1997 Annual $PM_{2.5}$ TSD'') shows District rules with post-2013 compliance dates that are reflected in the future year baseline inventories, along with information on the EPA's approval of these rules, and shows that stationary source emissions reductions assumed by the SJV $PM_{2.5}$ Plan for future years are supported by rules approved as part of the California SIP for the San Joaquin Valley. With respect to mobile sources, the EPA has taken action in recent years to approve CARB mobile source regulations into the state-wide portion of the California SIP. We therefore find that the future year baseline projections in the SJV $PM_{2.5}$ Plan are properly supported by SIP-approved stationary and mobile source measures.

For these reasons, we are proposing to find that the 2013 base year emissions inventories in the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS continue to satisfy the requirements of CAA section 172(c)(3) and 40 CFR 51.1008 for purposes of both the Serious area and the CAA section 189(d) attainment plans. We are also proposing to find that the forecasted inventories in the Plan for the years 2017, 2018, 2019, 2020, 2023, and 2026 provide an adequate basis for the BACM, RFP, and the modeled attainment demonstration analyses in the SJV $PM_{2.5}$ Plan.

B. $PM_{2.5}$ Precursors

1. Statutory and Regulatory Requirements

Under subpart 4 of part D, title I of the CAA and the $PM_{2.5}$ SIP Requirements Rule, each state containing a $PM_{2.5}$ nonattainment area must evaluate all $PM_{2.5}$ precursors for regulation unless, for any given $PM_{2.5}$ precursor, the state demonstrates to the Administrator's satisfaction that such precursor does not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS in the nonattainment area.[98] The provisions of subpart 4 do not define the term ''precursor'' for purposes of $PM_{2.5}$, nor do they explicitly require the control of any specifically identified PM precursor. The statutory definition of ''air pollutant,'' in CAA section 302(g), however, provides that the term ''includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used.'' [99] The EPA has identified NO_X, SO_2, VOC, and ammonia as precursors to the formation of $PM_{2.5}$.[100] Accordingly, the attainment plan requirements of subpart 4 apply to emissions of all four precursor pollutants and direct $PM_{2.5}$ from all types of stationary, area, and mobile

[94] 86 FR 38652 and 86 FR 67329.

[95] 86 FR 67329, 67341.

[96] 15 μg/m³ SIP Revision, Appendix D, p. D–125. Transportation Conformity Budgets, Emissions Trading Mechanism, Table 21. These sensitivity simulations used the same modeling base case as the attainment demonstration for the 15 μg/m³ SIP Revision.

[97] Spreadsheet ''EMFAC update effect on annual 1997 $PM_{2.5}$ NAAQS attainment demonstration,'' EPA Region IX, May 1, 2023.

[98] 81 FR 58010, 58017–58020.

[99] CAA section 302(g).

[100] 81 FR 58010, 58015.

sources, except as otherwise provided in the Act (*e.g.,* in CAA section 189(e)).

Section 189(e) of the Act requires that the control requirements for major stationary sources of direct PM_{10} (which includes $PM_{2.5}$) also apply to major stationary sources of PM_{10} precursors, except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels that exceed the standard in the area. Section 189(e) contains the only express exception to the control requirements under subpart 4 (*e.g.,* requirements for RACM, RACT, BACM, BACT, MSM, and nonattainment new source review (NSR)). Although section 189(e) explicitly addresses only major stationary sources, the EPA interprets the Act as authorizing it also to determine, under appropriate circumstances, that regulation of specific $PM_{2.5}$ precursors from other source categories in a given nonattainment area is not necessary.[101] For example, under the EPA's longstanding interpretation of the control requirements that apply to stationary and mobile sources of PM_{10} precursors in nonattainment areas under CAA section 172(c)(1) and subpart 4,[102] a state may demonstrate in a SIP submission that control of a certain precursor pollutant is not necessary because it does not contribute significantly to ambient PM_{10} levels in the nonattainment area and is not needed for attainment.[103]

Under the $PM_{2.5}$ SIP Requirements Rule, a state may elect to submit to the EPA a ''comprehensive precursor demonstration'' for a specific nonattainment area to show that emissions of a particular precursor from all existing sources located in the nonattainment area do not contribute significantly to $PM_{2.5}$ levels that exceed the standard in the area.[104] If the EPA determines that the contribution of the precursor to $PM_{2.5}$ levels in the area is not significant and approves the demonstration, the state is not required to control emissions of the relevant precursor from existing sources in the attainment plan.[105]

In addition, in May 2019, the EPA issued the ''$PM_{2.5}$ Precursor Demonstration Guidance'' (''$PM_{2.5}$ Precursor Guidance''),[106] which provides recommendations to states for analyzing nonattainment area $PM_{2.5}$ emissions and developing such optional precursor demonstrations, consistent with the $PM_{2.5}$ SIP Requirements Rule. The EPA developed recommended contribution thresholds to help assess whether a precursor significantly contributes to $PM_{2.5}$ levels above the NAAQS. The thresholds are based on the size of $PM_{2.5}$ concentration increases that are statistically indistinguishable from the inherent variability in the measured atmospheric concentrations.[107] If the chemical component of $PM_{2.5}$ ambient concentrations corresponding to emissions of a precursor (*e.g.,* the concentration of sulfate, which corresponds to SO_2 emissions) is below the threshold, that is evidence that the precursor does not significantly contribute. If the precursor is above the threshold in this concentration-based test, the State can use a sensitivity-based test, in which the modeled sensitivity or response of ambient $PM_{2.5}$ concentrations to changes in emissions of the precursor is estimated and then compared to the threshold. The EPA's recommended annual average contribution threshold for purposes of the 2012 annual $PM_{2.5}$ NAAQS is 0.2 μg/m^3.[108] The $PM_{2.5}$ Precursor Guidance explains that this threshold represents a percentage of the 2012 annual NAAQS and that ''[d]ifferent thresholds may be applicable to other levels and/or forms of the NAAQS (either past or future).'' [109] In addition to comparing the concentration or modeled response to the threshold, the State can consider other information in assessing whether the precursor significantly contributes.

As explained in the $PM_{2.5}$ Precursor Guidance, and consistent with the $PM_{2.5}$ SIP Requirements Rule (40 CFR 51.1010(a)(2)(ii), 51.1006(a)(1)(ii)), the EPA may require an air agency to identify and evaluate potential control measures for a precursor to determine the potential emissions reductions achievable, in support of a precursor demonstration that relies on a sensitivity analysis.[110] The guidance states that such evaluation is particularly important for an area in which the $PM_{2.5}$ response to a 30 percent reduction in precursor emissions is close to the contribution threshold. In the case of a nonattainment area classified as Serious, this analysis would include identification and evaluation of measures that would constitute BACM/BACT level control for such pollutant.[111] Consistent with these regulations, the EPA requested that the State identify and evaluate potential control measures for ammonia to determine the potential emissions reductions achievable for purposes of the 1997 annual $PM_{2.5}$ NAAQS.

We are evaluating the SJV $PM_{2.5}$ Plan in accordance with the presumption embodied within subpart 4, that states must address all $PM_{2.5}$ precursors in the evaluation of potential control measures unless the state adequately demonstrates that emissions of a particular precursor or precursors do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the $PM_{2.5}$ NAAQS in the nonattainment area. In reviewing any determination by a state to exclude a $PM_{2.5}$ precursor from the required evaluation of potential control measures, we consider both the magnitude of the precursor's contribution to ambient $PM_{2.5}$ concentrations in the nonattainment area and, where the state has conducted sensitivity-based analyses, the sensitivity of ambient $PM_{2.5}$ concentrations in the area to reductions in emissions of that precursor in accordance with the $PM_{2.5}$ Precursor Guidance.

2. Summary of the State's Submission

The State presents some results and conclusions from its $PM_{2.5}$ precursor sensitivity analysis in Chapter 5 (''Demonstration of Federal Requirements for 1997 $PM_{2.5}$ Standards''), Section 5.3.1 (''Summary of Modeling Results'') of the 15 μg/m^3 SIP Revision, and presents the full

[101] Id. at 58018–58019.

[102] General Preamble, 13539–13542.

[103] Courts have upheld this approach to the requirements of subpart 4 for PM_{10}. See, *e.g., Assoc. of Irritated Residents* v. *EPA, et al.,* 423 F.3d 989 (9th Cir. 2005).

[104] 40 CFR 51.1006(a)(1).

[105] Id. A state may also perform a separate, ''NNSR precursor demonstration'' to evaluate the sensitivity of $PM_{2.5}$ levels in the nonattainment area to an increase in emissions of a particular precursor and determine if new major stationary sources and major modifications of a precursor would contribute significantly to $PM_{2.5}$ levels that exceed the standard in the nonattainment area. 40 CFR 51.1006(a)(3).

[106] ''$PM_{2.5}$ Precursor Demonstration Guidance,'' EPA–454/R–19–004, May 2019, including memorandum dated May 30, 2019, from Scott Mathias, Acting Director, Air Quality Policy Division and Richard Wayland, Director, Air Quality Assessment Division, Office of Air Quality Planning and Standards (OAQPS), EPA to Regional Air Division Directors, Regions 1–10, EPA. The $PM_{2.5}$ Precursor Guidance builds upon the draft version of the guidance, released on November 17, 2016 (''Draft $PM_{2.5}$ Precursor Guidance''), which CARB referenced in developing its precursor demonstration in the SJV $PM_{2.5}$ Plan. ''$PM_{2.5}$ Precursor Demonstration Guidance, Draft for Public Review and Comments,'' EPA–454/P–16–001, November 17, 2016, including memorandum dated November 17, 2016, from Stephen D. Page, Director, OAQPS, EPA to Regional Air Division Directors, Regions 1–10, EPA.

[107] $PM_{2.5}$ Precursor Guidance, p. 15.

[108] Id. at 17.

[109] Id. at fn. 20.

[110] Id. at 31.

[111] Id.

precursor demonstration in Appendix G (''Precursor Demonstration'') of the 2018 $PM_{2.5}$ Plan.[112] CARB presents additional modeling results in Appendix K (''Modeling Attainment Demonstration'') of the 15 μg/m³ SIP Revision. CARB also provided clarifying information on its precursor assessment, including an Attachment A to its letter transmitting the 2018 $PM_{2.5}$ Plan to the EPA[113] and further clarifications in five email transmittals.[114] CARB's December 2018 Staff Report and August 2021 Staff Report contain additional discussion of the role of ammonia in the formation of ammonium nitrate and the role of VOC in the formation of ammonium nitrate and secondary organic aerosol.[115] Lastly, on March 30, 2023, CARB transmitted to the EPA a technical supplement titled ''Ammonia: Supplemental Information for EPA in Support of 15 μg/m³ Annual $PM_{2.5}$ Standard, March 2023'' (''March 2023 Ammonia Supplement'') in which CARB and the District ''clarify CARB's assessment of ammonia as a precursor to fine particulate matter ($PM_{2.5}$) for the 15 μg/m³ annual standard by summarizing information previously submitted to EPA and providing new detailed control measure analysis'' [116] to assess potential ammonia emissions reductions achievable in the San Joaquin Valley through the implementation of best available controls.

The SJV $PM_{2.5}$ Plan provides both concentration-based and sensitivity-based analyses of precursor contributions to ambient $PM_{2.5}$ concentrations in the San Joaquin Valley. For the concentration-based analysis, CARB assessed the 2015 annual average concentration of each precursor in ambient $PM_{2.5}$ at Bakersfield, for which the necessary speciated $PM_{2.5}$ data are available and where the highest $PM_{2.5}$ design values have been recorded in most years. CARB concludes that the 2015 annual average contributions of ammonia, SO_X, and VOC are 5.2 μg/m³, 1.6 μg/m³, and 6.2 μg/m³, respectively. Given that these levels are above the EPA's recommended contribution threshold, the State proceeded with a sensitivity-based analysis.

CARB's sensitivity-based analysis used the same Community Multiscale Air Quality (CMAQ) modeling platform as that used for the Plan's attainment demonstration, described in Section IV.D. of this proposal. The State modeled the sensitivity of ambient $PM_{2.5}$ concentration in the San Joaquin Valley to 30 percent and 70 percent reductions in anthropogenic emissions of each precursor pollutant for modeled years 2013, 2020, and 2024. The year 2013 is the 2018 $PM_{2.5}$ Plan's base year; 2020 is the modeled attainment year for the 1997 24-hour $PM_{2.5}$ NAAQS and former modeled attainment year for the 1997 annual $PM_{2.5}$ NAAQS; and 2024 is the modeled attainment year for the 2006 24-hour $PM_{2.5}$ NAAQS. For the 1997 annual $PM_{2.5}$ NAAQS, the revised modeled attainment year is 2023, but the State did not conduct precursor sensitivity modeling for that additional year. Instead, the State assumed that 2023 and 2024 would have very similar results; [117] and results for 2024 were used as a proxy for those in 2023.

In Appendix G of the 2018 $PM_{2.5}$ Plan, the State compared its sensitivity modeling results to the recommended annual average contribution threshold of 0.2 μg/m³ in the $PM_{2.5}$ Precursor Guidance. As discussed in Section IV.B.1, the 0.2 μg/m³ contribution threshold was derived based on the level of the 2012 annual $PM_{2.5}$ NAAQS (*i.e.,* 12.0 μg/m³). In the March 2023 Ammonia Supplement, the State explains that adjusting the contribution threshold to the level of the 1997 annual $PM_{2.5}$ NAAQS (*i.e.,* 15.0 μg/m³) results in a contribution threshold of 0.25 μg/m³ and presents an updated evaluation of the modeled concentration-based and sensitivity-based analyses for ammonia using the 0.25 μg/m³ threshold.[118]

In collaboration with the District, the State supplemented the sensitivity analysis, particularly for ammonia, with consideration of additional information such as emissions trends, the appropriateness of future year versus base year sensitivity, the severity of nonattainment, and a detailed controls analysis.[119] These factors were identified in the then-available Draft $PM_{2.5}$ Precursor Guidance, as well as in the final $PM_{2.5}$ Precursor Guidance, as factors that may be relevant to a sensitivity-based contribution analysis.[120]

Taken together, these analyses led CARB to conclude that NO_X remains a plan precursor but that ammonia, SO_X, and VOC do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the $PM_{2.5}$ NAAQS in the San Joaquin Valley. We summarize the State's analysis and conclusions below. For a more detailed summary of the precursor demonstration in the Plan, please refer to the EPA's ''Technical Support Document, EPA Evaluation of $PM_{2.5}$ Precursor Demonstration, San Joaquin Valley $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS,'' February 2020 (''EPA's February 2020 Precursor TSD'').

a. Ammonia

For the ammonia analysis presented in Appendix G of the 2018 $PM_{2.5}$ Plan, the State compared the annual precursor contributions to 0.2 μg/m³, the contribution threshold recommended for the 2012 annual $PM_{2.5}$ NAAQS in the $PM_{2.5}$ Precursor Guidance. The State supplemented this analysis in the March 2023 Ammonia Supplement by comparing the annual ammonia contributions to the 0.25 μg/m³ threshold it derived for the 1997 annual $PM_{2.5}$ NAAQS. For a modeled 30 percent ammonia emissions reduction, the ambient $PM_{2.5}$ responses in 2013 ranged from 0.20 to 0.72 μg/m³ across 15 monitoring sites, with all of the sites at or above the 0.2 μg/m³ contribution threshold and all but two of the sites above the 0.25 μg/m³ contribution threshold. $PM_{2.5}$ responses in 2020 ranged from 0.12 to 0.42 μg/m³, with nine sites above the 0.2 μg/m³ contribution threshold and four sites

[112] Appendix G was not changed relative to the 2018 $PM_{2.5}$ Plan for the 15 μg/m³ SIP Revision.

[113] Letter dated May 9, 2019, from Richard Corey, Executive Officer, CARB, to Michael Stoker, Regional Administrator, EPA Region 9, Attachment A (''Clarifying information for the San Joaquin Valley 2018 Plan regarding model sensitivity related to ammonia and ammonia controls'').

[114] Email dated June 20, 2019, from Jeremy Avise, CARB, to Scott Bohning, EPA Region IX, Subject: ''RE: SJV model disbenefit from SO_X reduction,'' with attachment (''CARB's June 2019 Precursor Clarification''); email dated September 19, 2019, from Jeremy Avise, CARB, to Scott Bohning, EPA Region IX, Subject: ''FW: SJV species responses,'' with attachments (''CARB's September 2019 Precursor Clarification''); email dated October 18, 2019, from Laura Carr, CARB, to Scott Bohning, Jeanhee Hong, and Rory Mays, EPA Region IX, Subject: ''Clarifying information on ammonia,'' with attachment ''Clarifying Information on Ammonia'' (''CARB's October 2019 Precursor Clarification''); email dated April 19, 2021, from Laura Carr, CARB, to Rory Mays, EPA Region IX, Subject: ''Ammonia update,'' with attachment ''Update on Ammonia in the San Joaquin Valley'' (''CARB's April 19, 2021 Precursor Clarification''); and email dated April 26, 2021, from Laura Carr, CARB, to Scott Bohning, EPA Region IX, Subject: ''RE: Ammonia update,'' with attachment ''Ammonia in San Joaquin Valley'' (''CARB's April 26, 2021 Precursor Clarification'').

[115] December 2018 Staff Report, Appendix C, pp. 9–16, and August 2021 Staff Report, pp. 8–9 and Attachment 1. Attachment 1 is identical to the attachment to CARB's April 19, 2021 Precursor Clarification.

[116] Letter dated March 29, 2023, from Steven S. Cliff, Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region 9, with enclosures.

[117] 15 μg/m³ SIP Revision, Chapter 5, p. 5–8, and March 2023 Ammonia Supplement, fn. 35.

[118] The State did not provide an updated analysis using the 0.25 μg/m³ threshold for SO_X or VOC.

[119] 2018 $PM_{2.5}$ Plan, Appendix G, pp. 8–10, and March 2023 Ammonia Supplement, pp. 13–96.

[120] $PM_{2.5}$ Precursor Guidance, pp. 18–19 (consideration of additional information), p. 31 (available emission controls), and pp. 35–36 (appropriateness of future year versus base year sensitivity).

above the 0.25 μg/m^3 contribution threshold. Responses in 2024 ranged from 0.08 to 0.26 μg/m^3, with two sites above the 0.2 μg/m^3 contribution threshold and one site above the 0.25 μg/m^3 contribution threshold. For a modeled 70 percent ammonia emissions reduction, the ambient $PM_{2.5}$ responses were above both thresholds at all 15 sites for all three modeled years.

The State based its ammonia precursor determination on the sensitivity analysis for the future years, using a 30 percent ammonia emissions reduction. This was supported by its assessment of research studies and the Plan's projected emissions reductions, and its assessment of available emissions controls. As explained in the $PM_{2.5}$ Precursor Guidance, precursor responses may be above the recommended contribution threshold and yet not contribute significantly to levels that exceed the standard in the area.[121] Therefore, the State considered additional information to examine whether the identified $PM_{2.5}$ responses constituted a significant contribution to ambient $PM_{2.5}$ in the San Joaquin Valley. The additional information included emissions trends, support for the State's reliance on modeling results for a 30 percent ammonia emissions reduction, as well as conclusions from research studies.

The State estimates that NO_X emissions in the San Joaquin Valley are projected to decrease by 53 percent from 2013 to 2024, while ammonia emissions are projected to remain relatively flat, thereby increasing the relative abundance of ammonia.[122] Based on the Plan's emission reduction projections combined with the research study conclusions, the State relies on the modeled responses for the 2024 future year, rather than the 2013 base year, stating that the future year NO_X emissions are more representative of San Joaquin Valley emissions conditions.[123] The State references the Draft $PM_{2.5}$ Precursor Guidance, which notes that it may be appropriate to model future conditions that are more representative of current atmospheric conditions and those conditions expected closer to the attainment date.[124] The State concludes that this in fact applies to the San Joaquin Valley.[125]

The State also describes previous research studies that support its conclusion that ammonium nitrate $PM_{2.5}$ formation in the San Joaquin Valley is NO_X-limited rather than ammonia-limited.[126] For example, based on aircraft-borne measurements during the 2013 DISCOVER–AQ campaign,[127] the State concluded that ammonium nitrate formation is NO_X-limited based on the large amount of ''excess ammonia,'' which is defined as the amount of measured ammonia left over if all the nitrate and sulfate present were to combine with available ammonia to form particulate.[128] CARB's December 2018 Staff Report describes these conclusions in more detail and lists results from multiple other recent studies with similar conclusions.[129] The studies suggest a very low ambient sensitivity to ammonia, based on measured excess ammonia relative to NO_X, the abundance of particulate nitrate relative to gaseous NO_X, and the large abundance of ammonia relative to nitric acid. The studies all conclude that there is a large amount of ammonia left over after reacting with NO_X, so that ammonia emission reductions would be expected mainly to reduce the amount of ammonia excess, rather than to reduce the particulate amonium nitrate.

CARB also describes the results of two studies indicating that ammonia concentrations may be underestimated in modeling of the DISCOVER–AQ early 2013 study period, which would result in the response to ammonia reductions being overpredicted.[130] CARB conducted its own analysis comparing 2017 satellite observations with CMAQ model predictions and found that modeled ammonia concentrations were half of the magnitude of the satellite observations at some locations and that the modeled valley-wide average was approximately 25 percent less than observed. Taken together, CARB concludes that these studies provide evidence that $PM_{2.5}$ would respond only weakly to ammonia emissions reductions.

Finally, the State and District provided additional information, both in the SJV $PM_{2.5}$ Plan and in the March 2023 Ammonia Supplement, to support its conclusion that 30 percent is a reasonable upper bound on the ammonia reductions that are practically available, and as a basis for its reliance on the modeling results for a 30 percent ammonia emissions reduction. This information includes a review of ammonia emission reductions achieved nationwide from 2011 to 2017 as summarized in the EPA's $PM_{2.5}$ Precursor Guidance,[131] an evaluation of the main ammonia source categories in the San Joaquin Valley,[132] a summary of existing control measures in the San Joaquin Valley that affect ammonia from these sources,[133] a review of existing control measures implemented by other air districts,[134] and an evaluation of additional mitigation options for ammonia sources in the Valley.[135] We briefly summarize the State's analyses and conclusions for relying on a 30 percent upper bound in the following paragraphs. For a more detailed summary of the State's ammonia control measure analysis, please refer to the EPA's 1997 annual $PM_{2.5}$ TSD.[136]

First, CARB and the District reason that trends in ammonia emissions provided in the $PM_{2.5}$ Precursor Guidance, which show a national increase of 0.8 percent in ammonia emissions between 2011–2017, are indicative of a lack of controls on ammonia sources nationwide.[137] The March 2023 Ammonia Supplement includes a comparison of the guidance trends in ammonia with trends in NO_X and SO_2 over the same period, which decreased by 63.6 percent and 31.8 percent, respectively, which CARB and the District attribute to control measures to reduce emissions of these pollutants. The State acknowledges that new controls for ammonia are being researched but states that the recent emissions trends suggest that a 30 percent reduction in ammonia is a conservative upper bound on what is achievable. To further support that statement, the District and State

[121] $PM_{2.5}$ Precursor Guidance, p. 18.

[122] March 2023 Ammonia Supplement, pp. 14–15.

[123] Id. at 15 and 17.

[124] Id. at 13 (referencing Draft $PM_{2.5}$ Precursor Guidance, p. 33). See also $PM_{2.5}$ Precursor Guidance, p. 35.

[125] Id. at 15.

[126] 2018 $PM_{2.5}$ Plan, Appendix G, pp. 9–10; December 2018 Staff Report, Appendix C, pp. 12–15; and Attachment A to CARB's May 9, 2019, submittal letter.

[127] Deriving Information on Surface conditions from COlumn and VERtically Resolved Observations Relevant to Air Quality,'' *https://www.nasa.gov/mission_pages/discover-aq/index.html.*

[128] 2018 $PM_{2.5}$ Plan, Appendix G, Figure 2.

[129] December 2018 Staff Report, Appendix C, p. 12; and Attachment A to CARB's May 9, 2019 submittal letter. These studies are also discussed in the EPA's February 2020 Precursor TSD.

[130] CARB's April 19, 2021 Precursor Clarification; CARB's April 26, 2021 Precursor Clarification. The modeling used for the attainment demonstration has enough excess ammonia to correctly predict ammonium nitrate and ammonium sulfate $PM_{2.5}$ concentrations, but likely less of an excess than indicated from ambient measurements of ammonia itself.

[131] March 2023 Ammonia Supplement, p. 11. See also $PM_{2.5}$ Precursor Guidance, Section 4.1.1.

[132] March 2023 Ammonia Supplement, pp. 20–25.

[133] Id. at 25, and 2018 $PM_{2.5}$ Plan, Appendix C, Section C–25.

[134] March 2023 Ammonia Supplement, pp. 26–27, and 2018 $PM_{2.5}$ Plan, Appendix C, Section C–25.

[135] March 2023 Ammonia Supplement, pp. 28–96.

[136] EPA, Technical Support Document, ''San Joaquin Valley $PM_{2.5}$ Plan Revision for the 1997 annual $PM_{2.5}$ NAAQS,'' April 2023.

[137] March 2023 Ammonia Supplement, p. 11.

collaborated on an evaluation of potential control measures to reduce ammonia emissions in the San Joaquin Valley for the March 2023 Ammonia Supplement.

The first step in the control measure evaluation was to characterize the key sources of ammonia in the Valley. The three main sources of ammonia emissions identified in the Plan are: (1) confined animal facilities (CAFs); (2) agricultural fertilizers; and (3) composting operations, which together account for 94 percent of the Valley's ammonia emissions.[138] CAFs are subject to District Rule 4570 (''Confined Animal Facilities''), and composting operations are subject to District Rule 4565 (''Biosolids, Animal Manure, and Poultry Litter Operations'') and District Rule 4566 (''Organic Material Composting Operations''). Although these District rules explicitly apply only to VOC emissions from these sources, the State concludes that these rules have also resulted in significant reductions in ammonia emissions.[139] Appendix C of the 2018 $PM_{2.5}$ Plan cites a number of scientific studies that address the correlation between VOC and ammonia emissions from these emission sources.[140] Given that CAFs and agricultural fertilizers account for 92 percent of the ammonia emissions inventory in the San Joaquin Valley,[141] and that ammonia emissions from composting operations account for only 2 percent of the ammonia emissions inventory and have already been reduced through District Rules 4565 and 4566, the ammonia control measure evaluation focused primarily on potential controls for CAFs and agricultural fertilizers.

For CAFs, the District provides an inventory of the types of facilities operating in the Valley subject to Rule 4570 and the corresponding ammonia emissions from each facility type.[142] For dairy cattle, which accounts for an estimated 67.2 percent of ammonia emissions from CAFs, the District assessed how the different CAF operations contribute to the overall ammonia inventory. For example, the District estimates that 56.6 percent of dairy cattle ammonia emissions are from housing dairy cattle in corrals/pens, 11.1 percent of emissions are from lagoons and storage ponds, and 12.0 percent of emissions occur during land application of liquid manure.[143]

Next, the District discusses ammonia mitigation measures that are already being implemented in the Valley. The District discusses in detail in Appendix C of the 2018 $PM_{2.5}$ Plan how Rule 4570 is structured (*e.g.,* to address varying types of CAFs); the five main CAF operations/emission sources: feeding, housing (including distinctions for housing configurations), solid waste, liquid waste, and land application of manure; the control menu requirements for each of those five operations; and research papers that estimate ammonia emission reductions from some of the measures.[144] The District explains that some of the measures in Rule 4570 are required to be implemented but that the rule also requires additional measures to be selected from a menu of options.[145] The menu-based approach is intended to allow facilities flexibility to select measures that are the most practical and effective for their design and operation given the District's findings of variability within the industry.[146]

As a first step in assessing whether there are additional feasible control measures for CAFs that are not yet being implemented in the Valley, the District evaluated other district CAF rules with requirements comparable to those in Rule 4570.[147] The District reviewed CAF rules implemented by the South Coast Air Quality Management District (AQMD), Bay Area AQMD, Ventura County Air Pollution Control District (APCD), Sacramento Metropolitan AQMD, Imperial County APCD, and the State of Idaho.[148] The District also points to comparisons between Rule 4570 and two additional sets of requirements imposed by Butte County APCD and Yakima Regional Clean Air Agency, as conducted for the ''2016 Plan for the 2008 8-hour Ozone Standard.'' [149] Based on comparisons between specific requirements, the State concludes that Rule 4570 is more stringent than other district rules and no additional requirements are currently being implemented in other areas.[150]

The second step in the control measure analysis was to review scientific research studies on mitigating ammonia emissions from CAFs. In Appendix A of the March 2023 Ammonia Supplement, the District provides a list of research studies and potential ammonia control measures it considered. For each of the 46 mitigation measures identified in the literature, the State provides a narrative detailing its evaluation of the feasibility of implementation of the measure in the San Joaquin Valley.[151] The State's analysis covers a broad range of CAF activities, including animal feeding and housing, and the storage, handling, and land application of manure. The analysis also addresses a number of other mitigation options, such as pasture and range land management, land use changes, and planting a tree shelter belt near CAFs.[152] Based on these evaluations, the State identified three measures that could provide further reductions in ammonia emissions in the San Joaquin Valley. These measures include 1) reducing the crude protein content in feed for beef finishing cattle, 2) incorporating solid manure into the soil within 24-hours, and 3) adding acidifying amendments to poultry litter and manure.[153] Based on control efficiencies cited in the literature, the District estimates that the total emissions reductions achievable from these measures is 6.6 tons per day (tpd), which is approximately two percent of the 2023 inventory. For those measures it found to be infeasible in the San Joaquin Valley, the District includes a narrative explaining its conclusion.

Regarding fertilizer application, the State provides an estimate of 111.2 tpd of ammonia emissions in 2023.[154] In the 2018 $PM_{2.5}$ Plan, the District describes key research assessing nitrogen in California, as well as regulations adopted by the California Water Resources Control Board, including orders adopted by the Central Valley Regional Water Quality Control Board (*e.g.,* a Nutrient Management Plan), the Irrigated Lands Regulatory Program (*e.g.,* a Nitrogen Management Plan), and other individual orders on agricultural operations not subject to those programs.[155] These orders subject agricultural operators, including dairies, bovine feedlots, poultry operations, and crop farmers to ''waste discharge requirements that protect both surface water and groundwater.'' [156]

In the March 2023 Ammonia Supplement, the State supplemented its prior analysis by explaining how various state agencies are engaged in fertilizer use and application and discussing its efforts to identify any

[138] Id. at 20.

[139] Id. at 26 and 96.

[140] 2018 $PM_{2.5}$ Plan, Appendix C, Section C–25.

[141] March 2023 Ammonia Supplement, Figure 4.

[142] Id. at Figure 5 and Table 7.

[143] Id. at Figure 7.

[144] 2018 $PM_{2.5}$ Plan, Appendix C, pp. C–312 to C–323.

[145] Id. and March 2023 Ammonia Supplement, pp. 25–26.

[146] Id.

[147] March 2023 Ammonia Supplement, pp. 26–27.

[148] 2018 $PM_{2.5}$ Plan, Appendix C, Section C–25.

[149] March 2023 Ammonia Supplement, p. 27.

[150] Id.

[151] Id. at 28–85.

[152] Id. at 86–88.

[153] Id. at 88–89.

[154] Id. at 89.

[155] 2018 $PM_{2.5}$ Plan, Appendix C, pp. C–339 to C–343.

[156] Id. at C–341.

existing rules or regulations in the nation controlling ammonia emissions from this source category.[157] CARB states that it has not identified any measures that are being implemented to reduce ammonia and thus, again turns to scientific research studies on ammonia mitigation measures to assess the potential emissions reductions that could be achieved from fertilizer application. The measures identified in the literature for reducing ammonia emissions from fertilizer application include optimizing fertilizer use, adding a urease inhibitor, mixing and injecting fertilizer into the soil quickly, and applying fertilizer during optimal weather conditions. Based on its review, the State finds that several of the strategies identified in the literature are consistent with strategies recommended by the California Department of Food and Agriculture Fertilizer Research and Education Program as part of its Irrigation and Nitrogen Management training program, which includes overviews of the ''4 R's'' of nitrogen management: ''Right source'' of nitrogen at the ''right rate,'' ''right time,'' and ''right place.'' [158] However, the State concludes that more research is needed to explore the feasibility and effectiveness of requiring some of the identified strategies in California, due in part to the warmer and dryer climate conditions in the San Joaquin Valley compared to, for example, the European climate in which many of the research studies were conducted, and due to the need to explore any potential adverse consequences. Thus, the State concludes that additional reductions in ammonia from fertilizer application are not feasible at this time.[159]

For composting operations and other ammonia sources, the District notes that it currently regulates ammonia emissions from composting though Rules 4565 and 4566 and states that these rules have reduced ammonia emissions by 44 percent. Given that composting amounts to only two percent of the total ammonia emissions, the District did not provide any further evaluation for this source category. For the remaining ammonia sources in the Valley covered under ''other'' source category, which amounts to 6 percent of the total inventory, the District notes that ammonia emissions are primarily from mobile sources and fuel combustion, which it asserts are also already controlled. The District concludes that no additional reductions are available from composting operations or other ammonia sources.[160]

Taken together, the State estimates that ammonia emissions could be reduced by 6.6 tpd in the San Joaquin Valley through three additional mitigation measures for CAFs, which would amount to a total ammonia reduction of 2 percent. Based on this analysis, the State concludes that ammonia control measures achieving even the low end of the modeled range (*i.e.,* 30 percent) are not feasible for implementation in the San Joaquin Valley, and that it is therefore reasonable to treat a 30 percent ammonia reduction as a conservative upper bound on the reductions that are achievable, and to base the analysis in the precursor demonstration on the model response to a 30 percent reduction.

In summary, the State's sensitivity analysis presents a range of $PM_{2.5}$ responses to ammonia emissions reductions in multiple modeled years. The State describes in the Plan its bases for finding that the 2024 future year sensitivity results better represent conditions in the San Joaquin Valley than the 2013 base year, and for finding a 30 percent ammonia reduction to be a reasonable upper bound on the ammonia emissions reductions available for assessing the ammonia contribution. Based on these analyses of the modeled response to ammonia reductions below the threshold, additional ambient evidence, and the amount of reductions available from controls, the State concludes that ammonia does not contribute significantly to ambient $PM_{2.5}$ levels above the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley.

b. SO_X

For SO_X, the State compares the annual precursor contributions to the contribution threshold of 0.2 $\mu g/m^3$ recommended for the 2012 annual $PM_{2.5}$ NAAQS in the $PM_{2.5}$ Precursor Guidance. For modeled SO_X emissions reductions of 30 percent and 70 percent, the ambient $PM_{2.5}$ responses in 2013 ranged from –0.05 $\mu g/m^3$ to 0.15 $\mu g/m^3$ across 15 monitoring sites, which all fall below the 0.20 $\mu g/m^3$ contribution threshold.[161] The response was below zero in select cases, indicating an increase, rather than a decrease, in ambient $PM_{2.5}$ in response to SO_X emissions reductions (*i.e.,* a disbenefit). For 2020, the responses to 30 percent and 70 percent emissions reductions ranged from -0.01 $\mu g/m^3$ to 0.16 $\mu g/m^3$ while for 2024, the responses ranged from 0.01 $\mu g/m^3$ to 0.08 $\mu g/m^3$; these are also all below the 0.2 $\mu g/m^3$ contribution threshold.[162]

To explain the SO_X emissions reduction disbenefit that is observed in some cases, CARB refers to the non-linearity of inorganic aerosol thermodynamics, as described in a study by West et al.[163] The paper discusses how, under certain conditions, reducing SO_X could free ammonia to combine with nitrate, increasing overall $PM_{2.5}$ mass. To investigate this issue further, CARB conducted simulations with the ISORROPIA inorganic aerosol thermodynamic equilibrium model used within the CMAQ model and provided clarifications to the EPA.[164] In essence, CARB states that for some conditions typical of San Joaquin Valley, ISORROPIA switches to a different chemical regime in which the disbenefit occurs. CARB states that it is not known how well this model behavior reflects the actual atmosphere, but CARB accepts the results because it is a well-known and widely used chemical model.

The State also provides an emissions trend chart that shows that SO_X emissions are approximately constant at 8 tpd from 2013 through 2024. Given that the relative levels of estimated SO_X and ammonia emissions over the timeframe remain similar, the State concludes that 2013 sensitivities are also representative of future years.[165]

Based on the small modeled response of ambient $PM_{2.5}$ to SO_X emissions reductions, the constant SO_X emissions over time, and its scientific understanding of sulfate interactions with other molecules in the air, the State concludes that SO_X does not contribute significantly to ambient $PM_{2.5}$ levels that exceed the 1997 annual

[157] March 2023 Ammonia Supplement, pp. 89–92.

[158] Id. at 92.

[159] Id. at 96.

[160] Id.

[161] 2018 $PM_{2.5}$ Plan, Appendix G, tables 8 and 9.

[162] CARB's September 2019 Precursor Clarification, 2020 analysis tables 7 and 8, and 2024 analysis tables 7 and 8.

[163] 15 $\mu g/m^3$ SIP Revision, Appendix K, Section 5.7 (''$PM_{2.5}$ Precursor Sensitivity Analysis''); and West, J.J., Ansari, A.S., Pandis, S.N., 1999, Marginal $PM_{2.5}$: Nonlinear aerosol mass response to sulfate reductions in the eastern United States, *Journal of the Air & Waste Management Association,* 49, 1415–1424. *https://doi.org/10.1080/10473289.1999.10463973.*

[164] CARB's June 2019 Precursor Clarification.

[165] 2018 $PM_{2.5}$ Plan, Appendix G, p. 15. The State includes modeling of 30 percent and 70 percent reductions of SO_X for 2013 only, finding that the sensitivity of ambient $PM_{2.5}$ to such changes were below the EPA's recommended threshold, and that the 2020 and 2024 results would differ little from 2013 due to the similarity of emissions conditions over time. Appendix G, p. 17. CARB's September 2019 Precursor Clarification provides the 2020 and 2024 sensitivity results, which are indeed very close to those for 2013.

$PM_{2.5}$ NAAQS in the San Joaquin Valley.

c. VOC

For VOC, CARB compared the annual precursor contributions to the EPA's recommended contribution threshold for the 2012 $PM_{2.5}$ NAAQS of 0.2 μg/m³. For a modeled 30 percent VOC emissions reduction, the ambient $PM_{2.5}$ responses in 2013 ranged from 0.01 μg/m³ to 0.16 μg/m³ across 15 monitoring sites, with all sites below the 0.2 μg/m³ contribution threshold.[166] The 2020 and 2024 responses ranged from –0.07 μg/m³ to 0.06 μg/m³, with all monitoring sites below the 0.2 μg/m³ contribution threshold for both years. For a modeled 70 percent VOC emissions reduction, the $PM_{2.5}$ responses in 2013 ranged from 0.05 μg/m³ to 0.40 μg/m³, including responses at or above the 0.2 μg/m³ contribution threshold at 8 of the 15 sites. However, for 2020 and 2024 all responses were below the 0.2 μg/m³ contribution threshold; 2020 responses ranged from –0.10 μg/m³ to 0.16 μg/m³ and the 2024 responses ranged from –0.18 μg/m³ to 0.08 μg/m³. The negative responses to VOC reductions represent an increase in $PM_{2.5}$ levels, *i.e.,* a disbenefit. The 2024 results show a disbenefit at 11 of the 15 sites for both the 30 percent and the 70 percent VOC emissions reductions scenarios.

CARB then considered additional information to assess whether these $PM_{2.5}$ responses constituted a significant contribution to ambient $PM_{2.5}$ in the San Joaquin Valley, including emissions trends and an assessment of the modeled disbenefit of VOC emissions reductions. VOC emissions are projected to decrease approximately 30 tpd (or 9 percent) from 2013 to 2024, with approximately 28 out of the 30 tpd reduction taking place by 2020.[167] The State concludes that the formation of ambient $PM_{2.5}$ from VOC may therefore differ in base and future years and that the sensitivity analysis for 2013, which showed some contributions above 0.2 μg/m³, is not representative of current or future conditions.

CARB explained the modeled disbenefit of VOC reductions as follows: emissions of VOC and NO_X react in the atmosphere to form organic nitrate species, such as peroxyacetyl nitrate, meaning that some portion of the NO_X emissions is not available to react with ammonia to form ammonium nitrate particulate matter. In other words, VOC emissions can be a ''sink'' for NO_X emissions. Reducing VOC emissions therefore reduces the formation of organic nitrates, so the sink is smaller and nitrate molecules are freed to react with ammonia to form particulate ammonium nitrate.[168] The State further explored the VOC disbenefit based on a 2016 CARB modeling assessment provided in Appendix A (''Air Quality Modeling'') of the ''2016 Moderate Area Plan for the 2012 $PM_{2.5}$ Standard'' for the San Joaquin Valley (''2016 $PM_{2.5}$ Plan''), which CARB submitted to the EPA as a SIP revision on May 10, 2019.[169]

Based on its sensitivity-based analysis of VOC emissions reductions, VOC emissions trends, and the scientific understanding of VOC chemistry in the San Joaquin Valley, CARB concludes that VOC emissions do not contribute significantly to $PM_{2.5}$ levels that exceed the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley.

3. The EPA's Review of the State's Submission

The EPA has evaluated the State's precursor demonstration in the SJV $PM_{2.5}$ Plan, consistent with the $PM_{2.5}$ SIP Requirements Rule and the recommendations in the $PM_{2.5}$ Precursor Guidance. The State did not present a precursor demonstration for NO_X, and indeed stated that controlling it is essential for the attainment strategy; [170] NO_X emission sources, therefore, remain subject to control requirements under subparts 1 and 4 of part D, title I of the Act. For the reasons provided in the following paragraphs, the EPA proposes to approve the State's comprehensive demonstrations for ammonia, SO_X, and VOC based on a conclusion that emissions of these precursor pollutants do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley. For further discussion of the EPA's evaluation of the precursor demonstration, please see the EPA's February 2020 Precursor TSD, which provides the EPA's summary of the State's precursor analyses for all four $PM_{2.5}$ precursors.[171]

The State based its analyses on the latest available data and studies concerning ambient $PM_{2.5}$ formation in the San Joaquin Valley from precursor emissions. For the required concentration-based analysis, the State assessed the absolute annual average contribution of each precursor to ambient $PM_{2.5}$ in 2015. Given that the absolute concentrations in 2015 were above the EPA's recommended contribution thresholds for both the 2006 24-hour and 2012 annual average NAAQS, the State proceeded with a sensitivity-based analysis, consistent with the recommendations in the $PM_{2.5}$ SIP Requirements Rule.

For the sensitivity-based analysis, the State performed its analyses based on the EPA's recommended approach—*i.e.,* for each modeled year and level of precursor emissions reduction (in percentages), the State estimated the ambient $PM_{2.5}$ response using the procedure recommended in the $PM_{2.5}$ Precursor Guidance. In particular, the State considered the EPA's recommended range of emissions reductions (30 percent to 70 percent) for the 2013 base year, 2020 interim year, and 2024 future year, and quantified the estimated response of ambient $PM_{2.5}$ concentrations to precursor emission changes in the San Joaquin Valley.

The State's emissions projections in the 2018 $PM_{2.5}$ Plan show that baseline emissions of each of these precursors will decrease from the 2013 base year to the 2023 attainment year. These decreases are included in the State's modeled projections of ambient $PM_{2.5}$ levels in the San Joaquin Valley for purposes of demonstrating attainment and RFP. The State's sensitivity analyses are consistent with these projections, in accordance with the EPA's recommendations in the $PM_{2.5}$ Precursor Guidance.[172]

The EPA is proposing to find that such quantification and CARB's consideration of additional information provide an informed basis on which to make a determination as to whether ammonia, SO_X, and VOC contribute significantly to ambient $PM_{2.5}$ levels that exceed the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley.[173] If we

[166] 2018 $PM_{2.5}$ Plan, Appendix G, Table 10.

[167] Id. at p. 19 and Figure 5.

[168] 15 μg/m³ SIP Revision, Appendix K, pp. 81–82 (citing Meng, Z., D. Dabdub, D., Seinfeld, J.H., Chemical Coupling Between Atmospheric Ozone and Particulate Matter, *Science* 277, 116 (1997). DOI: 10.1126/science.277.5322.116).

[169] 2016 $PM_{2.5}$ Plan, Appendix A, p. A–57. See also 15 μg/m³ SIP Revision, Appendix K, Section 5.7 (''$PM_{2.5}$ Precursor Sensitivity Analysis'').

[170] 2018 Plan Appendix G, p. 2.

[171] Much of the analysis in the EPA's February 2020 Precursor TSD is applicable to SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS. For example, the State's precursor demonstration used 2015 annual average concentration data for its concentration-based analysis, examined annual average sensitivities of ambient $PM_{2.5}$ concentrations to reductions in each precursor in 2013, 2020, and 2024, and presented information on research studies and emission trends that are relevant for assessing the sensitivity of annual average ambient $PM_{2.5}$ concentrations to emission reductions of each $PM_{2.5}$ precursor. Our evaluation of such factors is similarly applicable for the 1997 annual $PM_{2.5}$ NAAQS and we expand on such evaluation for purposes of those NAAQS specifically herein.

[172] $PM_{2.5}$ Precursor Guidance, p. 35.

[173] The State did not evaluate the 2015 Serious area attainment year. Because the year has passed and the area failed to attain by the Serious area attainment date, we will evaluate the precursor

Continued

finalize this proposal to approve the State's precursor demonstrations, the State will not be required to implement BACM/BACT level controls for sources of ammonia, SO_X, and VOC for purposes of the SJV $PM_{2.5}$ Plan for 1997 annual $PM_{2.5}$ NAAQS that is the subject of this proposed action. Under 40 CFR 51.1006(b), such precursor demonstration approval would apply only to this attainment plan. For any new $PM_{2.5}$ attainment plan that the State is required to submit in accordance with 40 CFR 51.1003 for purposes of any $PM_{2.5}$ NAAQS, the State will be required to submit an updated precursor demonstration if it seeks to exempt sources of a particular precursor from control requirements in that attainment plan. In the subsections that follow, we summarize our evaluation of the State's precursor demonstrations for each of these three precursor pollutants.

a. Ammonia

We have evaluated CARB's sensitivity-based contribution analyses for 2013, 2020, and 2024 in the 2018 $PM_{2.5}$ Plan and supplemental materials provided by the State, as well as CARB's determination that the 2024 results are representative of conditions in the San Joaquin Valley for purposes of a sensitivity-based analysis for the 1997 annual $PM_{2.5}$ NAAQS. The EPA's $PM_{2.5}$ Precursor Guidance explicitly provides for consideration of a future year, and we are proposing to find that the State provided sufficient justification for relying on modeling results for 2024.[174]

We also consider it appropriate for the State to take into account additional information as part of its evaluation of whether the ammonia contribution is significant and to rely on the responses to the 30 percent modeled ammonia emissions reduction in its precursor demonstration for ammonia. The modeled $PM_{2.5}$ response to the 30 percent reduction is only marginally above the contribution threshold at a single monitoring site in 2024, and the EPA has evidence from the State and elsewhere that the response was overestimated, as discussed below. Together these suggest that ammonia does not contribute significantly to ambient $PM_{2.5}$ levels. However, because the response is so close to the threshold at a 30 percent reduction, such a conclusion strongly depends on the emission reduction benefit of potential controls being 30 percent or less; larger reductions could give responses above the threshold. Therefore, per 40 CFR 51.1010(a)(2)(ii), the EPA required an analysis of potential controls to aid the EPA in its evaluation of the precursor demonstration, which the State provided in the March 2023 Ammonia Supplement. The response of ambient $PM_{2.5}$ to an actual assessment of the benefit from potential controls could then be used by the State to determine whether controlling ammonia would significantly affect $PM_{2.5}$ levels.

The State relied on the 2024 modeled ambient $PM_{2.5}$ responses to a 30 percent reduction in ammonia after concluding that 30 percent was a reasonable upper bound on potential ammonia reductions, based on past research on ammonia emissions and its evaluation of potential control options. Based on the EPA's review of the State's rationale, including its ammonia control measure analysis, the EPA agrees that the reductions that the State could achieve through additional available BACM/BACT level controls on ammonia sources would be below 30 percent, and thus that the $PM_{2.5}$ response to the ammonia emission reductions available would be below the contribution threshold at all sites for purposes of this plan, as discussed in the following paragraphs.[175]

The State compared the ammonia modeled sensitivity results in Appendix G of the 2018 $PM_{2.5}$ Plan to the 0.2 μg/m³ contribution threshold recommended by the EPA for the 2012 annual $PM_{2.5}$ NAAQS in the $PM_{2.5}$ Precursor Guidance. However, in the March 2023 Ammonia Supplement, the State also compared the model results against the 0.25 μg/m³ contribution threshold it calculated based on the level of the 1997 annual $PM_{2.5}$ NAAQS. We find that the State's use of a 0.25 μg/m³ threshold is consistent with the recommendations in the $PM_{2.5}$ Precursor Guidance,[176] and is appropriate for purposes of evaluating the modeling results for the 1997 annual $PM_{2.5}$ NAAQS, given the EPA's method of calculating the threshold and the level of the 1997 annual $PM_{2.5}$ NAAQS (15.0 μg/m³).

The precursor demonstration in the SJV $PM_{2.5}$ Plan indicates that the ambient response to a 30 percent ammonia emission reduction would exceed the 0.25 μg/m³ contribution threshold for 13 out of 15 monitoring sites in the 2013 analysis year, and at 4 out of 15 for the 2020 analysis year. For the 2024 analysis year, 1 of the 15 sites (Hanford) would exceed the contribution threshold. In absolute terms, the ambient $PM_{2.5}$ response declines from 0.24 μg/m³ in 2020 to 0.12 μg/m³ in 2024 at Bakersfield-Planz, the highest concentration site. The Hanford responses decline from 0.42 μg/m³ in 2020 to 0.26 μg/m³ in 2024. The average response over all monitoring sites declines from 0.23 μg/m³ to 0.14 μg/m³, with the decline being generally larger for the sites with the highest projected $PM_{2.5}$ levels.

While the 2024 Hanford modeled response to a 30 percent ammonia reduction is above the contribution threshold, additional information about this location leads the EPA to give the response lower weight in the overall assessment of whether ammonia contributes significantly to $PM_{2.5}$ levels. An independent study using aircraft and surface data from the winter 2013 DISCOVER–AQ[177] campaign, a key period in the SJV $PM_{2.5}$ Plan's 2013 model base case, found that the CMAQ model underestimated ammonia at Hanford by roughly a factor of five; Hanford is just outside a region with high ammonia emissions in the model (western Tulare County).[178] If the modeled ammonia concentrations were higher to better match observations, there would be relatively more ammonia per NO_X and the model response to ammonia reductions would be lower. This is consistent with CARB's conclusions regarding ammonia as described earlier.

In choosing which year's modeled response to ammonia to rely on, the EPA considered the State's point that the $PM_{2.5}$ benefit of ammonia emission reductions is projected to decline steeply over time. We believe it is appropriate to consider changes in

analysis for the Serious area plan based on the current section 189(d) projected attainment date of December 31, 2023.

[174] $PM_{2.5}$ Precursor Guidance, p. 35.

[175] Note that the task for the State is not to show whether controls could reduce ammonia by 30 percent, though that is the focus of the State's March 2023 Ammonia Supplement. The SIP requirements rule and the $PM_{2.5}$ Precursor Guidance do not establish potential reductions of 30 percent as a ''bright line'' test for determining precursor significance. Rather, information from the control evaluation is to be used in conjunction with other information to determine whether ammonia reductions are effective in reducing $PM_{2.5}$ levels, and so whether ammonia contributes significantly to $PM_{2.5}$.

[176] $PM_{2.5}$ Precursor Guidance, fn. 20.

[177] NASA, ''Deriving Information on Surface conditions from Column and VERtically Resolved Observations Relevant to Air Quality,'' described at *https://www.nasa.gov/mission_pages/discover-aq/index.html.*

[178] Kelly, J.T. *et al.* 2018, ''Modeling NH_4NO_3 over the San Joaquin Valley during the 2013 DISCOVER–AQ campaign,'' Journal of Geophysical Research: Atmospheres, 123, pp. 4727–4745, *https://doi.org/10.1029/2018JD028290* at 4733. The paper notes that, despite the ammonia underestimation, model performance was good for particulate ammonium nitrate and the ammonium nitrate was not sensitive to the ammonia underestimate since its formation was NO_X-limited.

atmospheric chemistry that may occur between the base or current year and the attainment year because the changes may ultimately affect the nonattainment area's progress toward expeditious attainment. The $PM_{2.5}$ Precursor Guidance explicitly states that a future year may be used, and that there are a multitude of considerations in choosing the analysis year.[179] The ''anticipated growth or loss of sources . . . or trends in ambient speciation data and precursor emissions'' [180] are among the ''facts and circumstances of the area'' [181] to consider in determining the significance of a precursor. The Guidance states that a future year could be more appropriate if it better represents the period that sources will operate in. As discussed in more detail below, the 2024 model results better represent the period that ammonia sources will operate in than 2013 and 2020 because of the steep decline in NO_X emissions projected to occur by 2023 and 2024. We consider it reasonable for the State to focus on the ambient $PM_{2.5}$ response to ammonia emission reductions in 2024, rather than 2013 or 2020, as the modeled response in 2024 in the San Joaquin Valley better reflects the potential benefit of ammonia control measures for purposes of expeditious attainment of the 1997 annual $PM_{2.5}$ NAAQS.

The State's precursor demonstration in the SJV $PM_{2.5}$ Plan shows that ambient sensitivity to ammonia emissions reductions in the San Joaquin Valley declines steeply over time. Between 2020 and 2024, the modeled response to a 30 percent ammonia emissions reduction declines by 50 percent at the Bakersfield-Planz monitoring site, which has the highest projected $PM_{2.5}$ level, and by 37 percent averaged over all monitoring sites. As noted above, in absolute terms, the ambient $PM_{2.5}$ response declines from 0.24 $\mu g/m^3$ in 2020 to 0.12 $\mu g/m^3$ in 2024 at Bakersfield-Planz, and from 0.23 $\mu g/m^3$ to 0.14 $\mu g/m^3$ as averaged over all monitoring sites, with the decline being generally larger for the sites with the highest projected $PM_{2.5}$ levels. Thus, between 2020 and 2024, the number of sites at which modeled sensitivity exceeds the 0.25 $\mu g/m^3$ threshold for the 1997 annual $PM_{2.5}$ NAAQS declines from 4 out of 15 down to 1 out of 15.[182] As discussed earlier, ammonia sensitivity declines because of the shifting atmospheric chemistry caused by NO_X emissions decreases. NO_X emissions are projected to decrease by 27 percent between 2020 and 2024 due to baseline measures (*e.g.,* existing motor vehicle controls), with 91 percent of those emissions reductions occurring between 2020 and 2023.[183] That is, NO_X emissions in 2023 are 24 percent lower than NO_X emissions in 2020 and 3 percent higher than NO_X emissions in 2024. Thus, conditions in 2024 are anticipated to be much more similar to those in 2023 compared to 2020. The decreased NO_X emissions will make ammonia more abundant relative to NO_X, and even less of a limiting factor on $PM_{2.5}$ formation. In other words, the model response in the future year 2024 gives a more realistic assessment of the potential effect of ammonia controls than past conditions.[184]

Additionally, the ambient studies described by the State and in independent research studies provide strong evidence that $PM_{2.5}$ would respond only weakly to ammonia emissions reductions. As described above, those include a large measured excess of ammonia relative to the amount of nitrate available to interact with it to form $PM_{2.5}$, and satellite and aircraft measurements indicating a larger amount of ammonia than is derived in model predictions. This evidence reflects actual measurements of the atmosphere, independent of uncertainties in the modeling and independent of estimates of ammonia and other emissions that are input to the model.

Finally, the EPA has reviewed the additional information provided by the State to support its assertion that 30 percent is a reasonable upper bound on the ammonia reductions that could be achieved in the San Joaquin Valley and the State's reliance on the 30 percent sensitivity modeling results for the precursor demonstration for the 1997 annual $PM_{2.5}$ NAAQS. The EPA proposes to find that the additional information adequately supports the conclusion that potential ammonia controls would yield less than a 30 percent reduction, such that the resulting decrease in ambient $PM_{2.5}$ concentration would be below the contribution threshold. As discussed in Section IV.B.1 of this document, the $PM_{2.5}$ Precursor Guidance indicates that the EPA may require air agencies to identify and evaluate potential emissions controls in support of a precursor demonstration that relies on a sensitivity analysis, particularly for an area in which the $PM_{2.5}$ response to a 30 percent reduction in precursor emissions is close to the contribution threshold. For the San Joaquin Valley, the modeled response to a single site, Hanford, is just above the 0.25 $\mu g/m^3$ threshold for the 1997 annual $PM_{2.5}$ NAAQS at 0.26 $\mu g/m^3$. Furthermore, several analyses show ambient ammonia concentrations are underestimated at Hanford and so we believe that the 2024 modeled response of 0.26 $\mu g/m^3$ is likely overestimated. Supporting that conclusion is the evidence of the large ambient excess of ammonia relative to nitrate, which suggests that the actual $PM_{2.5}$ response to reductions in ammonia emissions would be very small, and less than the response seen in the modeling. Thus, we conclude that in the San Joaquin Valley, the $PM_{2.5}$ response to a 30 percent reduction in ammonia emissions is close to the contribution threshold and that the State's approach to evaluate additional information in support of the precursor demonstration sensitivity analysis, including additional potential ammonia control measures, is consistent with the EPA's recommendations in the $PM_{2.5}$ Precursor Guidance and responsive to the EPA's request for such additional information and analysis.

As discussed in Section IV.B.2.a of this document, the State began its analysis to identify and evaluate potential emissions controls for ammonia by characterizing key ammonia source categories in the Valley (*i.e.,* CAFs, agricultural fertilizers, and composting operations), and identifying existing rules that have resulted in ammonia emission reductions from these sources. Specifically, the State discusses the ammonia control effectiveness of a number of existing rules designed to reduce VOC emissions from these sources.[185] While there are no ammonia-specific controls in place for these source categories, the EPA agrees with the District's information indicating that some of the management practices in the District's rules to reduce VOC emissions also reduce ammonia

[179] $PM_{2.5}$ Precursor Guidance, p. 35.

[180] Id. at 18.

[181] $PM_{2.5}$ SIP Requirements Rule, 40 CFR 51.1006(a)(1)(ii).

[182] 2018 $PM_{2.5}$ Plan, Appendix G, tables 4 and 5.

[183] NO_X emissions in 2020, 2023, and 2024 are 203.3 tpd, 153.6 tpd, and 148.9 tpd, respectively.

[184] Since precursor sensitivity modeling results were not available for the specific year of 2023, the EPA estimated the 2023 $PM_{2.5}$ response to a 30 percent ammonia reduction using the modeling results for 2020 and 2024. As for the 2024 modeled sensitivities, we found that Hanford was the only site that would be above the 0.25 $\mu g/m^3$ contribution threshold for 2023, with a response of 0.27 $\mu g/m^3$. Thus, the results of this exercise do not change our conclusions. Spreadsheet ''Estimated 2023 annual $PM_{2.5}$ sensitivity to ammonia reductions.xlsx,'' EPA Region IX, June 26, 2023.

[185] 2018 $PM_{2.5}$ Plan, Appendix C, pp. C–311 to C–358.

emissions by limiting ammonia formation and volatilization.[186]

Regarding the analysis for CAFs, we find that the District provided a thorough evaluation of potential ammonia mitigation measures by CAF type and activity through its comparison of the applicability and requirements of Rule 4570 with comparable rules that are being implemented in other air districts and its review of scientific research studies. In considering the technical feasibility of each identified measure, the District assessed factors such as how the measure compares with requirements already being implemented under District Rule 4570, the compatibility of the measure with the types of CAFs operating in the Valley (considering, for example, CAF size and common practices employed), compatibility of the measure with the climate conditions in the Valley, and any cobenefits and/or undesirable consequences of implementing the measure.

Based on its evaluation, the District determined that several measures identified in the literature are already required in the San Joaquin Valley by Rule 4570 (*e.g.,* washing floors and other soiled areas in livestock facilities), or by other State regulations (*e.g.,* requirements to carefully time manure application as required by the California Regional Water Quality Control Board).[187] [188] For measures that the District identified as feasible for implementation in the San Joaquin Valley, the District provided information detailing how it estimated the potential ammonia emission reductions that could be achieved based on control efficiencies cited in the literature. For measures that the State determined to be infeasible in the San Joaquin Valley, the District provided a narrative justification for its conclusion.

Reasons for concluding that a particular measure is infeasible included that the measure is not conducive to the type, size, or standard practices of CAFs operating in the Valley; the measure is not compatible with the hot, dry, drought climate conditions in the Valley; the measure is not economically feasible; or that the measure would have undesirable consequences (*e.g.,* adverse effects on water quality, reduced dairy cattle milk production). The District also concluded that more research is needed to examine the technical and/or economic feasibility of implementing some of the measures in the Valley specifically. For those measures that the District found to be economically infeasible (*e.g.,* biofilters and wet scrubbers, oxygenation of liquid manure lagoons), it provided detailed cost analyses to support its assertion.[189] Based on our review of the District's controls analysis for CAFs, we find that the District provided a robust analysis of its Rule 4570 and a thorough review of 46 possible mitigation measures for reducing ammonia emissions from CAFs in the San Joaquin Valley.

For fertilizer application, the State emphasizes that it has not identified any SIP-approved requirements that are being implemented in other areas. Thus, it describes regulations adopted by other California State agencies to control fertilizer application, such as regulations adopted by the California Water Resources Board, and otherwise focuses its review on several research studies on reducing ammonia emissions from synthetic fertilizer application. Based on its review of mitigation options in the literature, the State concludes that some of the mitigation strategies are already required by current State regulations, and that further research is needed to explore the feasibility and effectiveness of those measures that are not currently in practice.

Regarding State regulations that are currently in place to control fertilizer application, we generally agree with the State that those regulations are likely to enhance the retention of nitrogen from manure and nitrogen-based chemical fertilizers in the San Joaquin Valley and to limit the loss of nitrogen as pollution to water and air, thereby potentially reducing ammonia emissions. Additionally, as discussed earlier, District Rules 4570 and 4565 have provisions that reduce ammonia emissions by addressing the land application of manure from CAFs and of biosolids, animal manure, and poultry litter from composting operations. The EPA believes that the State's review of both existing ammonia mitigation measures and the research literature is an appropriate and thorough method for identifying potential measures. We also believe it reasonable that the State concludes that several of the specific mitigation strategies identified in the literature, such as optimizing fertilizer use, are already being implemented in the San Joaquin Valley due to these current State regulations and co-benefits such as reduced cost to farmers, and that more research is needed to assess the feasibility of other additional measures identified. Based on our review, and the fact that the State did not identify any ammonia mitigation measures for fertilizer application being implemented in other areas, we conclude that the State's overall conclusions are reasonable.

For composting and other sources, the District notes that significant ammonia reductions are already being achieved by existing rules, including a 44 percent reduction from composting operations from Rules 4565 and 4566, and reductions from mobile source and fuel combustion measures. As discussed earlier, the EPA agrees that Rules 4565 and 4566 have reduced ammonia emissions in the Valley. We also agree that the State's stringent controls for on-road mobile sources have resulted in ammonia reductions from those sources. While the State continues to work to reduce emissions from mobile sources to reduce NO_X and other pollutants in the Valley, since on-road mobile sources account for approximately one percent of the ammonia emissions inventory,[190] any ammonia reductions achievable through additional on-road mobile source controls would be small. The District states that it did not identify any additional potential mitigation measures for these source categories.

While we generally find that the State provided a robust review of existing regulations and potential additional mitigation measures in the research literature, we note that a limitation of the District's analysis is that there remains some uncertainty as to how much reduction is currently being achieved by State and District rules and thus if some incremental additional reduction may be available. For fertilizer application specifically, the District does not attempt to quantify or otherwise substantiate the scale of ammonia emission reductions from existing regulations, nor their enforceability, which confounds the prospects for quantifying how much additional reductions may be available. Furthermore, while the District provides a detailed controls analysis for CAFs, with regard to Rule 4570, as the EPA has previously noted,[191] the State has not sufficiently substantiated its calculation of the 100 tpd of ammonia emission reductions attributed to Rule 4570. In the 2018 $PM_{2.5}$ Plan, the State references an analysis from 2006 that relied on a different baseline emissions inventory, but has not supplemented this analysis, or reconciled it with more recent

[186] For example, see 2018 $PM_{2.5}$ Plan, Appendix C, p. C–313 (for CAFs).

[187] March 2023 Ammonia Supplement, pp. 47–49.

[188] Id. at 77.

[189] Id. at 59–60 and Appendix B.

[190] 2018 $PM_{2.5}$ Plan, Appendix B, Table B–5.

[191] 81 FR 69396, 69397–69398 (October 6, 2016) and 87 FR 60494, 60503–60504 (October 5, 2022).

emissions inventory data.[192] While the EPA agrees that meaningful ammonia reductions have been achieved from Rule 4570, there remains some uncertainty as to the precise magnitude of those reductions. Notwithstanding this uncertainty, as discussed in more detail below, given the scarcity of additional feasible measures identified by the State, and the scale of potential additional emissions reductions available in the context of the sensitivity of $PM_{2.5}$ to ammonia reductions in the nonattainment area for the 1997 annual $PM_{2.5}$ NAAQS, we find that the controls analysis provided by the State is sufficient to support its conclusion that that ammonia emissions do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley.

Based on its analysis, the State concludes that significant ammonia reductions have already been achieved in the San Joaquin Valley through existing State regulations and standard practices, and that the potential additional ammonia emissions reductions achievable through the implementation of additional best available controls is two percent of the total ammonia emissions in the San Joaquin Valley. This value is well below the lower end (*i.e.,* 30 percent) of the ammonia reductions that the State modeled for analytical purposes for its sensitivity-based analysis. While there remains some uncertainty as to the ammonia reductions that are currently being achieved by existing rules and standard practices, and thus the additional reductions that could be achieved by those rules and practices, we believe the State has provided sufficient evidence to support its assertion that the additional available reductions are less than 30 percent.

Specifically, the District has made a convincing case that significant ammonia reductions have already been achieved through District Rule 4570 and that few additional mitigation measures could provide only modest further reductions from CAFs, which account for 58 percent of the total ammonia inventory. Similarly, the State has provided support for its assertion that additional reductions are not feasible from the fertilizer, composting, and other smaller source categories through its analysis of potential fertilizer controls, in particular, in addition to information regarding controls that are already in place for these source categories.[193] Based on our review of the analysis, we conclude that the potential reduction from available controls would be well below 30 percent. Given that the State's modeled sensitivities of $PM_{2.5}$ concentrations to a 30 percent ammonia reduction are approximately at or below the threshold used for identifying an impact that is significant for the 1997 annual $PM_{2.5}$ NAAQS, and that potential reductions would be below 30 percent, the EPA agrees that the response of $PM_{2.5}$ to an ammonia reduction of a percentage smaller than 30 percent would be below the contribution threshold, indicating that ammonia does not contribute significantly to ambient $PM_{2.5}$ concentrations for purposes of the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS.

In summary, we conclude that the State quantified the sensitivity of ambient $PM_{2.5}$ levels to reductions in ammonia emissions using appropriate modeling techniques, the modeled response to ammonia reductions is likely lower than reported, and the State's choice of 2024 as the reference point for purposes of evaluating the sensitivity of ambient $PM_{2.5}$ levels to ammonia emissions reductions is well-supported. The State also provided strong evidence to support its conclusion that additional controls on ammonia sources would achieve ammonia emissions reductions well below 30 percent, including its estimate, following review of the measures the State and District consider feasible, that the reductions available are approximately 2 percent. Since the modeled ambient $PM_{2.5}$ response to a 30 percent ammonia reduction is only marginally above the contribution threshold at a single monitoring site, that response may be overestimated, and potential reductions are below 30 percent, the $PM_{2.5}$ response to additional ammonia controls would be below the contribution threshold. Based on these considerations, the EPA proposes to approve the State's demonstration that ammonia emissions do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley.

We note that this proposed determination is specific to the facts and circumstances of this particular plan—including but not limited to the specific level of the 1997 annual $PM_{2.5}$ NAAQS and the proportional modeling response needed to be considered significant, the State's modeling indicating that ammonia levels the San Joaquin Valley are at or below the contribution threshold for the 1997 annual $PM_{2.5}$ NAAQS, the unique atmospheric conditions in the Valley in which the $PM_{2.5}$ response to reductions in ammonia emissions would be relatively small, the demonstration that the potential reductions from additional control measures that are not currently being implemented would be below 30 percent, and the current limited research in key areas of ammonia controls—and that it does not pre-determine the outcome of significance determinations of precursors in the future.

b. SO_X

For SO_X, the 2018 $PM_{2.5}$ Plan's sensitivity estimates for 2013 are well below the EPA's recommended threshold for both the 30 percent and 70 percent emission reduction scenarios and are even negative for some monitoring sites. Given those results and the steady SO_X emission levels over 2013 to 2023 (as opposed to increases), the EPA agrees with the State's conclusion that the 2013 modeled sensitivities provide a sufficient basis for the SO_X precursor demonstration. The supplemental results provided by the State for 2020 and 2024 support this conclusion.

Therefore, based on these modeled ambient $PM_{2.5}$ responses to SO_X emissions reductions in the San Joaquin Valley, and on the facts and circumstances of the area, the EPA proposes to approve the State's demonstration that SO_X emissions do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley. We note that this proposed determination is specific to the facts and circumstances of this particular plan and that it does not pre-determine the outcome of significance determinations of precursors in the future.

c. VOC

For VOC, the State found that the ambient $PM_{2.5}$ response to VOC emissions reductions were generally

[192] 2018 $PM_{2.5}$ Plan, Appendix C, pp. C–311 to C–339 and SJVUAPCD, ''Final Draft Staff Report, Proposed Re-Adoption of Rule 4570 (Confined Animal Facilities),'' June 18, 2009, at Appendix F, ''Ammonia Reductions Analysis for Proposed Rule 4570 (Confined Animal Facilities),'' June 15, 2006 (discussing various assumptions underlying the District's calculation of ammonia emission factors without identifying relevant emissions inventories).

[193] The State has not provided an estimate of the reductions that are currently being achieved for the fertilizer category, which accounts for 34 percent of the total ammonia emissions inventory. Nevertheless, even if ammonia emissions from fertilizers could be reduced by a very high percentage (*e.g.,* 70 percent), that would correspond to a smaller percentage reduction of the total ammonia emissions. Such conservatively high reductions from fertilizers added to the potential ammonia reductions from CAFs identified by the State would still amount to less than a 30 percent reduction of the total ammonia emissions.

below the EPA's recommended contribution threshold of 0.2 μg/m^3, and predicted an increase in ambient $PM_{2.5}$ levels in response to VOC reductions (*i.e.,* a disbenefit) at 2 out of 15 monitoring sites in 2020, and at 11 out 15 sites in 2024. Only for a 70 percent emissions reduction for the 2013 base year did the State predict the ambient $PM_{2.5}$ response to be above the threshold at a majority of sites.[194]

The EPA has evaluated and agrees with the State's determination in the 2018 $PM_{2.5}$ Plan that the modeling for future years is more representative of conditions in the San Joaquin Valley than the 2013 modeling for sensitivity-based analyses and the State's resulting conclusion that the contribution from VOC emissions is not significant. The EPA agrees that the 8.6 percent decrease in VOC emissions from 2013 to 2020 and the 9.2 percent projected decrease from 2013 to 2024 favors reliance on the future year modeling results. Furthermore, there is a large decrease in NO_X emissions over this period, as discussed in Section IV.B.2 of this proposed rule, that affects the atmospheric chemistry with respect to ambient $PM_{2.5}$ formation from VOC emissions. The 9.2 percent VOC emissions reductions and the vast majority of NO_X emissions reductions are expected to result from baseline measures already in effect. Therefore, we conclude that it is reasonable to rely on future year 2020 or 2024 modeled responses to VOC emissions reductions. The EPA also concludes that the State provided a reasonable explanation for the VOC emissions reduction disbenefit and evidence that it occurs in the San Joaquin Valley.

For these reasons, we propose to approve the State's demonstration that VOC emissions do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley. We note that this proposed determination is specific to the facts and circumstances of this particular plan and that it does not predetermine the outcome of significance determinations of precursors in the future.

C. Attainment Plan Control Strategy

1. Statutory and Regulatory Requirements

Section 189(b)(1)(B) of the Act requires for any Serious $PM_{2.5}$ nonattainment area that the state submit provisions to assure that best available control measures (BACM), including controls that reflect best available control technology (BACT), for the control of $PM_{2.5}$ and $PM_{2.5}$ precursors shall be implemented no later than four years after the date the area is reclassified as a Serious area. The EPA has defined BACM in the $PM_{2.5}$ SIP Requirements Rule to mean ''any technologically and economically feasible control measure that can be implemented in whole or in part within four years after the date of reclassification of a Moderate $PM_{2.5}$ nonattainment area to Serious and that generally can achieve greater permanent and enforceable emissions reductions in direct $PM_{2.5}$ emissions and/or emissions of $PM_{2.5}$ plan precursors from sources in the area than can be achieved through the implementation of RACM on the same source(s). BACM includes best available control technology (BACT).'' [195]

Because the 2015 Serious area attainment date has passed, and the EPA found that the area failed to attain by the Serious area attainment date, we are evaluating the submission for compliance with the BACM/BACT requirements now, in conjunction with the State's SIP submission intended to meet both the Serious area and section 189(d) plan requirements.

The EPA generally considers BACM a control level that goes beyond existing RACM-level controls, for example by expanding the use of RACM controls or by requiring preventative measures instead of remediation.[196] Indeed, because states are required to implement BACM and BACT when a Moderate nonattainment area is reclassified as Serious due to its inability to attain the NAAQS through implementation of ''reasonable'' measures, it is logical that ''best'' control measures should represent a more stringent and potentially more technologically advanced or more costly level of control.[197] If RACM and RACT level controls of emissions have been insufficient to reach attainment, then the CAA title I, part D, subpart 4 provisions for $PM_{2.5}$ nonattainment plans contemplate the implementation of more stringent controls, controls on more sources, or other adjustments to the control strategy are necessary to attain the NAAQS in the area. Thus, BACM/BACT determinations are to be ''generally independent'' of attainment for purposes of implementing the $PM_{2.5}$ NAAQS.[198]

Under the $PM_{2.5}$ SIP Requirements Rule, those control measures that otherwise meet the definition of BACM/BACT but ''can only be implemented in whole or in part beginning four years after reclassification'' are referred to as ''additional feasible measures.'' [199] In accordance with the requirements of CAA section 172(c)(6), a Serious area plan must include any additional feasible measures to control emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors that are necessary and appropriate to provide for attainment of the relevant NAAQS as expeditiously as practicable and no later than the applicable attainment date.[200]

Consistent with longstanding guidance provided in the General Preamble Addendum, the preamble to the $PM_{2.5}$ SIP Requirements Rule discusses the following steps for states to follow to identify and select emission controls needed to meet the BACM/BACT and additional feasible measures requirements of 40 CFR 51.1010:

(1) Develop a comprehensive emissions inventory of all sources of $PM_{2.5}$ and $PM_{2.5}$ precursors from major and non-major stationary point sources, area sources, and mobile sources;

(2) Identify potential control measures for all sources or source categories of emissions of $PM_{2.5}$ and relevant $PM_{2.5}$ plan precursors;

(3) Determine whether an available control measure or technology is technologically feasible;

(4) Determine whether an available control measure or technology is economically feasible; and

(5) Determine the earliest date by which a control measure or technology can be implemented in whole or in part.[201]

The EPA allows states to consider factors such as a source's processes and operating procedures, raw materials, physical plant layout, and potential environmental effects such as increased water pollution, waste disposal, and energy requirements when considering technological feasibility.[202] For purposes of evaluating economic

[194] 2018 $PM_{2.5}$ Plan, Appendix G, tables 10 and 11.

[195] 40 CFR 51.1000 (definitions). In longstanding guidance, the EPA has similarly defined BACM to mean, ''among other things, the maximum degree of emissions reduction achievable for a source or source category, which is determined on a case-by-case basis considering energy, environmental, and economic impacts.'' General Preamble Addendum, 42010, 42013.

[196] 81 FR 58010, 58081 and General Preamble Addendum, 42011, 42013.

[197] Id. and General Preamble Addendum, 42009–42010.

[198] $PM_{2.5}$ SIP Requirements Rule, 58081–58082. See also, General Preamble Addendum, 42011.

[199] 40 CFR 51.1000, 40 CFR 51.1010(a)(4)(ii).

[200] Because the Serious area attainment year has passed and the area failed to attain by the Serious area attainment date, we will evaluate the BACM/BACT and additional feasible measure analysis for the Serious area plan with respect to the current section 189(d) projected attainment date of December 31, 2023.

[201] 81 FR 58010, 58083–58085.

[202] 40 CFR 51.1010(a)(3)(i).

feasibility, the EPA allows states to consider factors such as the capital costs, operating and maintenance costs, and cost effectiveness (*i.e.,* cost per ton of pollutant reduced by a measure or technology) associated with the measure or control.[203] For any potential control measure identified through the process described above that is eliminated from consideration, states are required to provide detailed written justification for doing so on the basis of technological or economic feasibility, including how its criteria for determining such feasibility are more stringent than those used for determining RACM/RACT.[204]

Once these analyses are complete, the state must use this information to develop enforceable control measures for all relevant source categories in the nonattainment area and submit them to the EPA for evaluation as SIP provisions to meet the basic requirements of CAA section 110 and any other applicable substantive provisions of the Act. The EPA is using these steps as guidelines in the evaluation of the BACM and BACT measures and related analyses in the SJV $PM_{2.5}$ Plan. Furthermore, because the EPA has not previously taken action to approve the California SIP as meeting the subpart 4 Moderate area planning requirements under CAA section 189 for the 1997 annual $PM_{2.5}$ NAAQS for the San Joaquin Valley area, the EPA is reviewing the SJV $PM_{2.5}$ Plan for compliance with those requirements.[205]

The overarching requirement for the CAA section 189(d) attainment control strategy is that it provides for attainment of the NAAQS as expeditiously as practicable.[206] The control strategy must include any additional measures (beyond those already adopted in previous nonattainment plans for the area as RACM/RACT or BACM/BACT) that are needed for the area to attain expeditiously. This includes reassessing any measures previously rejected during the development of any Moderate area or Serious area attainment plan control strategy.[207] The state must also demonstrate that it will, at a minimum, achieve an annual five percent reduction in emissions of direct $PM_{2.5}$ or any $PM_{2.5}$ plan precursor from sources in the area, based on the most recent emissions inventory for the area.[208]

In the $PM_{2.5}$ SIP Requirements Rule, the EPA clarified its interpretation of the statutory language in CAA section 189(d) requiring a state to submit a new attainment plan to achieve annual reductions ''from the date of such submission until attainment,'' to mean annual reductions beginning from the due date of such submission until the new projected attainment date for the area based on the new or additional control measures identified to achieve at least five percent emissions reductions annually.[209] This interpretation is intended to make clear that even if a state is late in submitting its CAA section 189(d) plan, the area must still achieve its annual five percent emissions reductions beginning from the date by which the state was required to make its CAA section 189(d) submission, not by some later date. Because the deadline for California to submit a section 189(d) plan for the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley was December 31, 2016, one year after the December 31, 2015 attainment date for these NAAQS under CAA section 188(c)(2), the starting point for the five percent emissions reduction requirement under section 189(d) for this area is 2017.

2. Summary of the State's Submission and the EPA's Evaluation and Proposed Action

a. Control Strategy

i. Baseline Measures

The control strategy in the SJV $PM_{2.5}$ Plan is based largely on ongoing emissions reductions from baseline control measures, which amount to approximately 98.2 percent of total NO_X emissions reductions and 93.3 percent of total direct $PM_{2.5}$ emissions reductions modeled to result in attainment of the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley.[210] [211] As we use the term here, baseline measures are State and District regulations adopted prior to the development of the 2018 $PM_{2.5}$ Plan that continue to achieve emissions reductions through the projected 2023 attainment year for the 1997 annual $PM_{2.5}$ NAAQS and beyond. The State describes these baseline measures in the 15 μg/m^3 SIP Revision in Chapter 4 (''Attainment Strategy for $PM_{2.5}$'') [212] and Appendix D (''Mobile Source Control Measure Analyses''), and in Appendix C (''Stationary Source Control Measure Analyses'') of the 2018 $PM_{2.5}$ Plan. The State incorporates reductions generated by these baseline measures into the projected baseline inventories, and reductions resulting from District measures are individually quantified in Appendix C. Table 4 provides a summary of the 2013 base year emissions and the reductions from baseline measures, additional State measures, and additional District measures that the Plan projects will result in attainment of the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley by December 31, 2023.

TABLE 4—SUMMARY OF THE SJV $PM_{2.5}$ PLAN'S ANNUAL AVERAGE EMISSION REDUCTIONS TO ATTAIN THE 1997 ANNUAL $PM_{2.5}$ NAAQS BY DECEMBER 31, 2023

		NO_X (tpd)	% of 2013 base year NO_X emissions	Direct $PM_{2.5}$ (tpd)	% of 2013 base year $PM_{2.5}$ emissions
A	2013 Base Year Emissions	317.2	.....	62.5	.....
B	Baseline Measure Emissions Reductions (2013–2023)	163.6	51.6	4.2	6.7
C	Additional CARB Measures	3.0	0.9	0.1	0.2

[203] 40 CFR 51.1010(a)(3)(ii).

[204] 40 CFR 51.1010(a)(3)(iii).

[205] The EPA does not normally conduct a separate evaluation to determine whether a Serious area plan's measures also meet the RACM requirements. As explained in the General Preamble Addendum, we interpret the BACM requirement as generally subsuming the RACM requirement—*i.e.,* if we determine that the measures are indeed the ''best available,'' we have necessarily concluded that they are ''reasonably available.'' (General Preamble Addendum, 42010). Therefore, a separate analysis to determine if the measures represent a RACM level of control is not necessary. A proposed approval of a Plan's provisions concerning implementation of BACM is also a proposed finding that the Plan provides for the implementation of RACM.

[206] 81 FR 58010, 58100.

[207] 40 CFR 50.1010(c)(2)(ii).

[208] CAA section 189(d) and 40 CFR 51.1010(c).

[209] 81 FR 58010, 58101.

[210] Because the 2015 Serious area attainment date has passed, and the EPA found that the area failed to attain by the Serious area attainment date, we are evaluating the control strategy for the Serious area requirements based on the timeline associated with the current section 189(d) projected attainment date of December 31, 2023.

[211] The EPA calculated these percentages as follows: annual average baseline NO_X reductions from 2013 to 2023 are 163.6 tpd of 166.6 tpd modeled to result in attainment (98.2 percent) and annual average baseline direct $PM_{2.5}$ reductions are 4.2 tpd of 4.5 tpd modeled to result in attainment (93.3 percent). 2018 $PM_{2.5}$ Plan, Appendix B; and 15 μg/m^3 SIP Revision, Chapter 4 and Appendix K.

[212] 15 μg/m^3 SIP Revision, Chapter 4, Table 4–2.

TABLE 4—SUMMARY OF THE SJV $PM_{2.5}$ PLAN'S ANNUAL AVERAGE EMISSION REDUCTIONS TO ATTAIN THE 1997 ANNUAL $PM_{2.5}$ NAAQS BY DECEMBER 31, 2023—Continued

		NO_X (tpd)	% of 2013 base year NO_X emissions	Direct $PM_{2.5}$ (tpd)	% of 2013 base year $PM_{2.5}$ emissions
D	Additional District Measures	0.0	0.0	0.2	0.3
E	Total 2013–2023 Emissions Reductions (B+C+D)	166.6	52.5	4.5	7.2

Source: 2018 $PM_{2.5}$ Plan, Appendix B, tables B–1 and B–2; and 15 μg/m³ SIP Revision, Appendix K, Table 32.

In the SJV $PM_{2.5}$ Plan, the State explains that mobile sources emit over 85 percent of the NO_X emissions in the San Joaquin Valley and that CARB has adopted and amended regulations to reduce public exposure to emissions from diesel vehicles and engines, which include direct $PM_{2.5}$ and NO_X, from ''fuel sources, freight transport sources like heavy-duty diesel trucks, transportation sources like passenger cars and buses, and non-road sources like large construction equipment.'' [213]

Given the need for substantial emissions reductions from mobile and area sources to meet the NAAQS in California nonattainment areas, the State of California has developed stringent control measures for on-road and non-road mobile sources and the fuels that power them. California has unique authority under CAA section 209 (subject to a waiver by the EPA) to adopt and implement new emissions standards for many categories of on-road vehicles and engines and new and in-use non-road vehicles and engines. The EPA has issued numerous waivers and authorizations for California's mobile source regulations and has approved many such mobile source regulations as revisions to the California SIP.[214]

CARB's mobile source program extends beyond regulations that are subject to the waiver or authorization process set forth in CAA section 209 to include standards and other requirements to control emissions from in-use heavy-duty trucks and buses, gasoline and diesel fuel specifications, and many other types of mobile sources. Generally, these regulations have also been submitted by the State and approved by the EPA as revisions to the California SIP.[215]

As to stationary and area sources, the State asserts in the SJV $PM_{2.5}$ Plan that stringent regulations adopted for prior attainment plans continue to reduce emissions of NO_X and direct $PM_{2.5}$.[216] Specifically, Table 4–1 of the 15 μg/m³ SIP Revision identifies 33 District measures that limit NO_X and direct $PM_{2.5}$ emissions.[217] The EPA has approved each of the identified measures into the California SIP,[218] with two exceptions.

First, the District amended Rule 4905 (''Natural Gas-fired, Fan-type, Residential Central Furnaces'') on June 21, 2018, to extend the period during which manufacturers may pay emissions fees in lieu of meeting the rule's NO_X emissions limits.[219] CARB submitted the amended rule to the EPA on November 21, 2018. However, the District amended Rule 4905 again on October 15, 2020, to further extend the period during which manufacturers of weatherized furnaces must pay emission fees in lieu of meeting the rule's NO_X emissions limits.[220] CARB submitted the rule as amended on October 15, 2020, to the EPA on December 30, 2020, and simultaneously withdrew the rule as amended June 21, 2018.[221] The District amended Rule 4905 once more on December 16, 2021, to further extend the implementation period and CARB submitted the amended version to the EPA on March, 9, 2022.[222] The EPA has not yet proposed any action on either the December 30, 2020 or the March 9, 2022 versions.

The EPA approved a prior version of Rule 4905 into the California SIP on March 29, 2016.[223] As part of that rulemaking, the EPA noted that because of the option in Rule 4905 to pay mitigation fees in lieu of compliance with emissions limits, emissions reductions associated with the rule's emissions limits would not be creditable in any attainment plan without additional documentation.[224] Until the District submits the necessary documentation to credit emissions reductions achieved by Rule 4905 toward an attainment control strategy, this rule is not creditable for SIP purposes. The Plan indicates that the District attributed annual average emission reductions of 0.2 tpd of NO_X reductions between 2013 and 2023 to Rule 4905.[225] These emissions reductions would not materially affect the attainment demonstration for the 1997 annual $PM_{2.5}$ NAAQS in the SJV $PM_{2.5}$ Plan.

Second, the SJV $PM_{2.5}$ Plan lists Rule 4203 (''Particulate Matter Emissions from Incineration of Combustible Refuse'') as a baseline measure. This rule has not been approved into the California SIP.[226] Appendix C of the 2018 $PM_{2.5}$ Plan indicates, however, that the emissions inventory for incineration of combustible refuse is 0.00 tpd of NO_X and 0.00 tpd direct $PM_{2.5}$ from 2013 through 2023.[227] Thus, although the District included this rule as a baseline measure, there are no meaningful

[213] 15 μg/m³ SIP Revision, Chapter 4, p. 4–9. For CARB's BACM analysis for mobile source measures, see 15 μg/m³ SIP Revision, Appendix D, including analyses for on-road light-duty vehicles and fuels (starting on page D–17), on-road heavy-duty vehicles and fuels (starting on page D–35), and non-road sources (starting on page D–64).

[214] For example, see 81 FR 39424 (June 16, 2016); 82 FR 14446 (March 21, 2017); 83 FR 23232 (May 18, 2018); and 88 FR 20688 (April 6, 2023).

[215] For example, see the EPA's approval of standards and other requirements to control emissions from in-use heavy-duty diesel trucks (77 FR 20308, April 4, 2012) and revisions to the California on-road reformulated gasoline and diesel fuel regulations (75 FR 26653, May 12, 2010).

[216] 15 μg/m³ SIP Revision, Chapter 4, p. 4–3. For the District's BACM analysis of stationary and area source measures, see 2018 $PM_{2.5}$ Plan, Appendix C.

[217] 15 μg/m³ SIP Revision, Chapter 4, Table 4–1.

[218] See EPA Region IX's website for information on District control measures that have been approved into the California SIP, available at: *https://www.epa.gov/sips-ca/epa-approved-san-joaquin-valley-unified-air-district-regulations-california-sip.*

[219] SJVUAPCD, Final Draft Staff Report, ''Proposed Amendments to Rule 4905 (Natural Gas-fired, Fan-type Central Furnaces),'' June 21, 2018, p. 2.

[220] SJVUAPCD, ''Item Number X: Adopt Proposed Amendments to Rule 4905 (Natural Gas-Fired, Fan-Type Furnaces),'' October 15, 2020, p. 3, including Final Draft Staff Report, ''Proposed Amendments to Rule 4905 (Natural Gas-Fired, Fan-Type Furnaces).''

[221] Letter dated December 28, 2020, from Richard W. Corey, Executive Officer, CARB, to John Busterud, Regional Administrator, EPA Region 9.

[222] Letter dated March 9, 2022, from Richard W. Corey, Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region IX.

[223] 81 FR 17390 (March 29, 2016) (approving Rule 4905 as amended January 22, 2015).

[224] EPA, Region IX Air Division, ''Technical Support Document for EPA's Proposed Rulemaking for the California State Implementation Plan (SIP), San Joaquin Valley Unified Air Pollution Control District's Rule 4905, Natural Gas-Fired, Fan-Type Central Furnaces,'' October 5, 2015, n. 8.

[225] 2018 $PM_{2.5}$ Plan, Appendix C, p. C–290.

[226] The EPA does not have any pending SIP submission for Rule 4203.

[227] 2018 $PM_{2.5}$ Plan, Appendix C, p. C–46.

reductions associated with this rule that would affect the attainment demonstration in the SJV $PM_{2.5}$ Plan.

In sum, although Table 4–1 of the 15 μg/m³ SIP Revision identifies two baseline measures that are not creditable for SIP purposes at this time, we conclude that the total emissions reductions attributed to these two measures in the future baseline inventories would not materially affect the attainment demonstration in the Plan.

ii. Additional Measures and CARB Commitment

In addition to baseline control measures, the SJV $PM_{2.5}$ Plan identifies several additional control measures that will contribute to expeditious attainment of the 1997 annual $PM_{2.5}$ NAAQS. These measures include three regulatory measures adopted by CARB or the District following development of the 2018 $PM_{2.5}$ Plan, and a commitment by CARB to adopt and implement an additional regulatory measure to meet an enforceable commitment. The three regulatory measures adopted following development of the 2018 $PM_{2.5}$ Plan include CARB's ''Lower Opacity Limits for Heavy-Duty Vehicles'' regulation,[228] CARB's ''Amended Warranty Requirements for Heavy-Duty Vehicles'' regulation,[229] and the District's 2019 amendments to Rule 4901 (''Wood Burning Fireplaces and Wood Burning Heaters'').[230] In addition to these three adopted measures, the 15 μg/m³ SIP Revision includes a commitment by CARB to achieve aggregate emissions reductions of 3.0 tpd of NO_X and 0.04 tpd of direct $PM_{2.5}$ (referred to as an ''aggregate tonnage commitment'') through adoption of CARB's ''Heavy-Duty Vehicle Inspection and Maintenance Program'' (''Heavy-Duty I/M'') (referred to as a ''control measure commitment'') and/or substitute measures.[231] Table 5 summarizes the NO_X and direct $PM_{2.5}$ emissions reductions associated with these additional measures in the 15 μg/m³ SIP Revision.

TABLE 5—ADDITIONAL NO_X AND DIRECT $PM_{2.5}$ EMISSION REDUCTIONS

Additional measures relied upon for attainment (beyond baseline measures)	NO_X emissions reductions in 2023 (tpd)	$PM_{2.5}$ emissions reductions in 2023 (tpd)
District's 2019 Revisions to Rule 4901	.....	0.2
CARB's Lower Opacity Limits for Heavy-Duty Vehicles	.....	0.09
CARB's Warranty Requirements for Heavy-Duty Vehicles	0.01	.....
CARB's Heavy-Duty I/M	.....	0.04

Source: 15 μg/m³ SIP Revision, Appendix K, Table 32.

Following CARB's submission of the 15 μg/m³ SIP Revision, on October 20, 2021, CARB and the District submitted to the EPA the ''Progress Report and Technical Submittal for the 2012 $PM_{2.5}$ Standard San Joaquin Valley'' (2021 Progress Report).[232] The 2021 Progress Report describes the State's progress to date in developing and adopting the additional measures identified in their control measure commitments in the 2018 $PM_{2.5}$ Plan for purpose of attaining the 2012 annual $PM_{2.5}$ NAAQS.[233] These measures include the additional measures identified in the 15 μg/m³ SIP Revision (*i.e.,* the measures in Table 5 of this proposal). The 2021 Progress Report provides status updates on the substance of each measure and the timing of board consideration for both adopted and remaining control measure commitments. The report also provides a side-by-side comparison of the original emission reduction estimates in the 2018 $PM_{2.5}$ Plan for each control measure commitment and updated emission reduction estimates for each measure based on technical analyses for adopted measures and draft measures and/or documentation in development for forthcoming regulations.[234] Although the purpose of the 2021 Progress Report was to provide an update on the progress that CARB and the District have made towards implementing the attainment strategy for the 2012 annual $PM_{2.5}$ NAAQS, some of the information provided in the report is relevant to the State's progress towards attaining the 1997 annual $PM_{2.5}$ NAAQS, as discussed below.

First, on July 22, 2020, the EPA published its final approval of the District's 2019 amendment to Rule 4901 [235] and concurrently credited this measure with annual average emission reductions of 0.2 tpd direct $PM_{2.5}$ towards the District's $PM_{2.5}$ tonnage commitment in the 2018 $PM_{2.5}$ Plan for 2024.[236] As described in the EPA's March 27, 2020 proposed rule, this amount of SIP credit corresponded to a 75 percent compliance rate (referred to as a ''rule effectiveness rate''), consistent with EPA guidance on wood burning curtailment programs,[237] rather than a higher 100 percent rule effectiveness rate used in the District's original calculations.[238] In the 2021 Progress Report, the State notes this conclusion in the EPA's July 22, 2020 final rule approving this measure into the SIP and now estimates emission reductions of 0.2 tpd direct $PM_{2.5}$ from this measure, both in the report [239] and in the 15 μg/m³ SIP Revision.[240] Consistent with the EPA's July 22, 2020 final rule, we propose to credit this measure with annual average emission reductions of 0.2 tpd direct $PM_{2.5}$ for purposes of attaining the 1997 annual $PM_{2.5}$ NAAQS by December 31, 2023.

Second, in 2018, CARB adopted the Lower Opacity Limits for Heavy-Duty Vehicles regulation as a revision to the

[228] Initially adopted via CARB Resolution 18–20 (May 25, 2018). CARB Resolution 18–20 was repealed on July 26, 2018 via CARB Resolution 18–28, which included a modified version of the regulation to address public comments. Per direction from CARB Resolution 18–28, the regulation was adopted via Executive Order R19–001 (March 12, 2019).

[229] CARB Resolution 18–24, June 28, 2018.

[230] SJVUAPCD Resolution 19–06–22, June 20, 2019.

[231] CARB Resolution 21–21, September 23, 2021, p. 6; and August 2021 Staff Report, pp. 4–5.

[232] ''Progress Report and Technical Submittal for the 2012 $PM_{2.5}$ Standard San Joaquin Valley,'' October 19, 2021. Transmitted to the EPA by letter dated October 20, 2021, from Richard W. Corey, Executive Officer, CARB, to Deborah Jordan, Acting Regional Administrator, EPA Region IX. See sections of 2021 Progress Report entitled ''Progress in Implementing District Measures'' and ''Progress in Implementing CARB Measures.''

[233] As discussed in fn. 28 of this document, the Serious area plan for the 2012 $PM_{2.5}$ NAAQS has since been withdrawn by the State.

[234] 2021 Progress Report, tables 2 and 3.

[235] 85 FR 44206.

[236] 85 FR 44192, 44204.

[237] Strategies for Reducing Wood Smoke, EPA–456/B–13–01, March 2013, p. 42.

[238] 85 FR 17382, 17415.

[239] 2021 Progress Report, p. 7 and Table 3.

[240] 15 μg/m³ SIP Revision, Appendix K, Table 32.

Heavy-Duty Vehicle Inspection Program (HDVIP) and Periodic Smoke Inspection Program (PSIP). CARB submitted the measure to the EPA on February 13, 2020, and on May 10, 2022, the EPA approved the measure into the California SIP.[241] CARB initially estimated in its staff report for the measure that it would achieve 1,170 tons of PM emissions benefits from the heavy-duty trucking transportation sector from 2019 to 2025.[242] In the 15 μg/m^3 SIP Revision, CARB estimates that the Lower Opacity Limits for Heavy-Duty Vehicles regulation will achieve 0.09 tpd direct $PM_{2.5}$ reductions in 2023. CARB later clarified via email that it derived this estimate using EMFAC2017 and that if it instead used EMFAC2014, consistent with the 15 μg/m^3 SIP Revision, the estimated reductions are 0.01 tpd of direct $PM_{2.5}$ by 2023.[243] However, CARB has not yet provided its analysis of the basis for this emissions reduction estimate for the San Joaquin Valley. Therefore, the EPA is not proposing at this time to credit this measure with any particular amount of emissions reductions toward attainment of the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley. While the Plan indicates that the State attributed annual average emission reductions of 0.09 tpd of $PM_{2.5}$ reductions between 2013 and 2023 to the Lower Opacity Limits for Heavy-Duty Vehicles regulation, these emissions reductions would not materially affect the attainment demonstration for the 1997 annual $PM_{2.5}$ NAAQS in the SJV $PM_{2.5}$ Plan.

Third, CARB adopted the Amended Warranty Requirements for Heavy-Duty Vehicles regulation on June 28, 2018 (''2018 HD Warranty Amendments''). CARB estimates that the measure will achieve 0.01 tpd of NO_X emissions reductions in 2023. By letter dated October 22, 2021, CARB submitted a request that the EPA determine that the 2018 HD Warranty Amendments are within the scope of the previously-granted waiver for California's emissions standards and associated test procedures for 2007 and subsequent model year heavy-duty diesel vehicle engines. Alternatively, CARB requested that the EPA grant California a new waiver of preemption for the 2018 HD Warranty Amendments. The EPA published a notice of opportunity for public hearing and comment concerning CARB's request on June 13, 2022, and the EPA held a public hearing on June 29, 2022.[244] On April 5, 2023, the EPA determined that the 2018 HD Warranty Amendments meet the criteria for a new waiver under section 209(b) of the CAA.[245] However, because the measure has not been approved into the California SIP, the EPA is not proposing at this time to credit this measure with any particular amount of emissions reductions toward attainment of the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley. Given the relatively small quantity of reductions from this measure, these emissions reductions would not materially affect the attainment demonstration for the 1997 annual $PM_{2.5}$ NAAQS in the SJV $PM_{2.5}$ Plan.

Finally, the 15 μg/m^3 SIP Revision includes an aggregate emissions reduction commitment by CARB to achieve reductions of 3.0 tpd of NO_X and 0.04 tpd of direct $PM_{2.5}$ through adoption of CARB's Heavy-Duty I/M program and/or substitute measures.[246] These reductions amount to 1.8 percent and 0.9 percent of the total NO_X and direct $PM_{2.5}$ reductions, respectively, needed to attain the 1997 annual $PM_{2.5}$ NAAQS. CARB adopted the Heavy-Duty I/M measure on December 9, 2021, fulfilling CARB's control measure commitment in the 15 μg/m^3 SIP Revision. Implementation of the program began on January 1, 2023. On December 14, 2022, CARB submitted the measure to the EPA as a revision to the California SIP.[247] The EPA is not proposing to credit the emission reductions from the Heavy-Duty I/M program towards the aggregate tonnage commitment at this time. The EPA will take such action in a separate future rulemaking.

In addition to the baseline and additional measures discussed above, CARB notes in its August 2021 Staff Report accompanying the 15 μg/m^3 SIP Revision that two additional measures are expected to provide for more emissions reductions by the 2023 attainment year for the 1997 annual $PM_{2.5}$ NAAQS.[248] While the EPA is not proposing to credit either of these measures at this time towards the aggregate tonnage commitment for the 1997 annual $PM_{2.5}$ NAAQS, we agree with the State that they will further reduce ambient $PM_{2.5}$ levels and exposure to $PM_{2.5}$ pollution for communities in the San Joaquin Valley.

The first measure is the Accelerated Turnover of Agricultural Equipment Incentive Projects (''Agricultural Equipment Incentive Measure''), which includes commitments by CARB to monitor, assess, and report on emission reductions, and to achieve emission reductions of 5.1 tpd NO_X and 0.3 tpd direct $PM_{2.5}$ from the 2025 baseline inventory in the 2018 $PM_{2.5}$ Plan by December 31, 2024.[249] The State asserts in the August 2021 Staff Report that a large portion of those emissions reductions will be achieved by 2023.[250] The EPA finalized a partial approval of this measure on December 16, 2021, wherein the EPA credited 4.83 tpd NO_X and 0.24 tpd direct $PM_{2.5}$ towards CARB's tonnage commitments for 2024 (for attaining the 2006 24-hour $PM_{2.5}$ NAAQS), and calculated 4.46 tpd NO_X and 0.26 tpd direct $PM_{2.5}$ for 2025 (for attaining the 2012 annual $PM_{2.5}$ NAAQS).[251]

The second measure is the Agricultural Burning Phase-out Measure, which for purposes of state law, was adopted by the District on June 17, 2021,[252] and concurred on by CARB on June 18, 2021,[253] and later adopted by the District on November 18, 2021, as a revision to the California SIP.[254] Previously, through Rule 4103 (''Open Burning''), as amended April 15, 2010, the District restricted the type of materials that may be burned and established other conditions and procedures for open burning in conjunction with the District's Smoke Management Program.[255] The EPA

[241] 87 FR 27949.

[242] CARB, ''Proposed Amendments to the Heavy-Duty Vehicle Inspection Program and Periodic Smoke Inspection Program, Staff Report: Initial Statement of Reasons,'' release date April 3, 2018, p. 15. See also, EPA Region IX, ''Technical Support Document for EPA's Rulemaking for the California State Implementation Plan, California Air Resources Board—Title 13, Division 3, Chapter 3.5; Opacity Testing of Heavy-Duty Diesel Vehicles,'' July 2021, p. 4.

[243] Email dated March 3, 2022, from Laura Carr, CARB, to Ashley Graham, EPA Region IX, Subject: ''Lower Opacity regulation reductions.'' This email is in the docket for this proposed action,

[244] 87 FR 35760.

[245] 88 FR 20688.

[246] CARB Resolution 21–21, pp. 4–5.

[247] Letter dated December 7, 2022, from Steven S. Cliff, Ph.D., Executive Officer, to Martha Guzman, Regional Administrator, EPA Region IX, with enclosures.

[248] August 2021 Staff Report, pp. 3–4.

[249] EPA Region IX ''Technical Support Document for EPA's Rulemaking for the California State Implementation Plan California Air Resources Board Resolution 19–26 San Joaquin Valley Agricultural Equipment Incentive Measure,'' February 2020, pp. 4–5, 24–25, and 31.

[250] CARB's August 2021 Staff Report, p. 3.

[251] 86 FR 73106 (December 27, 2021). The EPA deferred action on the NRCS portion of the Agricultural Equipment Incentive Measure.

[252] SJVUAPCD Resolution 21–06–12, June 17, 2021.

[253] Letter dated June 18, 2021, from Richard W. Corey, Executive Officer, CARB, to Samir Sheikh, Executive Director, SJVUAPCD.

[254] SJVUAPCD Resolution 21–11–7, November 18, 2021. See also, Letter dated October 20, 2021, from Richard W. Corey, Executive Officer, CARB, to Deborah Jordan, Acting Regional Administrator, EPA Region IX.

[255] SJVUAPCD Rule 4103, as amended April 15, 2010.

approved Rule 4103 and the associated table of the restrictions on open burning by crop category into the California SIP on January 4, 2012.[256] The District identifies Rule 4103 as a baseline measure in the 2018 $PM_{2.5}$ Plan.[257] The Agricultural Burning Phase-out Measure, in turn, includes a schedule to phase-out (*i.e.,* introduce prohibitions of) agricultural burning for additional crop categories or materials accounting for a vast majority of the tonnage of agricultural waste in phases starting January 1, 2022, and becoming fully implemented by January 1, 2025.[258] Thus, the State asserts that the measure will provide for additional reductions in 2023 not accounted for in the attainment demonstration for the in the 15 μg/m^3 SIP Revision for 1997 annual $PM_{2.5}$ NAAQS.[259] The EPA approved the Agricultural Burning Phase-out Measure into the California SIP on June 16, 2022.[260]

iii. Three Factor Test for Enforceable Commitments

The EPA interprets the CAA to allow for approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted and submitted measures.[261] Specifically, CAA section 110(a)(2)(A) provides that each SIP ''shall include enforceable emission limitations and other control measures, means or techniques. . .as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of [the Act].'' Section 172(c)(6) of the Act, which applies to nonattainment SIPs, is virtually identical to section 110(a)(2)(A). The language in these sections of the CAA is broad, allowing a SIP to contain any ''means or techniques'' that the EPA determines are ''necessary or appropriate'' to meet CAA requirements, such that the area will attain as expeditiously as practicable, but no later than the designated date. Furthermore, the express allowance for ''schedules and timetables'' demonstrates that Congress understood that all required controls might not have to be in place before a SIP could be fully approved.

Once the EPA determines that circumstances warrant consideration of an enforceable commitment to satisfy a CAA requirement, it considers three factors in determining whether to approve the enforceable commitment: (1) does the commitment address a limited portion of the CAA requirement; (2) is the state capable of fulfilling its commitment; and (3) is the commitment for a reasonable and appropriate period of time.[262]

With respect to the SJV $PM_{2.5}$ Plan, circumstances warrant the consideration of enforceable commitments as part of the attainment demonstration for this area. As discussed in Section IV.C.2.a.i of this proposed rule, the majority of the emissions reductions needed to demonstrate attainment and RFP in the San Joaquin Valley are achieved by rules and regulations adopted prior to the State's development of the SJV $PM_{2.5}$ Plan, *i.e.,* baseline measures. As a result of these already-adopted CARB and District measures, most air pollution sources in the San Joaquin Valley were already subject to stringent rules prior to the development of the SJV $PM_{2.5}$ Plan, leaving fewer and more technologically challenging opportunities to reduce emissions. Despite these significant emission reductions, as shown in Table 4 of this proposed rule, the State needs to reduce NO_X and direct $PM_{2.5}$ emission levels by a total of 52.5 percent and 7.2 percent, respectively, from 2013 base year levels in order to attain the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley.

As part of CARBs control measure commitment in the 15 μg/m^3 SIP Revision, it identifies the control measure (*i.e.,* Heavy-Duty I/M) that it expects to achieve the additional emissions reductions needed for attainment. The timeline needed to develop, adopt, and implement the measure extended beyond the timeline for Plan adoption, with board consideration scheduled for December 2021 at the time the Plan was developed.[263] As discussed in Section IV.C.2.a.ii of this document, CARB adopted the Heavy-Duty I/M measure on December 9, 2021, fulfilling CARB's control measure commitment per the schedule in the Plan. Given these circumstances, we conclude that reliance on enforceable commitments in the SJV $PM_{2.5}$ Plan is warranted. Therefore, we have considered the three factors the EPA uses to determine whether the use of enforceable commitments in lieu of adopted measures satisfies CAA planning requirements.

(1) The Commitment Represents a Limited Portion of Required Reductions

For the first factor, we look to see if the commitment addresses a limited portion of a statutory requirement, such as the amount of emissions reductions needed to attain the NAAQS in a nonattainment area. As discussed in Section IV.C.2.a.i of this proposed rule, most of the total emission reductions needed to attain the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley by the end of 2023 will be achieved through implementation of baseline measures and additional measures for which the EPA has finalized approval, leaving 1.8 percent (3 tpd) of the necessary NO_X reductions and 0.9 percent (0.04 tpd) of the necessary direct $PM_{2.5}$ reductions as aggregate tonnage commitments.

Given the nature of the $PM_{2.5}$ challenge in the San Joaquin Valley, the significant reductions in NO_X and direct $PM_{2.5}$ emission levels achieved through implementation of baseline measures over the past several decades, and the difficulty of identifying additional control measures that are feasible for implementation in the area, we consider it reasonable for CARB and the District to seek additional time to develop and adopt the last increment of emission reductions necessary for attainment by 2023. Therefore, we conclude that the

[256] 77 FR 214 (January 4, 2012). The table of open burning restrictions by crop category is codified at 40 CFR 52.220(c)(388)(i)(B)(*3*) Table 9–1, Revised Proposed Staff Report and Recommendations on Agricultural Burning, approved by the District on May 20, 2010.

[257] 2018 $PM_{2.5}$ Plan, Chapter 4, tables 4–2 and 4–3, and Appendix C.

[258] 2021 Supplemental Report and Recommendations, Table 2–1 (''Accelerated Reductions by Crop Category'').

[259] CARB's August 2021 Staff Report, pp. 3–4.

[260] 87 FR 36222.

[261] Commitments approved by the EPA under CAA section 110(k)(3) are enforceable by the EPA and citizens under CAA sections 113 and 304, respectively. In the past, the EPA has approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments. See, *e.g., American Lung Ass'n of N.J.* v. *Kean,* 670 F. Supp. 1285 (D.N.J. 1987), aff'd, 871 F.2d 319 (3rd Cir. 1989); *NRDC* v. *N.Y. State Dept. of Env. Cons.,* 668 F. Supp. 848 (S.D.N.Y. 1987); *Citizens for a Better Env't* v. *Deukmejian,* 731 F. Supp. 1448, recon. granted in par, 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air* v. *South Coast Air Quality Mgt. Dist.,* No. CV 97–6916–HLH, (C.D. Cal. Aug. 27, 1999). Further, if a state fails to meet its commitments, the EPA could make a finding of failure to implement the SIP under CAA section 179(a), which starts an 18-month period for the State to correct the non-implementation before mandatory sanctions are imposed.

[262] The Fifth Circuit Court of Appeals upheld the EPA's interpretation of CAA sections 110(a)(2)(A) and 172(c)(6) and the Agency's use and application of the three factor test in approving enforceable commitments in the 1-hour ozone SIP for Houston-Galveston. *BCCA Appeal Group* v. *EPA,* 355 F.3d 817 (5th Cir. 2003). More recently, the Ninth Circuit Court of Appeals upheld the EPA's approval of enforceable commitments in ozone and $PM_{2.5}$ SIPs for the San Joaquin Valley, based on the same three factor test. *Committee for a Better Arvin* v. *EPA,* 786 F.3d 1169 (9th Cir. 2015). But see, *Medical Advocates for Healthy Air* v. *EPA,* Case No. 20–72780, (9th Cir., Apr. 13, 2022) (finding that the EPA did not adequately show the State was capable of fulfilling its commitment with respect to incentive-based control measure commitments).

[263] August 2021 Staff Report, p. 4.

emission reductions remaining as enforceable commitments in the SJV $PM_{2.5}$ Plan represent a limited portion of the total emissions reductions needed to demonstrate attainment of the 1997 annual $PM_{2.5}$ NAAQS by December 31, 2023.

(2) The State Is Capable of Fulfilling Its Commitment

For the second factor, we consider whether the State is capable of fulfilling its commitments. As discussed in Section IV.C.2.a.ii of this document, CARB has already adopted the regulatory measure (*i.e.,* Heavy-Duty I/M) it committed to in the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS. The aggregate tonnage commitments associated with this measure are 3 tpd of NO_X and 0.04 tpd of direct $PM_{2.5}$ in 2023, less than 2 percent of the NO_X and direct $PM_{2.5}$ emissions reductions needed for attainment by December 31, 2023.[264]

Given CARB's progress in adopting the Heavy-Duty I/M measure it committed to in the 15 μg/m³ SIP Revision per the schedule in the Plan and its continuing efforts to develop additional control measures to further reduce NO_X and $PM_{2.5}$ emissions in the San Joaquin Valley, we propose that CARB is capable of fulfilling the remaining increment of NO_X emission reductions necessary to attain the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley by December 31, 2023.

More broadly, we note that CARB will have to submit to the EPA, for SIP approval, any control measure that it intends to rely on to satisfy the aggregate tonnage commitments in the Plan. Furthermore, if CARB intends to substitute reductions in one pollutant to achieve a tonnage commitment concerning a different pollutant (*e.g.,* substituting direct $PM_{2.5}$ reductions to satisfy a NO_X reduction commitment), it must include an appropriate inter-pollutant trading (IPT) ratio and the technical basis for such ratio. The EPA will review any such IPT ratio and its bases before approving or disapproving the measure.

(3) The Commitment Is for a Reasonable and Appropriate Timeframe

For the third factor, we consider whether the commitment is for a reasonable and appropriate period of time. The SJV $PM_{2.5}$ Plan includes specific rule adoption and implementation schedules for the Heavy-Duty I/M measure to meet CARB's commitment to reduce emissions to the levels needed to attain the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley by 2023. CARB has already met its control measure commitment through its December 2021 adoption of the Heavy-Duty I/M measure and implementation ahead of the December 31, 2023 projected attainment date. We consider that these schedules provide a reasonable and appropriate amount of time for CARB to achieve the remaining emission reductions necessary to attain the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley by December 31, 2023. We therefore propose to conclude that the third factor is satisfied.

b. Best Available Control Measures

We are evaluating the State's BACM demonstration for the 1997 annual $PM_{2.5}$ NAAQS against the section 189(b)(1)(B) Serious area plan BACM requirement, and the section 189(d) plan requirement to address all Serious area plan requirements that the State has not already met. Because we have already found that the State failed to attain the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley area by the Serious area attainment date, and because we have not previously found that the state has met the BACM requirement for purposes of the 1997 annual $PM_{2.5}$ NAAQS, we are evaluating the State's submission against the Serious area BACM requirement in light of the section 189(d) control plan timeline.

i. Summary of the State's Submission

The State's BACM demonstration is presented in Appendix C (''Stationary Source Controls'') of the 2018 $PM_{2.5}$ Plan and Appendix D (''Mobile Source Control Measure Analyses'') of the 15 μg/m³ SIP Revision.[265] The State also provided additional information regarding building heating appliances, including residential natural gas-fired water heaters and furnaces, in a document titled ''Building Electrification Technical Supplement for the 1997 Annual $PM_{2.5}$ NAAQS'' (''March 2023 Building Heating Supplement''), submitted to the EPA on March 30, 2023.[266]

As discussed in Section IV.A of this proposed rule, Appendix B (''Emissions Inventory'') of the 2018 $PM_{2.5}$ Plan contains the planning inventories for direct $PM_{2.5}$ and all $PM_{2.5}$ precursors (NO_X, SO_X, VOC, and ammonia) for the San Joaquin Valley nonattainment area together with documentation to support these inventories. Each inventory includes emissions from stationary, area, on-road, and non-road emissions sources, and the State specifically identifies the condensable component of direct $PM_{2.5}$ for relevant stationary source and area source categories. As discussed in Section IV.B of this proposed rule, the State concluded that the Plan should control emissions of $PM_{2.5}$ and NO_X to reach attainment. Accordingly, the BACM and BACT evaluation in the Plan addresses potential controls for sources of those pollutants.

Stationary and Area Sources

For stationary and area sources, the District identifies the sources of direct $PM_{2.5}$ and NO_X in the San Joaquin Valley that are subject to District emissions control measures and provides its evaluation of these regulations for compliance with BACM requirements in Appendix C of the 2018 $PM_{2.5}$ Plan. As part of its process for identifying candidate BACM and considering the technical and economic feasibility of additional control measures, the District reviewed the EPA's guidance documents on BACM, additional guidance documents on control measures for direct $PM_{2.5}$ and NO_X emissions sources, and control measures implemented in other ozone and $PM_{2.5}$ nonattainment areas in California and other states.[267] Based on these analyses, the District concludes that all best available control measures for stationary and area sources are in place in the San Joaquin Valley for NO_X and directly emitted $PM_{2.5}$ for purposes of meeting the BACM/BACT requirement for the 1997 annual $PM_{2.5}$ NAAQS. We provide an evaluation of many of the District's control measures for stationary sources and area sources in Section IV of the EPA's 1997 Annual $PM_{2.5}$ TSD together with recommendations for possible future improvements to these rules.

[264] Unlike the aggregate commitments at issue in the *Medical Advocates* case, which relied in-part on incentive-based control measure commitments, the aggregate commitment the EPA is proposing to approve in this action consists solely of a regulatory measure that has already been adopted and submitted by the State and for which implementation began on January 1, 2023.

[265] Appendices C and D also present an MSM analysis for the purposes of meeting a precondition for an extension of the Serious area attainment date under CAA section 188(e) for the 2006 $PM_{2.5}$ NAAQS. The San Joaquin Valley area is not subject to the MSM requirement for the 1997 annual $PM_{2.5}$ NAAQS. Thus, the EPA is evaluating the Plan's control strategy for implementation of BACM and BACT only.

[266] Letter dated March 29, 2023, from Steven S. Cliff, Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region 9, with enclosures. This letter is in the docket for this proposed action.

[267] 15 μg/m³ SIP Revision, Chapter 4, Section 4.3.1.

As noted earlier, the State provided additional information to the EPA to support its BACM analysis for building heating appliances in its March 2023 Building Electrification Supplement.[268] We provide a summary of the State's BACM analysis for building heating appliances in the paragraphs that follow.

The State provides a summary of its existing rules governing building heating appliances, including Rule 4902 (''Residential Water Heaters'') and Rule 4905 (''Natural Gas-Fired, Fan-Type Central Furnaces''), in Appendix C of the 2018 $PM_{2.5}$ Plan.[269] The rules are point of sale rules that limit the types of water heaters and furnaces that may be sold in the San Joaquin Valley.[270] The District also provides comparisons of its rules with rules in other California air districts.[271] Based on the District's analysis at that time, it determined that it was implementing the most stringent requirements feasible for such building heating appliances.

The EPA has previously provided our evaluation of the District's BACM demonstration in the 2018 $PM_{2.5}$ Plan for stationary and area sources in general, and several source categories in more detail, for purposes of other $PM_{2.5}$ NAAQS in three documents: (1) the EPA's ''Technical Support Document, EPA Evaluation of BACM/MSM, San Joaquin Valley $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS,'' February 2020 (''EPA's BACM/MSM TSD''); (2) the EPA's ''Response to Comments Document for the EPA's Final Action on the San Joaquin Valley Serious Area Plan for the 2006 $PM_{2.5}$ NAAQS,'' June 2020 (''EPA's 2020 Response to Comments''); and (3) Section II of the EPA's ''Technical Support Document, San Joaquin Valley $PM_{2.5}$ Plan for the 1997 24-hour $PM_{2.5}$ NAAQS,'' August 2021 (''EPA's 1997 24-hour $PM_{2.5}$ TSD''). In particular, the EPA's 2020 Response to Comments presented our evaluation of the District's BACM demonstration for residential water heaters and residential and commercial, natural gas-fired, fan-type central furnaces.[272] At that time we found that the requirements for residential fuel combustion sources covered by Rules 4902 and 4905 represented BACM.[273] In addition, the EPA concluded that setting a zero-NO_X standard for heating appliances in new buildings reasonably requires additional consideration and analysis of technological and economic feasibility by the District because, per the 2018 $PM_{2.5}$ Plan, the most common types of residential water heaters and furnaces are those that use natural gas as fuel.

We also noted in the EPA's 2020 Response to Comments that the building codes referenced by commenters at that time appeared to be green building code ordinances that restrict or prohibit installation of natural gas or propane appliances in new construction.[274] Such ordinances, most of which appeared to have been adopted in late 2019 and early 2020, fell within a category known as ''reach codes,'' which are city and county building code standards for energy efficiency that exceed California's statewide standards. We stated that California law requires local governments to submit proposed ordinances to the California Energy Commission for a determination that they will be both cost effective and more energy efficient than statewide standards, and that compliance with this procedure is necessary for such measures to be enforceable.[275] We also noted that ordinances adopted by city councils and county officials are legally distinct from measures adopted by the governing boards of the respective air districts and that it did not appear at the time that California air districts had adopted similar restrictions.

Since the time of the EPA's actions on the San Joaquin Valley plans for the 2006 24-hour and 1997 24-hour $PM_{2.5}$ standards (*i.e.,* 2020–2021), additional jurisdictions have adopted natural gas bans, appliance standards, and other strategies to reduce emissions from building heating devices.[276] Furthermore, CARB and the Bay Area AQMD are moving forward in developing measures to set zero-emission standards for space heaters and water heaters. Given these factors, the State has supplemented its evaluation of the feasibility of strengthening its rules for building heating sources for purposes of the EPA's evaluation of the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS.[277]

The March 2023 Building Electrification Supplement includes analyses from both CARB and the District regarding the stringency of the District's current rules, recent efforts across the State of California to further reduce emissions from building heating appliances, and information supporting the State's assertion that it is infeasible, and therefore not required for BACM, to implement a zero-emission regulation for building heating appliances within the timeframe of the Plan for the 1997 annual $PM_{2.5}$ NAAQS.

First, the District asserts that its Rules 4902 (''Residential Water Heaters''), 4308 (''Boilers, Steam Generators, and Process Heaters—0.075 MMBtu/HR to Less Than 2.0 MMBtu/HR''), and 4905 (''Natural Gas-Fired, Fan-Type Central Furnaces'') include the most stringent requirements currently being implemented for water and space heaters in the nation and are the most stringent measures feasible for implementation in the San Joaquin Valley as of March 2023.[278] Specifically, the District notes that its NO_X limits of 10 and 14 nanograms of NO_X per joule of useful heat (ng/J) for water and space heaters, respectively, are the same as those implemented by the South Coast AQMD and are the most stringent in the country.[279] The District also points to its efforts to reduce emissions from home heating through its Fireplace and Woodstove Change-Out incentive program, which offers support for purchasing and installing cleaner space heating appliances.[280] The District notes

[268] Letter dated March 29, 2023, from Steven S. Cliff, Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region 9, with enclosures.

[269] 2018 $PM_{2.5}$ Plan, Appendix C, sections C.20 and C.21.

[270] SJVUAPCD Rule 4902 (''Residential Water Heaters''), amended March 19, 2009, and SJVUAPCD Rule 4905 (''Natural Gas-Fired, Fan-Type Central Furnaces''), amended January 22, 2015.

[271] 2018 $PM_{2.5}$ Plan, Appendix C, sections C.20 and C.21.

[272] EPA's 2020 Response to Comments, pp. 142–148, Comment 6.O and Response 6.O.

[273] Id. at 146–147.

[274] Id. at 147–148.

[275] California 2019 Building Energy Standards, at California Code of Regulations (CCR), title 24, part 1, article 1, sec. 10–106 (''Locally Adopted Energy Standards''); see also *https://ww2.energy.ca.gov/title24/2016standards/ordinances.*

[276] We note, for awareness only, that the City of Berkeley introduced an ordinance in 2019 prohibiting the installation of natural gas infrastructure in most new buildings. In April 2023, the Ninth Circuit Court of Appeals reversed and remanded the prior district court's rule that upheld the ordinance on the grounds that the federal Energy Policy and Conservation Act expressly preempted the local ordinance's regulation of ''energy use'' of a product covered by the statute. *California Restaurant Association* v. *City of Berkeley,* No. 21–16278 (9th Cir. 2023).

[277] The EPA's evaluation of BACM for NO_X emissions from building heating appliances in its proposed rule on the State's Serious area plan for the 2012 annual $PM_{2.5}$ NAAQS was the subject of adverse comments. (86 FR 74310, December 29, 2021); and comment letter dated and received January 28, 2022, from Brent Newell, Public Justice, et al., to Rory Mays, EPA, including Exhibits 1 through 47. The EPA re-proposed action on portions of that Serious area plan, including BACM for building heating appliances based on the record available at the time. (87 FR 60494, October 5, 2022). However, the State withdrew that original Serious area plan on October 27, 2022, and has since supplemented its analysis of BACM for this source category, as described herein.

[278] March 2023 Building Electrification Supplement, p. 1.

[279] Id.

[280] Id. at 1–2. The EPA proposed to approve the District's ''Burn Cleaner Fireplace and Woodstove

Continued

that the program has helped replace over 21,000 wood burning appliances with natural gas inserts, stoves, and fireplaces and that recent changes to the program are providing larger incentives for electric space heating and cooling heat pumps in Valley homes.[281]

Next, CARB and the District discuss CARB's commitment and ongoing work to develop a statewide zero-emission space and water heater regulation. CARB included in its 2022 State SIP Strategy for the State Implementation Plan (''2022 State SIP Strategy''), among other measures, a commitment to develop a zero-emission standard for space and water heaters.[282] CARB submitted the 2022 State SIP Strategy to the EPA for approval into the California SIP on February 23, 2023.[283] CARB reiterated its commitment for a zero-emission standard in the Final 2022 Scoping Plan for Achieving Carbon Neutrality (''2022 Scoping Plan'').[284] The 2022 State SIP Strategy and 2022 Scoping Plan anticipate implementation of a zero-emission standard for building heating appliances starting in 2030, pending rule development and CARB Board approval in 2025.[285]

Third, the State discusses the technical and economic feasibility challenges of implementing a zero-emission standard for space and water heaters in the San Joaquin Valley. The State summarizes its position in the March 2023 Building Electrification Supplement and refers to technical and economic feasibility considerations outlined in Appendix F of the 2022 Scoping Plan, which CARB included as an attachment to the March 2023 Building Electrification Supplement.

With regard to technical feasibility, CARB acknowledges that electric alternatives to gas-fueled appliances are currently available for deployment in some applications but cites various challenges related to manufacturing capacity, retrofit complications (*e.g.,* physical space constraints), consumer awareness/perception, and decreased performance of some units in colder climates.[286] The State asserts that consumer preference for appliance types that they are already familiar with is a major barrier to building electrification and discusses the need for increased consumer awareness and adoption, which would allow manufacturers to take advantage of economies of scale and increase production capacity.[287]

With regard to economic feasibility, CARB provides some qualitative comparisons between capital and energy costs for electric and natural gas-powered appliances, which vary depending on equipment and installation needs, climate zones, and energy rate structures.[288] Costs associated with retrofitting an existing building are expected to be higher than those for new construction due to the potential for additional installation costs, which may include electrical panel and circuit upgrades, rewiring, ductwork modifications, and space reconfigurations.[289] Energy costs are expected to vary depending on the characteristics of the appliances and buildings, climate variation, consumer use patterns, and utility rate structures.[290] CARB notes that higher energy bills after electrification have the potential to especially burden low-income residents of the State and discusses the importance of coordinating statewide actions to ensure energy rates are structured to support electrification.[291]

Additionally, the State posits that low-income customers may be less likely to adopt electric appliances early on due to capital costs and could end up paying a larger share of systemwide fossil gas system costs as other households move away from natural gas use.[292] With regard to the San Joaquin Valley specifically, the District notes that the per capita income of District residents is only 40.5 percent of the average per capita income of areas in California that have adopted building electrification ordinances to date, creating additional challenges for implementation in the Valley.[293] Furthermore, the State notes that care must be taken to ensure that vulnerable communities are not adversely affected. For example, some rural and tribal areas in California rely on propane or wood burning for heating because they are not connected to the State's electric grid or natural gas infrastructure.[294] CARB emphasizes the need for robust community engagement to ensure equitable consideration of low-income and environmental justice communities in the Valley and identifies a need for increased incentive funding to support a successful transition to building decarbonization.[295]

Lastly, the State discusses the anticipated implementation timelines for zero-NO_X building electrification standards in the context of the San Joaquin Valley Plan for the 1997 annual $PM_{2.5}$ NAAQS. CARB asserts that the public process to develop a rulemaking would take at least two years and that more time would be needed for implementation.[296] As discussed earlier, CARB's adoption and implementation timeline for a statewide zero-NO_X measure involves taking a measure to the CARB Board in 2025 and beginning implementation in 2030. This timeline was established to allow adequate time for CARB to collaborate with the U.S. Department of Energy; California Energy Commission; and California Building Standards Commission, Department of Housing and Community Development; and to provide time for robust public engagement with community-based organizations and other key stakeholders. The State asserts that emission reductions from building decarbonization are not feasible in the timeframe of the SJV $PM_{2.5}$ Plan, given the 2023 attainment date for the 1997 annual $PM_{2.5}$ NAAQS. The District has committed in the 2022 Plan for the 2015 8-Hour Ozone Standard to evaluate current and upcoming work by CARB and other agencies and to evaluate the feasibility of implementing zero-emission NO_X requirements for building heating sources in the Valley as part of their ongoing work to attain the 2015 ozone NAAQS.[297]

Mobile Sources

For mobile sources, CARB identifies the sources of direct $PM_{2.5}$ and NO_X in the San Joaquin Valley that are subject to the State's emissions control measures and provides its evaluation of these regulations for compliance with BACM requirements in Appendix D of the 15 $\mu g/m^3$ SIP Revision. Appendix D describes CARB's process for

Change-out Incentive Measure'' into the California SIP on April 14, 2023 (88 FR 22978).

[281] March 2023 Building Electrification Supplement, pp. 1–2.

[282] CARB, 2022 State Strategy for the State Implementation Plan, pp. 101–103. Available at *https://ww2.arb.ca.gov/sites/default/files/2022-08/2022_State_SIP_Strategy.pdf.*

[283] Letter dated February 22, 2023, from Steven S. Cliff, Executive Director, CARB, to Martha Guzman, Regional Administrator, EPA Region IX, with enclosures. The EPA has not yet taken action on the 2022 State SIP Strategy.

[284] CARB, 2022 Scoping Plan, pp. 211–215 and Appendix F.

[285] 2022 State SIP Strategy, Table 3.

[286] 2022 Scoping Plan, pp. 5–10.

[287] Id. at Appendix F, p. 22.

[288] Id. at 11–13.

[289] Id. at 16–18.

[290] Id. at 12.

[291] Id. at 13–14.

[292] Id. at 15.

[293] March 2023 Building Electrification Supplement, pp. 2–3. The average per capita income of San Joaquin Valley residents is $24,708 while the average per capita income in cities with building electrification ordinances is $60,969.

[294] Id.

[295] Id. at Section 4.

[296] March 2023 Building Electrification Supplement, p. 4.

[297] 2022 Plan for the 2015 8-Hour Ozone Standard, Section 3.3.4.2.1. Available at *https://ww2.valleyair.org/rules-and-planning/air-quality-plans/ozone-plans/2022-ozone-plan-for-the-san-joaquin-valley/.*

determining BACM, including identification of the sources of direct $PM_{2.5}$ and NO_X in the San Joaquin Valley, identification of potential control measures for such sources, assessment of the stringency and feasibility of the potential control measures, and adoption and implementation of feasible control measures.[298]

Mobile source categories for which CARB has primary responsibility for reducing emissions in California include most new and existing on- and non-road engines and vehicles and motor vehicle fuels. The SJV $PM_{2.5}$ Plan's BACM demonstration provides a general description of CARB's key mobile source programs and regulations and a comprehensive table listing on-road and non-road mobile source regulatory actions taken by CARB since 1985.[299]

Appendix D of the 15 μg/m³ SIP Revision also describes the current efforts of the eight local jurisdiction metropolitan planning organizations (MPOs) to implement cost-effective transportation control measures (TCMs) in the San Joaquin Valley.[300] TCMs are projects that reduce air pollutants from transportation sources by reducing vehicle use, traffic congestion, or vehicle miles traveled. TCMs are currently being implemented in the San Joaquin Valley as part of the Congestion Mitigation and Air Quality cost effectiveness policy adopted by the eight local jurisdiction MPOs and in the development of each Regional Transportation Plan (RTP). The Congestion Mitigation and Air Quality policy, which is included in a number of the District's prior attainment plan submissions for the ozone and $PM_{2.5}$ NAAQS, provides a standardized process for distributing 20 percent of the Congestion Mitigation and Air Quality funds to projects that meet a minimum cost effectiveness threshold beginning in fiscal year 2011. The MPOs revisited the minimum cost effectiveness standard during the development of their 2018 RTPs and 2019 Federal Transportation Improvement Program and concluded that they were implementing all reasonable transportation control measures.[301] Appendix D of the District's ''2016 Ozone Plan for 2008 8-Hour Ozone Standard,'' adopted June 16, 2016, contains a listing of adopted TCMs for the San Joaquin Valley.[302]

ii. The EPA's Review of the State's Submission

We have reviewed the State's and District's analysis and determination in the SJV $PM_{2.5}$ Plan that their baseline mobile, stationary, and area source control measures meet the requirements for BACM for sources of direct $PM_{2.5}$ and applicable $PM_{2.5}$ plan precursors (*i.e.,* NO_X) for purposes of the 1997 annual $PM_{2.5}$ NAAQS. In our review, we considered our evaluation of the State's and District's rules and supporting information included in the SJV $PM_{2.5}$ Plan in connection with our approval of the demonstrations for BACM (including BACT) and MSM for the 2006 24-hour $PM_{2.5}$ NAAQS,[303] our approval of the demonstration for BACM for the 1997 24-hour $PM_{2.5}$ NAAQS,[304] and our proposed disapproval of the demonstration for BACM for the 2012 annual $PM_{2.5}$ NAAQS.[305] We are proposing to find that the evaluation processes followed by CARB and the District in the SJV $PM_{2.5}$ Plan to identify potential BACM are generally consistent with the requirements of the $PM_{2.5}$ SIP Requirements Rule, the State's and District's evaluation of potential measures is appropriate, and the State and District have provided reasoned justifications for their rejection of potential measures based on technological or economic infeasibility. We also agree with the District's conclusion that all reasonable TCMs are being implemented in the San Joaquin Valley and that additional TCMs are being considered by the metropolitan transportation agencies as part of the Congestion Mitigation and Air Quality cost effectiveness policy, with strategies adopted to meet their SB375 greenhouse gas reduction targets. Therefore, we propose to find that these TCMs implement BACM for transportation sources.

With regard to building heating appliances, based on the EPA's review of the additional information provided in the March 2023 Building Electrification Supplement, and for the reasons discussed below, we are proposing to approve the State's BACM demonstration for NO_X and direct $PM_{2.5}$ emissions from building heating appliances for purposes of meeting the CAA requirements for the 1997 annual $PM_{2.5}$ NAAQS.

Consistent with the EPA's prior approvals of the State's BACM demonstration for building heating emission sources with respect to the 2006 24-hour and 1997 24-hour $PM_{2.5}$ NAAQS, we are proposing to find that the State provided a thorough review of measures for building heating sources that were being implemented in other nonattainment areas at the time the 2018 $PM_{2.5}$ Plan was developed, in accordance with 40 CFR 51.1010(a)(2)(i). The State has since updated the analysis to reflect the current facts and circumstances for controlling emissions from such sources in 2023 by providing a feasibility analysis and an updated evaluation of current measures and ongoing efforts by the State and local air districts to develop more stringent requirements in the future.

In accordance with 40 CFR 51.1010(a)(3)(iii), the State has provided a detailed justification, based on technical and economic feasibility constraints, for why a zero-emission standard for building heating appliances is not feasible in the timeframe of the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS (*i.e.,* before the projected attainment date). The State summarized various challenges that must be overcome, ranging from increased manufacturing to coordination with other State agencies to ensure energy rates are structured to support electrification. The State emphasized the need for careful consideration of potential adverse effects on low-income and environmental justice communities and a robust public process. The EPA acknowledges the work that is already underway by CARB to develop a statewide zero-emission NO_X measure for this source category and the recent commitment by the District in its plan for the 2015 ozone NAAQS to continue to study the feasibility of such standard for the San Joaquin Valley specifically.

With regard to efforts currently underway by the Bay Area AQMD, we note that on March 15, 2023, Bay Area AQMD adopted amendments to Rule 9–4 (''Nitrogen Oxides from Fan Type Residential Central Furnaces'') and Rule 9–6 (''Nitrogen Oxides Emissions from Natural Gas-Fired Boilers and Water Heaters'').[306] These rules govern point

[298] 15 μg/m³ SIP Revision, Appendix D, Chapter II.

[299] Id. at Table 17.

[300] Id. at D–127 and D–128.

[301] Id. at D–127.

[302] Id. and SJVUAPCD, ''2016 Ozone Plan for 2008 8-Hour Ozone Standard'' (adopted June 16, 2016), Appendix D, Attachment D, tables D–10 to D–17.

[303] 85 FR 44192.

[304] 87 FR 4503 (January 28, 2022).

[305] 86 FR 74310.

[306] BAAQMD Board Resolution No. 2023–03, A Resolution of the Board of Directors of the Bay Area Air Quality Management District Amending Regulation 9, Rule 4 (Nitrogen Oxides from Fan-Type Residential Furnaces) and Amending Regulation 9, Rule 6 (Nitrogen Oxides Emissions from Natural Gas-Fired Boilers and Water Heaters);

Continued

of sale emission standards for small, typically residential and commercial, water and space heating systems. The amendments to Rule 9–4 lower the current NO_X emission limit for applicable furnaces from 40 ng/J by to 14 ng/J (which matches the limit in SJVUAPCD Rule 4905) with a compliance date of January 1, 2024; followed by a zero-NO_X emission requirement with a compliance date of January 1, 2029.[307] The amendments to Rule 9–6 introduce a zero-NO_X emission standard for residential and commercial water heaters and boilers to be implemented by January 1, 2027 and January 1, 2031 depending on equipment heat rate (*i.e.,* the size of the boiler or water heater).[308]

The fifth step in identifying and selecting controls needed to meet BACM/BACT requirements in the $PM_{2.5}$ SIP Requirements Rule involves determining the earliest date by which a control measure or technology can be implemented in whole or in part. Accordingly, while Bay Area AQMD recently adopted zero-emission requirements for building heating sources, its timeframes for implementing those standards (*i.e.,* 2027–2031) do not conflict with the State's conclusion that a zero-emission standard is not feasible in the timeframe of the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS (*i.e.,* by the December 31, 2023 attainment date).[309] Based on measures currently being implemented by the Bay Area AQMD, South Coast AQMD, and other California air districts as discussed in the SJV $PM_{2.5}$ Plan and herein, we agree with the State's conclusion that the District's current rules include the most stringent requirements that are currently being implemented in the nation for this source category.

We note that the District is currently working to develop a new Serious area attainment plan for purposes of the 2012 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley. Such plan must demonstrate attainment of those NAAQS as expeditiously as practicable but no later than December 31, 2025, or by the most expeditious alternative date practicable and no later than December 31, 2030, in accordance with the requirements of CAA sections 189(b) and 188(e). Under CAA section 189(b)(1)(B), the Serious area plan for the 2012 annual $PM_{2.5}$ NAAQS must include, among other things, provisions to assure that the plan provides for implementation of BACM/BACT and additional feasible measures for the control of direct $PM_{2.5}$ and $PM_{2.5}$ precursors. Given the longer time horizon of the 2012 annual $PM_{2.5}$ NAAQS, affording additional time for potential control measures to achieve emission reductions that may assist in attainment of those NAAQS, we note that nothing in this proposal should be interpreted as speaking to whether new measures for building heating appliances could be implemented in whole or in part within the timeframe of the attainment plan for those NAAQS.

For the foregoing reasons, we propose to find that the SJV $PM_{2.5}$ Plan provides for the implementation of BACM/BACT for sources of direct $PM_{2.5}$ and NO_X as expeditiously as practicable in accordance with the requirements of CAA section 189(b)(1)(B), and in satisfaction of both the Serious area and section 189(d) plan requirements.

c. Section 189(d) Five Percent Requirement

The SJV $PM_{2.5}$ Plan's demonstration of annual five percent reductions in NO_X emissions is in Chapter 5 (''Demonstration of Federal Requirements for 1997 $PM_{2.5}$ Standard''), Section 5.2 (''5% Plan Demonstration'') of the 15 μg/m^3 SIP Revision. As shown in Table 6, the demonstration uses the 2013 base year inventory as the starting point from which the five percent per year emissions reductions are calculated and uses 2017 as the year from which the reductions start. The target required reduction in 2017 is five percent of the base year (2013) inventory, which is a reduction of approximately 15.9 tpd of NO_X, and the targets for subsequent years are additional reductions of five percent per year until the 2023 attainment year. The projected emissions inventories reflect NO_X emissions reductions achieved by baseline (*i.e.,* already adopted) control measures only and the demonstration shows that these NO_X emissions reductions are greater than the required five percent per year.

TABLE 6—2017–2023 ANNUAL FIVE PERCENT EMISSIONS REDUCTIONS DEMONSTRATION FOR THE SAN JOAQUIN VALLEY

Year	% Reduction from 2013 base year (percent)	5% Target (tpd NO_X)	CEPAM Inventory v1.05 (tpd NO_X)	Meets 5%?
2013 (base year)	.....	.....	317.3	
2017	5	301.3	233.4	Yes
2018	10	285.5	221.5	Yes
2019	15	269.6	214.5	Yes
2020	20	253.8	203.3	Yes
2021	25	238.0	191.0	Yes
2022	30	222.1	179.8	Yes
2023	35	206.3	153.6	Yes

Source: 15 μg/m^3 SIP Revision, Table 5–2.

The EPA proposes to find that the State's use of 2017 as the starting point from which the five percent per year emissions reductions should begin is reasonable and consistent with the CAA. As discussed in Section IV.C.1 of this document, the EPA interprets the language under CAA section 189(d) to require a state to submit a new attainment plan to achieve annual reductions ''from the date of such submission until attainment.'' The 15

and Certifying a California Environmental Quality Act Environmental Impact Report, March 15, 2023.

[307] Final Staff Report, Proposed Amendments to Building Appliance Rules—Regulation 9, Rule 4: Nitrogen Oxides from Fan Type Residential Central Furnaces and Rule 6: Nitrogen Oxides Emissions from Natural Gas-Fired Boilers and Water Heaters, p. 8.

[308] Id. at 9.

[309] Furthermore, in light of CARB's work towards state-wide zero-emission requirements for building heating sources, and a recent 9th Circuit opinion on a City of Berkeley ordinance (see *California Restaurant Association* v. *City of Berkeley,* No. 21–16278 (9th Cir. 2023)), we note that there is uncertainty as to the exact timeline on which such requirements may be implemented.

μg/m³ SIP Revision was submitted by the State on November 8, 2021, and the 2018 $PM_{2.5}$ Plan on which it was based was submitted by the State on May 10, 2019. However, the Serious area attainment deadline for the San Joaquin Valley nonattainment area for the 1997 $PM_{2.5}$ NAAQS was December 31, 2015.[310] Accordingly, a plan submittal to meet the requirements under section 189(d) was due by December 31, 2016, and reductions were required to occur as of that date. The decline in emissions starting in 2017 shows that reductions did, in fact, occur within the required timeframe. Furthermore, the State's demonstration shows that NO_X emissions reductions from 2017 to 2023 are greater than the required minimum five percent per year. Thus, the EPA proposes to find that the SJV $PM_{2.5}$ Plan meets the CAA 189(d) requirement to provide for an annual reduction in $PM_{2.5}$ or $PM_{2.5}$ precursor emissions of not less than five percent per year of the amount of such emissions reported in the most recent inventory prepared for the area.

D. Attainment Demonstration and Modeling

1. Statutory and Regulatory Requirements

Section 189(b)(1)(A) of the CAA requires that each Serious area plan include a demonstration (including air quality modeling) that the plan provides for attainment of the $PM_{2.5}$ NAAQS by the applicable attainment date. As discussed at the beginning of Section IV of this proposal, given that the outermost statutory Serious area attainment date for the San Joaquin Valley area (*i.e.,* December 31, 2015) has passed and that the EPA has already found that the San Joaquin Valley area failed to attain by that date, the EPA must evaluate the State's plan for attainment by a later attainment date. Given that the finding of failure to attain triggered the State's obligation to submit a new plan meeting the requirements of section 189(d), the EPA is evaluating the SJV $PM_{2.5}$ Plan in light of the outermost attainment date required in section 189(d). That section, in conjunction with section 172(a)(2), requires that the attainment date be as expeditious as practicable, but not later than five years following the EPA's finding that the area failed to attain the NAAQS by the applicable Serious area attainment date, except that the EPA may extend the attainment date to a date no later than 10 years from the date of this determination (*i.e.,* to November 23, 2026), ''considering the severity of nonattainment and the availability and feasibility of pollution control measures.'' In this case, in the 15 μg/m³ SIP Revision, the State projected such attainment by December 31, 2023.

In the $PM_{2.5}$ SIP Requirements Rule, the EPA explained that the same general requirements that apply to Moderate and Serious area plans under CAA sections 189(a) and 189(b) should apply to plans developed pursuant to CAA section 189(d)—*i.e.,* the plan must include a demonstration (including air quality modeling) that the control strategy provides for attainment of the $PM_{2.5}$ NAAQS as expeditiously as practicable.[311] For purposes of determining the attainment date that is as expeditious as practicable, the state must conduct future year modeling that takes into account emissions growth, known controls (including any controls that were previously determined to be RACM/RACT or BACM/BACT), the five percent per year emissions reductions required by CAA section 189(d), and any other emissions controls that are needed for expeditious attainment of the NAAQS.

The EPA's $PM_{2.5}$ modeling guidance[312] (''Modeling Guidance'') recommends that states use a photochemical model, such as the Comprehensive Air Quality Model with Extensions (CAMx) or Community Multiscale Air Quality Model (CMAQ), to simulate a base case, with meteorological and emissions inputs reflecting a base case year, to replicate concentrations monitored in that year. The Modeling Guidance recommends the following procedures for states to use in attainment demonstrations. The model should undergo a performance evaluation to ensure that it satisfactorily reproduces the concentrations monitored in the base case year. The model may then be used to simulate emissions occurring in other years required for an attainment plan, namely the base year (which may differ from the base case year) and future year.[313] The Modeling Guidance recommends that the modeled response to the emissions changes between the base and future years be used to calculate relative response factors (RRFs). The modeled RRFs are applied to a monitored base design value (computed from monitored concentrations in the base year and neighboring years) to estimate the projected design value in the future year, which can be compared against the NAAQS. In the recommended procedure, the RRFs are calculated for each chemical species component of $PM_{2.5}$, and for each quarter of the year, to reflect their differing responses to seasonal meteorological conditions and emissions. These quarterly RRFs are applied to base period $PM_{2.5}$ concentrations that have been split into species components, using available chemical species measurements. The Modeling Guidance provides additional detail on the recommended approach.[314]

2. Summary of the State's Submission

The 15 μg/m³ SIP Revision includes a modeled demonstration projecting that the San Joaquin Valley will attain the 1997 annual $PM_{2.5}$ NAAQS by December 31, 2023, based on ongoing emissions reductions from baseline control measures, reductions from regulatory measures adopted by CARB and the District following development of the 2018 $PM_{2.5}$ Plan, and a commitment by CARB to adopt and implement an additional regulatory measure to meet an enforceable commitment. CARB's updated attainment demonstration for the 15 μg/m³ SIP Revision built upon modeling performed for the 2018 $PM_{2.5}$ Plan, applying a scaling procedure described below. CARB conducted photochemical modeling with the CMAQ model using inputs developed from routinely available meteorological and air quality data, as well as more detailed and extensive data from the DISCOVER–AQ field study conducted in January and February of 2013.[315] The Plan's primary discussion of the photochemical modeling appears in Appendix K (''Modeling Attainment Demonstration'') of the 15 μg/m³ SIP Revision. The State briefly summarizes the area's air quality problem in Chapter 2 (''Air Quality Challenges and Trends'') of the 2018 $PM_{2.5}$ Plan and the modeling results in Chapter 5 (''Demonstration of Federal Requirements for 1997 $PM_{2.5}$ Standard''), Section 5.3 (''Attainment Demonstration and Modeling'') of the 15 μg/m³ SIP Revision. The State provides

[310] 80 FR 18528.

[311] 40 CFR 51.1011(b)(1); 81 FR 58010, 58102.

[312] Memorandum dated November 29, 2018, from Richard Wayland, Air Quality Assessment Division, Office of Air Quality Planning and Standards, EPA, to Regional Air Division Directors, EPA, Subject: ''Modeling Guidance for Demonstrating Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,'' (''Modeling Guidance'').

[313] In this section, we use the terms ''base case,'' ''base year'' or ''baseline,'' and ''future year'' as described in Section 2.3 of the EPA's Modeling Guidance. CARB refers to the base year as the ''reference year.''

[314] Modeling Guidance, Section 4.4, ''What is the Modeled Attainment Tests [sic] for the Annual Average $PM_{2.5}$ NAAQS.''

[315] NASA, ''Deriving Information on Surface conditions from COlumn and VERtically Resolved Observations Relevant to Air Quality,'' available at *https://www.nasa.gov/mission_pages/discover-aq/index.html.*

a conceptual model of $PM_{2.5}$ formation in the San Joaquin Valley as part of the modeling protocol in Appendix L (''Modeling Protocol'') of the 2018 $PM_{2.5}$ Plan. Appendix J (''Modeling Emission Inventory'') of the 2018 $PM_{2.5}$ Plan describes emissions input preparation procedures. The modeling and its documentation are mainly identical to those submitted in the 2018 $PM_{2.5}$ Plan, except that Chapter 5 and Appendix K were updated to document procedures and results specific to the 2023 attainment demonstration, including the scaling of some model results. The following briefly summarizes the submitted modeling; additional details appear in the EPA's ''Technical Support Document, EPA Evaluation of Air Quality Modeling, San Joaquin Valley $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS,'' February 2020 (''EPA's February 2020 Modeling TSD'') accompanying the EPA's action on the 2018 $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS.

CARB developed a photochemical air quality model application for simulating $PM_{2.5}$ in the San Joaquin Valley. CARB started with a conceptual model of $PM_{2.5}$ formation in the area and a modeling protocol describing the following modeling procedures. The procedures and their outcomes are also documented in Appendix K. CARB selected the episode (*i.e.,* base year) to model, the modeling domain, and the modeling platform (CMAQ version 5.0.2); developed initial and boundary conditions, and base and future year emissions inventories for input into the model; and carried out performance evaluations for both the meteorological and photochemical modeling. Finally, CARB used the modeled $PM_{2.5}$ concentration outputs in the numerical NAAQS attainment test and in an unmonitored area analysis. These procedures are generally consistent with the EPA's recommendations in the Modeling Guidance.

For the 1997 annual $PM_{2.5}$ NAAQS attainment demonstration in the 15 μg/m³ SIP Revision, the State relied on existing model simulations available from previous work for the 2018 $PM_{2.5}$ Plan but applied them differently to reflect more recent conditions and a revised 2023 attainment date. To estimate the 2023 design value, the State used existing simulations to calculate RRFs, scaled the RRFs to reflect 2018–2023 emissions changes, and then applied the RRFs to a 2018 base design value.

The State relied on three CMAQ simulations: (1) a 2013 base case simulation to demonstrate that the model can reasonably reproduce monitored $PM_{2.5}$ concentrations; (2) a 2020 baseline year or ''reference'' simulation; and (3) a 2024 future year simulation. The 2020 and 2024 simulations used projected emissions growth and reductions due to controls reflecting those respective years. The State carried out these simulations for the 2018 $PM_{2.5}$ Plan for 2020 and 2024 attainment demonstrations for various $PM_{2.5}$ NAAQS.

While the State continued to rely on these same model simulations for the 15 μg/m³ SIP Revision, it applied them differently than in the 2018 $PM_{2.5}$ Plan. For the 15 μg/m³ SIP Revision, the State calculated a five-year weighted average of monitored concentrations, centered on 2018, as the base design value, and applied RRFs to the 2018 weighted average to predict the 2023 design value, as in the procedure recommended in the Modeling Guidance. The standard RRF would be the ratio of modeled 2023 concentrations to modeled 2018 concentrations, so the RRF would represent the modeled $PM_{2.5}$ change resulting from emissions changes between 2018 and 2023. Since modeling for the years 2018 and 2023 was not available, the State first calculated RRFs from the available 2020 and 2024 simulations, and then scaled them to account for the emissions changes that occur between 2018 and 2023, as shown in the equations in Appendix K.[316] This scaling of the RRFs can also be understood in terms of model sensitivity to emissions, since the RRF represents the relative change in $PM_{2.5}$ design value that results from a modeled emissions change, *i.e.,* a sensitivity. Essentially, the 2020 and 2024 model results were used to update the estimate of the sensitivity of $PM_{2.5}$ concentration to emissions. That sensitivity was applied to the expected 2018–2023 emissions change, yielding an estimate of the 2018–2023 ambient $PM_{2.5}$ change. The net result was that the State used emissions to scale the 2020–2024 RRF in order to estimate a 2018–2023 RRF, and then applied the 2018–2023 RRF to the 2018 base design value to estimate the 2023 design value. For conservatism, if a scaled RRF was lower than the original, the State used the higher original one so that the projected $PM_{2.5}$ concentration would be higher.

The State applied the RRFs to a five-year weighted average base design value, consistent with Modeling Guidance recommendations, to minimize the influence of year-to-year variability. The base design value used monitored concentrations from 2016–2020, centered on 2018. This updates the attainment demonstration relative to that in the 2018 $PM_{2.5}$ Plan, which used a base design value centered on 2012. For Bakersfield-Planz, the site with the highest base design value, the base design value concentration was 16.3 μg/m³. This calculation procedure incorporated the 2020 design value despite its ''adverse meteorological conditions and increased impacts from wildfires'' that contributed to the San Joaquin Valley not attaining the 1997 annual NAAQS in 2020.[317] CARB notes that because 2020 was unusual due to the COVID–19 pandemic, it also conducted alternative base design value calculations, in which it substituted the average of 2018 and 2019 for 2020, or simply excluded it, yielding Bakersfield base design values of 16.2 and 16.4 μg/m³, respectively.

Table 7 shows the 2018 base design values and 2023 projected future year annual $PM_{2.5}$ design values at monitoring sites in the San Joaquin Valley. The highest 2023 projected design value is 14.7 μg/m³ at the Bakersfield-California monitoring site, which is below the 15.0 μg/m³ level of the 1997 annual $PM_{2.5}$ NAAQS.[318]

TABLE 7—PROJECTED FUTURE ANNUAL $PM_{2.5}$ DESIGN VALUES AT MONITORING SITES IN THE SAN JOAQUIN VALLEY

[μg/m³]

Monitoring site	2018 Base design value	2023 Projected design value
Bakersfield—Planz	16.3	14.7
Visalia	15.2	14.0
Bakersfield—Golden State	15.1	13.6

[316] 15 μg/m³ SIP Revision, Appendix K, p. 64 and Table 31.

[317] Id. at 60.

[318] Id. at 61.

TABLE 7—PROJECTED FUTURE ANNUAL $PM_{2.5}$ DESIGN VALUES AT MONITORING SITES IN THE SAN JOAQUIN VALLEY—Continued

[μg/m³]

Monitoring site	2018 Base design value	2023 Projected design value
Hanford	14.8	12.8
Bakersfield—California Ave.	14.6	13.2
Corcoran	14.3	13.3
Fresno—Hamilton & Winery	13.9	13.0
Fresno—Garland	13.3	12.4
Clovis	12.2	11.4
Turlock	12.2	11.3
Stockton	11.7	11.1
Merced—S Coffee	11.5	10.6
Madera	11.3	10.2
Merced—Main Street	11.3	10.8
Modesto	10.6	9.9
Manteca	9.9	9.4
Tranquility	7.5	6.8

Source: 15 μg/m³ SIP Revision, Table 5–6; and Appendix K, Table 33.

3. The EPA's Review of the State's Submission

The EPA previously evaluated the modeling relied upon in the 15 μg/m³ SIP Revision in the context of the attainment demonstrations in the 2018 $PM_{2.5}$ Plan for the 1997 24-hour $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, and the Moderate area plan for the 2012 $PM_{2.5}$ NAAQS. For more details, see the EPA's February 2020 Modeling TSD. Most aspects of the 2018 $PM_{2.5}$ Plan modeling and the EPA's evaluation of it are the same for the 24-hour and the annual averaging times, and the EPA has found them adequate. These include the modeling protocol, choice of model, meteorological modeling, modeling emissions inventory, choice of model, modeling domain, and procedures for model performance evaluation. However, since the evaluation in the February 2020 Modeling TSD reached conclusions for 24-hour average $PM_{2.5}$, here we discuss aspects of the modeling relevant for the annual average, including for the 1997 annual $PM_{2.5}$ NAAQS.

One aspect that differs between the 24-hour and annual averaging times is the specific calculation procedure for estimating a future design value. In the procedure recommended in the Modeling Guidance for both averaging times, the model is used to calculate RRFs, the ratio of modeled future concentrations to base year concentrations, and the RRF is applied to monitored base year period concentrations; this is done for each monitor, $PM_{2.5}$ species, and calendar quarter. But for the 24-hour averaging time, the recommended procedure is to use the highest individual concentration days in each quarter, whereas for the annual average, the recommended procedure is to use the average of all days in each quarter. For the current action on the 15 μg/m³ SIP Revision, the EPA finds that the State's procedures [319] for estimating 2020 and 2024 design values for annual average $PM_{2.5}$ generally followed the EPA's recommendations and are adequate.

As discussed above, to predict 2023 design values, the State relied on model results from 2020 and 2024, using emissions differences to calculate scaled RRFs to reflect the modeled effect of emissions changes between 2018 and 2023, and then applied these to a 2018 base design value. This amounted to scaling model results by applying modeled $PM_{2.5}$ sensitivity (concentration change per emissions change) to an updated emissions change. The EPA discussed this approach with the State prior to development of the 15 μg/m³ SIP Revision. The EPA has approved comparable scaling in other plans, such as the San Joaquin Valley ''2008 $PM_{2.5}$ Plan'' for the 1997 $PM_{2.5}$ NAAQS,[320] to account for revised emissions estimates for trucks and diesel off-road equipment.[321] The EPA proposed to approve similar scaling for the ''2015 Plan for the 1997 $PM_{2.5}$ Standard'' [322] to account for emissions inventory changes relative to the 2008 plan.[323] In comparison with scaling approaches used previously, the RRF scaling approach in the 15 μg/m³ SIP Revision has some advantages. The RRFs are calculated on a seasonal basis and account for chemical interactions between the separate components of $PM_{2.5}$ since they incorporate modeled changes in all the components simultaneously. The approach thus accounts for seasonal variation in model responses and for possible nonlinear and nonadditive responses to emissions changes. A simpler scaling approach might use only the total $PM_{2.5}$ as opposed to individual $PM_{2.5}$ components, only annual averages instead of quarterly averages, or it may assume that sensitivity to individual species emissions changes can be directly added. While these are not necessarily incorrect, especially for small emissions changes, the approach in the 15 μg/m³ SIP Revision of scaling RRFs avoids potential inaccuracies resulting from the underlying assumptions of simpler approaches.

The EPA notes that scaling is not the standard approach for an attainment demonstration recommended in the EPA's Modeling Guidance. Typically, RRFs are calculated directly from a model prediction for a base year, which has undergone a performance evaluation against observations, and for a future year; the RRFs are then applied to a base design value that reflects monitored data representative of the base year. In the 15 μg/m³ SIP Revision, the State started from the standard RRFs, but adjusted them to reflect the emissions changes between two future years; 2018 and 2023 are both future with respect to the original 2013 model base case year. The State applied the RRFs to recent (2018-centered) monitor data, rather than to data reflective of the 2013 base

[319] Id. at 19.

[320] CARB submitted the ''2008 $PM_{2.5}$ Plan'' to the EPA on June 30, 2008.

[321] 76 FR 69896, November 9, 2011.

[322] CARB submitted the ''2015 Plan for the 1997 $PM_{2.5}$ Standard'' to the EPA on June 25, 2015.

[323] 81 FR 6936, February 9, 2016.

case year. This scaling approach is self-consistent and takes advantage of existing modeling as well as of more recent emissions and monitoring data. Given that the 15 μg/m^3 SIP Revision is an amendment to the 2018 $PM_{2.5}$ Plan to demonstrate attainment within the same statutory timeframe required under section 189(d) of the CAA (as discussed in Section I.B of this proposal), and that the scaling approach is used for estimating future design values for years close to those for which modeling is available, the EPA proposes to find the scaling approach used in the 15 μg/m^3 SIP Revision to be acceptable.

As mentioned above, the State calculated alternative base design values to exclude the unusual year of 2020. The State did not discuss the 2023 design values derived from those calculations. Since the alternative base design values are within 0.1 μg/m^3 of the 16.3 μg/m^3 value that was used, and the projected 14.7 μg/m^3 2023 design value is well below the NAAQS level of 15.0 μg/m^3, those alternative design value calculations would not change the conclusion of projected attainment in 2023.

Another modeling aspect that can differ between 24-hour and annual average is the focus of the model performance evaluation on the respective averaging times. For the 24-hour average, it is especially important that modeled concentrations on the highest days are comparable to those on the highest monitored days because calculation of the design value for the 24-hour $PM_{2.5}$ NAAQS uses the 98th percentile concentrations. For the annual average, peak concentrations continue to be important, but lower concentration days are also important because all days are included in the average. Under- and over-predictions on non-peak days may average out and have little overall effect on the modeled annual concentration, but systematic underprediction on non-peak days could lead to model underprediction of the annual average concentration. This problem of model bias is mitigated by the use of the model in a relative sense as recommended in the Modeling Guidance. In the RRF, model bias ''cancels out'' to a degree since it would be present in both its numerator (future year) and its denominator (base year). Applying the RRF to monitored base year concentration in this way anchors the final model prediction to real-world concentrations. Further, the Modeling Guidance recommends that RRFs be calculated on a quarterly basis to better account for emissions sources and atmospheric chemistry that differ between the seasons.

The 2018 $PM_{2.5}$ Plan did not include a separate model performance evaluation for the 24-hour and annual $PM_{2.5}$ averaging times; the State used statistical and graphical analyses applicable to both. The EPA evaluated the modeling for the 1997 annual $PM_{2.5}$ NAAQS using that same information, much of which has already been discussed in the EPA's February 2020 Modeling TSD. For the most part, in the TSD, the EPA did not distinguish between the two averaging times either but drew conclusions for the 24-hour averaging time rather than the annual averaging time. We did note a relatively large negative normalized bias (underprediction) in the ammonium and nitrate performance statistics [324] for the 2nd quarter for monitoring sites in Bakersfield, Fresno, and Visalia; and we add here that the 3rd quarter has similar negative bias. Underprediction of total $PM_{2.5}$ in the 2nd and 3rd quarters is also evident in time series plots for most monitoring sites, though by only a small amount for several monitoring sites.[325] The RRF procedure removes much of this bias, such that the underprediction in the model performance evaluation does not translate into an underpredicted future design value. The EPA's February 2020 Modeling TSD noted that because the 2nd and 3rd quarters have projected concentrations that are less than half of the concentrations in the 1st and 4th quarters, this may have a small influence on annual average concentrations. (It has even less influence on the 24-hour average because peak 24-hour concentrations typically occur in winter, *i.e.,* in the 1st and 4th quarters). For example, the worst quarterly underprediction for nitrate was for the 3rd quarter and occurred when the quarterly total $PM_{2.5}$ concentration was 9.4 μg/m^3. By contrast, for the 1st quarter, there was a small overprediction in nitrate when the quarterly total $PM_{2.5}$ concentration was 21.1 μg/m^3. That is, nitrate predictions are more biased during the quarters with low $PM_{2.5}$ concentrations. This is apparent from the Plan's ''bugle'' plot for the four monitors with speciated data.[326] Large (negative) biases in nitrate predictions occur for the lowest quarterly nitrate concentrations. For the higher concentrations that have the largest effect on the annual average, the nitrate fractional bias is sometimes positive and sometimes negative. For total $PM_{2.5}$, the fractional bias has a similar seasonal pattern to that of nitrate, with underprediction during the 2nd and 3rd quarters when quarterly $PM_{2.5}$ concentration values are in the 5–10 μg/m^3 range, and a small bias when quarterly concentrations are in the 20–30 μg/m^3 range. For the overall annual average, performance is good relative to that seen in other modeling studies with lower values of bias and error for multiple performance statistics for nitrate, as well as for the other $PM_{2.5}$ species and total $PM_{2.5}$.[327]

The high $PM_{2.5}$ concentration days are generally captured by the model even though some are underpredicted in December at certain monitoring sites such as Fresno. Overall, the modeled site maxima are comparable to the measurements. Also, the frequency of high and low days generally matches observations so the annual, as well as the daily, model performance is acceptable.

The EPA must make several findings in order to approve the modeled attainment demonstration in an attainment plan SIP submission. First, we must find that the attainment demonstration's technical bases, including the emissions inventories and air quality modeling, are adequate. As discussed in Section IV.A of this preamble, we have previously approved the emissions inventories on which the SJV $PM_{2.5}$ Plan's attainment demonstration and related provisions are based. Furthermore, the EPA has evaluated the State's choice of model and the extensive discussion in the Modeling Protocol and Appendix K about modeling procedures, tests, and performance evaluations. We find that the analyses are consistent with the EPA's guidance on modeling for $PM_{2.5}$ attainment planning purposes. Based on these reviews, we find that the modeling in the Plan is adequate for the purposes of supporting the RFP demonstration and demonstration of attainment by December 31, 2023, and are proposing to approve the air quality modeling. For further detail, see the EPA's February 2020 Modeling TSD.

Second, we must find that the SIP submittal provides for expeditious attainment through the timely implementation of the control strategy, including RACM, BACM, and any other emissions controls that are needed for expeditious attainment. As discussed in Section IV.C of this preamble, we are proposing to approve the control strategy in the SJV $PM_{2.5}$ Plan, including the BACM/BACT demonstration and the five percent emissions reduction

[324] 15 μg/m^3 SIP Revision, Appendix K, tables 20–23.

[325] Id. at figures S.41–S.52.

[326] Id. at Figure 13.

[327] Id. at Figure 14.

requirement under CAA sections 189(b)(1)(B) and 189(d), respectively.

Third, the EPA must find that the emissions reductions that are relied on for attainment in the SIP submission are creditable. As discussed in Section IV.C.2.a of this document, the SJV $PM_{2.5}$ Plan relies principally on rules that have already been adopted and implemented by the State, and approved by the EPA, to achieve the emissions reductions needed to attain the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley by December 31, 2023. We present our evaluation of the rules in Section IV.C.2.a of this document and in Sections III and IV of the EPA's 1997 Annual $PM_{2.5}$ TSD. We find that all but two of these rules are SIP-creditable and that the total emissions reductions attributed to the two measures that are not SIP-creditable have de minimis impacts on the attainment demonstration in the Plan. The balance of the reductions that the State has modeled to achieve attainment by this date is currently represented by an enforceable commitment that accounts for 1.8 percent of the NO_X and 0.9 percent of the direct $PM_{2.5}$ emissions reductions needed for attainment.

The EPA may accept enforceable commitments in lieu of adopted control measures in attainment demonstrations when the circumstances warrant it and the commitments meet the three criteria the EPA has established for this purpose. The EPA is proposing to find that circumstances here warrant the consideration of enforceable commitments and that the three criteria are met: (1) The commitment constitutes a limited portion of the required emissions reductions; (2) the State has demonstrated its capability to meet their commitments; and (3) the commitment is for an appropriate timeframe. We therefore propose to approve the State's reliance on the enforceable commitments in its attainment demonstration.

Based on these evaluations, we propose to determine that the SJV $PM_{2.5}$ Plan provides for attainment of the 1997 annual $PM_{2.5}$ NAAQS by the most expeditious date practicable, consistent with the requirements of CAA section 189(d). We present the basis for this proposed determination in Section IV.C.2.a of this proposal. Furthermore, because the December 31, 2015 Serious area attainment date has passed, and the EPA found that the area failed to attain by the Serious area attainment date, we are evaluating the State's compliance with the Serious area plan requirements in light of the attainment date required under CAA section 189(d).[328] For the reasons described in this section, in addition to our review of the SJV $PM_{2.5}$ Plan's control measure evaluations, the EPA is proposing to approve the attainment date of December 31, 2023 in the SJV $PM_{2.5}$ Plan under section 172(a)(2), given the severity of nonattainment in the San Joaquin Valley nonattainment area and the feasibility of control measures. We are also proposing to determine that the Plan meets the Serious area attainment plan requirements under CAA section 189(b)(1)(A).

E. Reasonable Further Progress and Quantitative Milestones

1. Statutory and Regulatory Requirements

Section 172(c)(2) of the CAA provides that all nonattainment area plans shall require reasonable further progress (RFP) toward attainment. In addition, CAA section 189(c) requires that all $PM_{2.5}$ nonattainment area plans include quantitative milestones to be achieved every three years until the area is redesignated to attainment and that demonstrate RFP. Section 171(l) of the Act defines RFP as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by [Part D] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date.'' Neither subpart 1 nor subpart 4 of part D, title I of the Act requires that states achieve a set percentage of emissions reductions in any given year for purposes of satisfying the RFP requirement. For purposes of the $PM_{2.5}$ NAAQS, the EPA has interpreted the RFP requirement to require that the nonattainment area plans show annual incremental emissions reductions sufficient to maintain ''generally linear progress'' toward attainment by the applicable deadline.[329]

Attainment plans for PM nonattainment areas should include detailed schedules for compliance with emissions control measures in the area and provide corresponding annual emissions reductions to be achieved by each milestone in the schedule.[330] In reviewing an attainment plan under subpart 4, the EPA considers whether the annual incremental emissions reductions to be achieved are reasonable in light of the statutory objective of timely attainment. Although early implementation of the most cost-effective control measures is often appropriate, states should consider both cost-effectiveness and pollution reduction effectiveness when developing implementation schedules for control measures and may implement measures that are more effective at reducing $PM_{2.5}$ earlier to provide greater public health benefits.[331]

In addition to the EPA's longstanding guidance on the RFP requirements for PM, the Agency has established specific regulatory requirements for the $PM_{2.5}$ NAAQS in the $PM_{2.5}$ SIP Requirements Rule for purposes of satisfying the Act's RFP requirements and provides related guidance in the preamble to the rule. Specifically, under the $PM_{2.5}$ SIP Requirements Rule, each $PM_{2.5}$ attainment plan must contain an RFP analysis that includes, at minimum, the following four components: (1) an implementation schedule for control measures; (2) RFP projected emissions for direct $PM_{2.5}$ and all $PM_{2.5}$ plan precursors for each applicable milestone year, based on the anticipated control measure implementation schedule; (3) a demonstration that the control strategy and implementation schedule will achieve reasonable progress toward attainment between the base year and the attainment year; and (4) a demonstration that by the end of the calendar year for each triennial milestone date for the area, pollutant emissions will be at levels that reflect either generally linear progress or stepwise progress in reducing emissions on an annual basis between the base year and the attainment year.[332] Additionally, states should estimate the RFP projected emissions for each quantitative milestone year by sector on a pollutant-by-pollutant basis.[333]

Section 189(c) of the Act requires that $PM_{2.5}$ attainment plans include quantitative milestones that demonstrate RFP. The purpose of the quantitative milestones is to allow periodic evaluation of the area's progress towards attainment of the $PM_{2.5}$ NAAQS consistent with RFP requirements. Because RFP is an annual emission reduction requirement and the quantitative milestones are to be achieved every three years, when a state demonstrates compliance with the quantitative milestone requirement, it should also demonstrate that RFP has been achieved during each of the relevant three years. Quantitative milestones should provide an objective means to evaluate progress toward

[328] See CAA section 172(a)(2) and 179(d); 40 CFR 51.1004(a)(3).

[329] General Preamble Addendum, 42015.

[330] Id. at 42016.

[331] Id.

[332] 40 CFR 51.1012(a).

[333] 81 FR 58010, 58056.

attainment meaningfully, *e.g.,* through imposition of emissions controls in the attainment plan and the requirement to quantify those required emissions reductions. The CAA also requires a state to submit, within 90 days after each three-year quantitative milestone date, a milestone report that includes technical support sufficient to document completion statistics for appropriate milestones, *e.g.,* of the calculations and any assumptions made concerning the emission reductions to date.[334]

The CAA does not specify the starting point for counting the three-year periods for quantitative milestones under CAA section 189(c). In the General Preamble and General Preamble Addendum, the EPA interpreted the CAA to require that the starting point for the first three-year period be the due date for the Moderate area plan submission.[335] In keeping with this historical approach, the EPA established December 31, 2014, the deadline that the EPA established for a state's submission of any additional attainment-related SIP elements necessary to satisfy the subpart 4 Moderate area requirements for the 1997 $PM_{2.5}$ NAAQS, as the starting point for the first three-year period under CAA section 189(c) for the 1997 $PM_{2.5}$ NAAQS in the San Joaquin Valley.[336]

Under the $PM_{2.5}$ SIP Requirements Rule, each attainment plan submission for an area designated nonattainment for the 1997 $PM_{2.5}$ NAAQS before January 15, 2015, must contain quantitative milestones to be achieved no later than three years after December 31, 2014, and every three years thereafter until the milestone date that falls within three years after the applicable attainment date.[337] If the area fails to attain, this post-attainment date milestone provides the EPA with the tools necessary to monitor the area's continued progress toward attainment while the state develops a new attainment plan.[338] Quantitative milestones must provide for objective evaluation of RFP toward timely attainment of the $PM_{2.5}$ NAAQS in the area and include, at minimum, a metric for tracking progress achieved in implementing SIP control measures, including BACM and BACT, by each milestone date.[339]

Because the EPA designated the San Joaquin Valley area as nonattainment for the 1997 annual $PM_{2.5}$ NAAQS effective April 5, 2005,[340] the plan for this area must contain quantitative milestones to be achieved no later than three years after December 31, 2014 (*i.e.,* by December 31, 2017), and every three years thereafter until the milestone date that falls within three years after the applicable attainment date.[341] For a Serious area attainment plan with a statutory attainment date of December 31, 2015, the relevant quantitative milestone year is December 31, 2017. However, as discussed in Section III of this proposal, the area did not attain by the statutory Serious area attainment date and evaluating reasonable further progress toward that date does not make sense. We are therefore evaluating the Serious area obligations based on the attainment date the State must meet in a plan required under CAA section 189(d).[342] To meet CAA section 189(d), the SJV $PM_{2.5}$ Plan includes a demonstration that the area will attain by December 31, 2023. Therefore, in accordance with 40 CFR 51.1013(a)(4), the attainment plan for this area must contain quantitative milestones to be achieved no later than December 31, 2017, December 31, 2020, December 31, 2023, and December 31, 2026.

2. Summary of the State's Submission

Appendix H (''RFP, Quantitative Milestones, and Contingency'') of the 15 μg/m³ SIP Revision contains the State's RFP demonstration and quantitative milestones for the 1997 annual $PM_{2.5}$ NAAQS, and the Valley State SIP Strategy contains the control measure commitments that CARB has identified as mobile source quantitative milestones.[343] Given the State's conclusions that ammonia, SO_X, and VOC emissions do not contribute significantly to $PM_{2.5}$ levels that exceed the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley, as discussed in Section IV.B of this proposed rule, the RFP demonstration provided by the State addresses emissions of direct $PM_{2.5}$ and NO_X.[344] Similarly, the State developed quantitative milestones based on the Plan's control strategy measures that achieve reductions in emissions of direct $PM_{2.5}$ and NO_X.[345] Appendix H of the 15 μg/m³ SIP Revision identifies the milestone dates of December 31, 2017, December 31, 2020, December 31, 2023, and December 31, 2026, for the 1997 annual $PM_{2.5}$ NAAQS.[346] The RFP analysis in the Plan shows generally linear progress toward attainment of the 1997 annual $PM_{2.5}$ NAAQS.

We describe the RFP analysis and quantitative milestones in the SJV $PM_{2.5}$ Plan in greater detail below.

Reasonable Further Progress

The State addresses the RFP and quantitative milestone requirements in Appendix H of the 15 μg/m³ SIP Revision. The State estimates that emissions of direct $PM_{2.5}$ and NO_X will generally decline from the 2013 base year to the projected 2023 attainment year, and beyond to the 2026 post-attainment quantitative milestone year. The Plan's emissions inventory shows that direct $PM_{2.5}$ and NO_X are emitted by a large number and range of sources in the San Joaquin Valley. Table H–2 in Appendix H contains an anticipated implementation schedule for District regulatory control measures and Table 4–8 in Chapter 4 of the 15 μg/m³ SIP Revision contains an anticipated implementation schedule for CARB control measures in the San Joaquin Valley. Table H–5 in Appendix H contains projected emissions for each quantitative milestone year. These emissions levels reflect both baseline emissions projections and commitments to achieve additional emission reductions through implementation of new control measures by 2023.[347]

The SJV $PM_{2.5}$ Plan identifies emissions reductions needed for attainment of the 1997 annual $PM_{2.5}$ NAAQS by 2023,[348] and identifies San Joaquin Valley's progress toward attainment in each milestone year.[349] The State and District set RFP targets for

[334] CAA section 189(c)(2) and 40 CFR 51.1013(b). See also, $PM_{2.5}$ SIP Requirements Rule, 58065 and General Preamble Addendum, 42016–42017.

[335] General Preamble, 13539, and General Preamble Addendum, 42016.

[336] 79 FR 31566 (final rule establishing subpart 4 Moderate area classifications and deadline for related SIP submissions). Although this final rule did not affect any action that the EPA had previously taken under CAA section 110(k) on a SIP for a $PM_{2.5}$ nonattainment area, the EPA noted that states may need to submit additional SIP elements to fully comply with the applicable requirements of subpart 4, even for areas with previously approved $PM_{2.5}$ attainment plans, and that the deadline for any such additional plan submissions was December 31, 2014. Id. at 31569.

[337] 40 CFR 51.1013(a)(4).

[338] 81 FR 58010, 58064.

[339] Id. at 58064 and 58092.

[340] 70 FR 944.

[341] 40 CFR 51.1013(a)(4).

[342] See CAA section 179(d); 40 CFR 51.1004(a)(3).

[343] Valley State SIP Strategy, Table 7 (identifying State measures scheduled for action between 2017 and 2023, inter alia) and CARB Resolution 18–49, ''San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan'' (October 25, 2018), p. 5 (adopting State commitment to begin public processes and propose for Board consideration the list of proposed SIP measures outlined in the Valley State SIP Strategy and included in Attachment A, according to the schedule set forth therein).

[344] 15 μg/m³ SIP Revision, Appendix H, p. H–1.

[345] Id. at H–18 and H–19 (District milestones) and H–21 and H–22 (State milestones).

[346] Id. at Table H–11.

[347] Id. at tables H–3 (emissions projections based on baseline measures), H–4 (reductions from control measure commitments), and H–5 (emissions projections accounting for controls). The 15 μg/m³ SIP Revision includes commitments for reductions from new control measures by 2023.

[348] Id. at Table H–6.

[349] Id. at Table H–7.

each of the quantitative milestone years as shown in Table H–8 of Appendix H of the 15 μg/m³ SIP Revision.

According to the Plan, reductions in both direct $PM_{2.5}$ and NO_X emissions from 2013 base year levels result in emissions levels consistent with attainment in the 2023 attainment year. Based on these analyses, CARB and the District assert that the adopted control strategy and additional commitment for reductions from Heavy-Duty I/M by 2023 are adequate to meet the RFP requirement for the 1997 annual $PM_{2.5}$ NAAQS.

The State and District's control strategy for attaining the 1997 annual $PM_{2.5}$ NAAQS relies on ongoing emissions reductions from baseline measures, emissions reductions from three measures adopted following the development of the 2018 $PM_{2.5}$ Plan and prior to adoption of the 15 μg/m³ SIP Revision, and an aggregate tonnage commitment for the remaining reductions needed for attainment. The majority of the NO_X and $PM_{2.5}$ reductions needed for attainment result from CARB's current mobile source control program. The attainment control strategy in the Plan is projected to achieve total emission reductions of 156 tpd NO_X and 4.54 tpd direct $PM_{2.5}$, of which 98 percent (153 tpd) and 99 percent (4.5 tpd), respectively, are attributed to CARB's baseline mobile source program.[350] These on-going controls will thus result in additional reductions in NO_X and direct $PM_{2.5}$ emissions between the 2013 base year and 2023 attainment year.[351]

CARB's mobile source control program provides significant ongoing reductions in emissions of direct $PM_{2.5}$ and NO_X from on-road and non-road mobile sources, such as light duty vehicles, heavy-duty trucks and buses, non-road equipment, and fuels. For on-road and non-road mobile sources, which represent the largest sources of NO_X emissions in the San Joaquin Valley, Appendix H of the 15 μg/m³ SIP Revision identifies five mobile source regulations and control programs that limit emissions of direct $PM_{2.5}$ and NO_X: The On-Road Heavy-Duty Diesel Vehicles (In-Use) Regulation (''Truck and Bus Regulation''), the In-Use Off-Road Diesel-Fueled Fleets Regulation (''Off-Road Regulation''), the California Low-NO_X Engine Standard for new on-road heavy-duty engines used in medium and heavy-duty trucks purchased in California, Heavy-Duty I/M, and the second phase of the Advanced Clean Cars Program (''ACC 2'').[352] CARB's mobile source BACM analysis in Appendix D of the 15 μg/m³ SIP Revision provides a more comprehensive overview of each of these programs and regulations, among many others.[353] CARB's emission projections for mobile sources are presented in the Plan's emissions inventory.[354]

The District has also adopted numerous stationary and area source rules for direct $PM_{2.5}$ and NO_X emission sources that are projected to contribute to RFP and attainment of the $PM_{2.5}$ standards. These include control measures for stationary internal combustion engines, residential fireplaces, glass manufacturing facilities, agricultural burning sources, and various sizes of boilers, steam generators, and process heaters used in industrial operations. Appendix H of the 15 μg/m³ SIP Revision identifies stationary source regulatory control measures implemented by the District that achieve ongoing $PM_{2.5}$ and/or NO_X reductions through the Plan's RFP milestone years and the attainment year.[355] These measures include rule amendments that the District adopted in 2019 through 2022, as summarized in Table 2 of the EPA's 1997 Annual $PM_{2.5}$ TSD. The District's stationary and area source BACM analysis in Appendix C of the 2018 $PM_{2.5}$ Plan provide a more comprehensive overview of each of these programs and regulations, among many others.[356]

Quantitative Milestones

Appendix H of the 15 μg/m³ SIP Revision identifies December 31 milestone dates for the 2017 and 2020 RFP milestone years, the 2023 attainment year, and a post-attainment milestone year of 2026.[357] Appendix H also identifies target emissions levels to meet the RFP requirement for direct $PM_{2.5}$ and NO_X emissions for each of these milestone years[358] and control measures that CARB and the District plan to implement by each of these years, in accordance with the control strategy in the Plan.[359] The identified regulatory measures include State measures for light-duty vehicles and non-road vehicles and several District measures for stationary and area sources.[360]

Specifically, for the 2017 milestone year, Appendix H of the 15 μg/m³ SIP Revision describes the District's quantitative milestone as a report on the implementation of several District rules, and CARB's quantitative milestones as a report on three measure-specific milestones: (1) actions taken between 2012 and 2017 to implement the Truck and Bus Regulation that required particulate filters and cleaner engine standards on existing heavy-duty diesel trucks and buses in California; (2) implementation of the ''Advanced Clean Cars Program'' (''ACC Program'') between 2014 and 2017; and (3) implementation of the ''In-Use Off-Road Diesel-Fueled Fleets Regulation'' (''Off-Road Regulation'') between 2014 and 2017.[361]

CARB submitted its 2017 Quantitative Milestone Report for the San Joaquin Valley to the EPA on December 20, 2018.[362] The report includes a certification that CARB and the District met the 2017 quantitative milestones identified in the 2018 $PM_{2.5}$ Plan for the 1997 $PM_{2.5}$ NAAQS and discusses the State's and District's progress on implementing the three CARB measures and six District measures identified in Appendix H as quantitative milestones for the 2017 milestone year. On February 15, 2021, the EPA determined that the 2017 Quantitative Milestone Report was adequate.[363] In our evaluation of the 2017 Quantitative Milestone Report, we found that the control measures in the Plan are in effect, consistent with the RFP demonstration in the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS, but we noted that the determination of adequacy did not constitute approval of any component of the SJV $PM_{2.5}$ Plan.[364]

[350] 15 μg/m³ SIP Revision, Chapter 4, Table 4–7.

[351] 15 μg/m³ SIP Revision, Appendix H, Table H–4.

[352] Id. at H–20 and H–21. Because the ACC 2 measure is not scheduled for implementation until 2026 (see 15 μg/m³ SIP Revision, Table 4–8), which is after the January 1, 2023 implementation deadline under 40 CFR 51.1011(b)(5) for control measures necessary for attainment by December 31, 2023, we are not reviewing this program as part of the control strategy in the SJV $PM_{2.5}$ Plan.

[353] 15 μg/m³ SIP Revision, Appendix D, Chapter IV.

[354] 2018 $PM_{2.5}$ Plan, Appendix B.

[355] 15 μg/m³ SIP Revision, Appendix H, Table H–2.

[356] 15 μg/m³ SIP Revision, Appendix D, Chapter IV, and Appendix C.

[357] 15 μg/m³ SIP Revision, Appendix H, Table H–11.

[358] Id. at Table H–5.

[359] Id. at H–20 and H–21 (for CARB milestones) and H–17 and H–18 (for District milestones).

[360] Id. at H–18 and H–19 (District milestones), and H–21 and H–22 (State milestones).

[361] Id. at H–21 to H–22.

[362] Letter dated December 20, 2018, from Richard W. Corey, Executive Officer, CARB, to Michael Stoker, Regional Administrator, EPA Region IX, with attachment ''2017 Quantitative Milestone Report for the 1997 and 2006 NAAQS.''

[363] Letter dated February 15, 2021, from Deborah Jordan, Acting Regional Administrator, EPA Region IX, to Richard W. Corey, Executive Officer, CARB, with enclosure titled ''EPA Evaluation of 2017 Quantitative Milestone Report.''

[364] Id.

For the 2020 milestone year, Appendix H of the 15 μg/m³ SIP Revision describes the District's quantitative milestone as a report on ''[t]he status of SIP measures adopted between 2017 and 2020 as per the schedule included in the adopted Plan.[365] The schedule for development of new or revised SIP measures in the 15 μg/m³ SIP Revision identifies ''action dates'' between 2017 and 2020 for eight District measures listed in tables 4–4 and 4–5 of Chapter 4, including, for example, ''Rule 4311, Flares,'' ''Rule 4702, Internal Combustion Engines,'' and ''Rule 4901, Wood Burning Fireplaces and Wood Burning Heaters.'' [366] Appendix H describes CARB's quantitative milestone as a report on two measure-specific milestones: (1) actions taken between 2017 and 2020 to implement the Truck and Bus Regulation, and (2) the ''status of SIP measures adopted between 2017 and 2020, including *Advanced Clean Cars 2* and the *Heavy-Duty Vehicle Inspection and Maintenance Program.*'' The schedule for development of new or revised CARB measures in the 15 μg/m³ SIP Revision identifies ''action'' dates between 2017 and 2020 for 16 CARB measures listed in Table 4–8 of Chapter 4, including, for example, the ''Heavy-Duty Vehicle Inspection and Maintenance Program'' and ''Small Off-Road Engines.'' [367]

For the 2023 milestone year, the District's quantitative milestone is to report on the status of SIP measures adopted between 2020 and 2023.[368] The schedule for development of new or revised SIP measures in the 15 μg/m³ SIP Revision identifies ''action dates'' in 2021 and 2022 for ''Rule 4354, Glass Melting Furnaces,'' ''Rule 4352, Solid Fuel-Fired Boilers, Steam Generators And Process Heaters,'' and ''Rule 4550, Conservation Management Practices.'' [369] Appendix H describes CARB's quantitative milestone as a report on actions taken between 2020 and 2023 to implement (1) the Truck and Bus Regulation, and (2) the ''California *Low-NO_X Engine Standard* for new on-road heavy-duty engines used in medium- and heavy-duty trucks purchased in California.''[370]

Finally, for the 2026 milestone year, Appendix H of the 15 μg/m³ SIP Revision describes the District's quantitative milestone as a report on (1) ''[i]mplementation of amendments to [the] *Residential Wood Burning Strategy,* including any regulatory amendments to the District Burn Cleaner incentive program''; (2) ''[i]mplementation of amendments to [the] *Commercial Under-Fired Strategy,* including any regulatory amendments and implementation of [the] related incentive-based strategy; and (3) ''[t]he status of SIP measures adopted between 2023 and 2026 as per the schedule included in the adopted Plan.[371] The schedule for development of new or revised SIP measures in the 15 μg/m³ SIP Revision identifies ''implementation begins'' dates of 2023 and 2024 for seven District measures listed in Table 4–4 of Chapter 4, and ''ongoing'' implementation for three incentive-based measures in Table 4–5. Appendix H describes CARB's quantitative milestone as a report on (1) the number of pieces of agricultural equipment upgraded to Tier 4 through 2026 due to the ''Accelerated Turnover of Agricultural Tractors Measure,'' and (2) the number of trucks and buses upgraded to a low-NO_X engine or cleaner through 2026 due to the ''Accelerated Turnover of Trucks and Buses Measure.'' [372]

3. The EPA's Review of the State's Submission

Reasonable Further Progress

The EPA has evaluated the RFP demonstration in Appendix H of the 15 μg/m³ SIP Revision and, for the following reasons, proposes to find that it satisfies the statutory and regulatory requirements for RFP.

First, the Plan contains an anticipated implementation schedule for the attainment control strategy, including all BACM and BACT control measures and CARB's aggregate tonnage commitment, as required by 40 CFR 51.1012(a)(1). The implementation schedule is found in tables 4–4, 4–5, and 4–8 of the 15 μg/m³ SIP Revision and in Table H–2 of Appendix H. The 15 μg/m³ SIP Revision documents the State's, District's, and MPOs' conclusions that they are implementing all BACM/BACT and additional feasible measures for direct $PM_{2.5}$ and NO_X emissions in the San Joaquin Valley as expeditiously as practicable.[373]

Second, the RFP demonstration presents projected emissions levels for direct $PM_{2.5}$ and NO_X to be achieved by each applicable milestone year as required by 40 CFR 51.1012(a)(2). These projections are based on the continued implementation of existing control measures in the area (*i.e.,* baseline measures) and the commitment by CARB to achieve additional emissions reductions by 2023, and reflect full implementation of the State's, District's, and MPOs' attainment control strategy for these pollutants.

Third, the projected emissions levels based on the implementation schedule in the Plan demonstrate that the control strategy will achieve direct $PM_{2.5}$ and NO_X emissions reductions at rates representing generally linear progress towards attainment between the 2013 baseline year and the 2023 attainment year as required by 40 CFR 51.1012(a)(3). The projected emissions levels for 2017, 2020, 2023, and 2026 are approximately at or below the target RFP emission levels for each year, and the decreases in emissions levels lead to the achievement of the reductions required for attainment in 2023. The target emissions levels and associated control requirements provide for objective evaluation of the area's progress towards attainment of the 1997 annual $PM_{2.5}$ NAAQS.

For these reasons, we propose to determine that the SJV $PM_{2.5}$ Plan satisfies the requirements for RFP in CAA section 172(c)(2) and 40 CFR 51.1012 for the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley.

Quantitative Milestones

Appendix H of the 15 μg/m³ SIP Revision identifies milestone dates (*i.e.,*

[365] 15 μg/m³ SIP Revision, Appendix H, p. H–18.

[366] 15 μg/m³ SIP Revision, Chapter 4, tables 4–4 and 4–5. See also email dated November 12, 2019, from Jon Klassen, SJVUAPCD to Wienke Tax, EPA Region IX, ''RE: follow up on aggregate commitments in SJV $PM_{2.5}$ plan'' (attaching ''District Progress In Implementing Commitments with 2018 $PM_{2.5}$ Plan,'' stating the District's intent to take action on the listed rules and measures by beginning the public process on each measure and then proposing the rule or measure to the SJVUAPCD Governing Board).

[367] Id. at Table 4–8. See also email dated November 12, 2019, from Sylvia Vanderspek, CARB to Anita Lee, EPA Region IX, ''RE: SJV $PM_{2.5}$ information'' (attaching ''Valley State SIP Strategy Progress'') and December 2018 Staff Report, pp. 14–15 (stating CARB's intent to ''bring to the Board or take action on the list of proposed State measures for the Valley'' by the action dates specified in Table 2).

[368] We note that the District's identified quantitative milestone for 2023 on page H–18 of Appendix H contains a typographical error, as it includes a District report on ''[t]he status of SIP measures adopted between 2017 and 2020 as per the schedule included in the adopted Plan.'' SJVUAPCD confirmed via an email that the District intended to refer here to the status of SIP measures adopted between 2020 and 2023, consistent with the schedule in the 15 μg/m³ SIP Revision. See email dated January 26, 2022, from Jon Klassen, SJVUAPCD, to Ashley Graham, EPA Region IX, ''Subject: FW: 2023 QM Report commitment in Attainment Plan Revision.''

[369] 15 μg/m³ SIP Revision, Chapter 4, Table 4–4.

[370] 15 μg/m³ SIP Revision, Appendix H, p. H–22.

[371] Id. at H–19.

[372] Id. at H–22.

[373] The BACM/BACT control strategy that provides the basis for these emissions projections is described in Chapter 4, Appendix C, and Appendix D of the 15 μg/m³ SIP Revision.

December 31 of 2017, 2020, 2023, and 2026) that are consistent with the requirements of 40 CFR 51.1013(a)(4). The Plan also identifies target emissions levels for direct $PM_{2.5}$ and NO_X to be achieved by these milestone dates through implementation of the control strategy. These target emissions levels and associated control requirements provide for objective evaluation of the area's progress towards attainment of the 1997 annual $PM_{2.5}$ NAAQS.

CARB and District's quantitative milestones in Appendix H are to implement specific measures identified in the Plan. These milestones provide an objective means for tracking CARB and the District's progress in implementing their respective control strategies and thus, provide for objective evaluation of the San Joaquin Valley's progress toward timely attainment. For these reasons, we propose to determine that the SJV $PM_{2.5}$ Plan satisfies the requirements for quantitative milestones in CAA section 189(c) and 40 CFR 51.1013 for the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley for purposes of both the Serious area and CAA section 189(d) attainment plans.

We note that on April 1, 2021, CARB submitted the San Joaquin Valley ''2020 Quantitative Milestone Report for the 1997 and 2006 NAAQS'' (''2020 QM Report'') to the EPA.[374] The EPA is currently reviewing the 2020 QM Report and will determine, as part of its determination on the submitted report, whether the State and District have met their identified quantitative milestones for 2020.

F. Motor Vehicle Emission Budgets

1. Statutory and Regulatory Requirements

Section 176(c) of the CAA requires federal actions in nonattainment and maintenance areas to conform to the goals of the state's SIP to eliminate or reduce the severity and number of violations of the NAAQS and achieve timely attainment of the NAAQS. Conformity to the SIP's goals means that such actions will not: (1) cause or contribute to violations of a NAAQS; (2) increase the frequency or severity of an existing violation; or (3) delay timely attainment of any NAAQS or any interim milestone.

Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the EPA's transportation conformity rule, codified at 40 CFR part 93, subpart A (''Transportation Conformity Rule''). Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state and local air quality and transportation agencies, the EPA, FHWA, and FTA to demonstrate that an area's regional transportation plans (RTPs) and transportation improvement programs conform to the applicable SIP. This demonstration is typically done by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emission budgets (''budgets'') contained in all control strategy plans applicable to the area. An attainment plan for the $PM_{2.5}$ NAAQS must include budgets for each RFP milestone year and the attainment year, as appropriate, for direct $PM_{2.5}$ and $PM_{2.5}$ precursors subject to transportation conformity analyses. Budgets are generally established for specific years and specific pollutants or precursors and must reflect all motor vehicle control measures contained in the attainment and RFP demonstrations.[375]

Under the $PM_{2.5}$ SIP Requirements Rule, Serious area $PM_{2.5}$ attainment plans must include appropriate quantitative milestones and projected RFP emissions levels for direct $PM_{2.5}$ and all $PM_{2.5}$ plan precursors in each milestone year.[376] For an area designated nonattainment for the 1997 $PM_{2.5}$ NAAQS before January 15, 2015, the attainment plan must contain quantitative milestones to be achieved no later than three years after December 31, 2014, and every three years thereafter until the milestone date that falls within three years after the applicable attainment date.[377] As the EPA explained in the preamble to the $PM_{2.5}$ SIP Requirements Rule, it is important to include a post-attainment year quantitative milestone to ensure that, if the area fails to attain by the attainment date, the EPA can continue to monitor the area's progress toward attainment while the state develops a new attainment plan.[378] Although the post-attainment year quantitative milestone is a required element of a Serious area plan, it is not necessary to demonstrate transportation conformity for the post-attainment year or to use the post-attainment year budgets in transportation conformity determinations until such time as the area fails to attain the 1997 annual $PM_{2.5}$ NAAQS.

$PM_{2.5}$ plans should identify budgets for direct $PM_{2.5}$, NO_X, and all other $PM_{2.5}$ precursors for which on-road emissions are determined to significantly contribute to $PM_{2.5}$ levels in the area for each RFP milestone year and the attainment year, if the plan demonstrates attainment. All direct $PM_{2.5}$ SIP budgets should include direct $PM_{2.5}$ from tailpipe, brake wear, and tire wear motor vehicle emissions. With respect to emissions of VOC, SO_2, and/or ammonia, the transportation conformity provisions of 40 CFR part 93, subpart A, apply only if the EPA Regional Administrator or the director of the state air agency has made a finding that transportation-related emissions of these precursors within the area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and Department of Transportation (DOT), or if the applicable implementation plan (or implementation plan submission) includes any of these precursors in the approved (or adequate) budget as part of the RFP, attainment, or maintenance strategy.[379] With respect to $PM_{2.5}$ from re-entrained road dust, the transportation conformity provisions of 40 CFR part 93, subpart A apply if the EPA Regional Administrator or the director of the state air agency has made a finding that re-entrained road dust emissions within the area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) includes re-entrained road dust in the approved (or adequate) budget as part of the reasonable further progress, attainment, or maintenance strategy.[380] Similarly, for $PM_{2.5}$ from construction emissions, the transportation conformity provisions of 40 CFR part 93, subpart A apply if the area's implementation plan identifies construction-related fugitive $PM_{2.5}$ as a significant contributor to the nonattainment problem.[381]

In addition, transportation conformity requirements apply with respect to emissions of NO_X in $PM_{2.5}$ areas unless

[374] Letter dated March 30, 2021, from Richard W. Corey, Executive Officer, CARB, to Deborah Jordan, Acting Regional Administrator, EPA Region 9, with enclosure.

[375] 40 CFR 93.118(e)(4)(v).

[376] 40 CFR 51.1012(a), 51.1013(a)(2).

[377] 40 CFR 51.1013(a)(4) and 81 FR 58010, 58058 and 58063–58064. Because the area has failed to attain the 1997 annual $PM_{2.5}$ NAAQS by the Serious area attainment date, the applicable attainment date for the purposes of our evaluation is the section 189(d) projected attainment date of December 31, 2023.

[378] 81 FR 58010, 58063–58064.

[379] 40 CFR 93.102(b)(2)(v); see also Conformity Rule preambles at 69 FR 40004, 40031–40034 (July 1, 2004) and 70 FR 24280, 24283–24285 (May 6, 2005).

[380] 40 CFR 93.102(b)(3).

[381] 40 CFR 93.122(f); see also Conformity Rule preambles at 69 FR 40004, 40035–40036 (July 1, 2004).

both the EPA Regional Administrator and the director of the state air agency have made a finding that transportation-related emissions of NO_X within the nonattainment area are not a significant contributor to the $PM_{2.5}$ nonattainment problem and have so notified the MPO and DOT, or the applicable implementation plan (or implementation plan submission) does not establish an approved (or adequate) budget for such emissions as part of the RFP, attainment, or maintenance strategy.[382]

It is not always necessary for states to establish motor vehicle emissions budgets for all $PM_{2.5}$ precursors. The $PM_{2.5}$ SIP Requirements Rule allows a state to demonstrate that emissions of certain precursors do not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS in a nonattainment area, in which case the state may exclude such precursor(s) from its control evaluations for the specific NAAQS at issue. If a state successfully demonstrates that the emissions of one or more of the $PM_{2.5}$ precursors from all sources do not contribute significantly to $PM_{2.5}$ levels in the subject area, then it is not necessary to establish motor vehicle emissions budgets for such precursor(s) consistent with the applicability requirements of the transportation conformity regulations (40 CFR 93.102(b)(2)(v)).[383]

Additionally, the transportation conformity regulations contain criteria for determining whether emissions of one or more $PM_{2.5}$ precursors are insignificant for transportation conformity purposes.[384] For a pollutant or precursor to be considered an insignificant contributor based on the transportation conformity rule's criteria, the control strategy SIP must demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth in that pollutant and/or precursor for a NAAQS violation to occur. Insignificance determinations are based on factors such as air quality, SIP-approved motor vehicle control measures, trends and projections of motor vehicle emissions, and the percentage of the total attainment plan emissions inventory for the NAAQS at issue that is comprised of motor vehicle emissions. The EPA's explanation for providing for insignificance determinations is described in the July 1, 2004, revision to the Transportation Conformity Rule.[385]

Transportation conformity trading mechanisms are allowed under 40 CFR 93.124 where a state establishes appropriate mechanisms for such trades. The basis for the trading mechanism is the SIP attainment modeling that establishes the relative contribution of each $PM_{2.5}$ precursor pollutant. The applicability of emissions trading between conformity budgets for conformity purposes is described in 40 CFR 93.124(b).

The EPA's process for determining the adequacy of a budget consists of three basic steps: (1) notifying the public of a SIP submittal; (2) providing the public the opportunity to comment on the budgets during a public comment period; and (3) making a finding of adequacy or inadequacy.[386] The EPA can notify the public by either posting an announcement that the EPA has received SIP budgets on the EPA's adequacy website,[387] or through a **Federal Register** notice of proposed rulemaking when the EPA reviews the adequacy of an implementation plan's budgets simultaneously with its review and action on the SIP itself.[388]

2. Summary of the State's Submission

The 15 μg/m³ SIP Revision includes budgets for direct $PM_{2.5}$ and NO_X emissions, calculated using annual average daily emissions, for 2017 (RFP milestone year), 2020 (RFP milestone year), 2023 (attainment year), and 2026 (post-attainment quantitative milestone year).[389] The Plan establishes separate direct $PM_{2.5}$ and NO_X subarea budgets for each county, and partial county (for Kern County), in the San Joaquin Valley.[390] CARB calculated the budgets using EMFAC2014.[391] At the time that the emissions inventories and other underlying technical information in the 2018 $PM_{2.5}$ Plan was developed, EMFAC2014 was CARB's latest version of the EMFAC model for estimating emissions from on-road vehicles operating in California that was approved by the EPA. CARB calculated the latest modeled vehicle miles traveled and speed distributions from the most recently amended 2017 Federal Statewide Transportation Improvement Program (FSTIP) for each MPO as of January 2018. The budgets reflect annual average emissions consistent with the annual averaging period for the 1997 annual $PM_{2.5}$ NAAQS and the SJV $PM_{2.5}$ Plan's RFP and 5 percent demonstrations.

The direct $PM_{2.5}$ budgets include tailpipe, brake wear, and tire wear emissions but do not include paved road dust, unpaved road dust, and road construction dust emissions.[392] The State is not required to include re-entrained road dust in the budgets under section 93.103(b)(3) and 93.122(f) unless the EPA or the State has made a finding that these emissions are significant. Neither the State nor the EPA has made such a finding, but the Plan does include a discussion of the significance/insignificance factors for re-entrained road dust.[393] The budgets included in the SJV $PM_{2.5}$ Plan for purposes of the 1997 annual $PM_{2.5}$ NAAQS are shown in Table 8.

TABLE 8—MOTOR VEHICLE EMISSION BUDGETS FOR THE SAN JOAQUIN VALLEY FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS

[Annual average, tpd]

County	2017 (RFP year)		2020 (RFP year)		2023 (Attainment year)		2026 (Post-Attainment year)	
	$PM_{2.5}$	NO_X	$PM_{2.5}$	NO_X	$PM_{2.5}$	NO_X	$PM_{2.5}$	NO_X
Fresno	0.9	28.5	0.9	25.3	0.8	15.1	0.8	14.0
Kern	0.8	28.0	0.8	23.3	0.7	13.3	0.8	12.5
Kings	0.2	5.8	0.2	4.8	0.2	2.8	0.2	2.6
Madera	0.2	5.3	0.2	4.2	0.2	2.5	0.2	2.2
Merced	0.3	10.7	0.3	8.9	0.3	5.3	0.3	4.8

[382] 40 CFR 93.102(b)(2)(iv).

[383] 81 FR 58010, 58055, 58058, and 58090.

[384] 40 CFR 93.109(f).

[385] 69 FR 40004.

[386] 40 CFR 93.118(f).

[387] 40 CFR 93.118(f)(1).

[388] 40 CFR 93.118(f)(2).

[389] 15 μg/m³ SIP Revision, Appendix D, Table 18.

[390] 40 CFR 93.124(c) and (d).

[391] EMFAC is short for *EM*ission *FAC*tor. The EPA announced the availability of the EMFAC2014 model for use in state implementation plan development and transportation conformity in California on December 14, 2015. The EPA's approval of the EMFAC2014 emissions model for SIP and conformity purposes was effective on the date of publication of the notice in the **Federal Register**.

[392] 15 μg/m³ SIP Revision, Appendix D, pp. D–122 and D–123.

[393] Id. at D–121 and D–122.

TABLE 8—MOTOR VEHICLE EMISSION BUDGETS FOR THE SAN JOAQUIN VALLEY FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS—Continued

[Annual average, tpd]

County	2017 (RFP year)		2020 (RFP year)		2023 (Attainment year)		2026 (Post-Attainment year)	
	$PM_{2.5}$	NO_X	$PM_{2.5}$	NO_X	$PM_{2.5}$	NO_X	$PM_{2.5}$	NO_X
San Joaquin	0.7	14.9	0.6	11.9	0.6	7.6	0.6	6.7
Stanislaus	0.4	11.9	0.4	9.6	0.4	6.1	0.4	5.4
Tulare	0.4	10.8	0.4	8.5	0.4	5.2	0.4	4.5

Source: 15 μg/m³ SIP Revision, Appendix D, Table 18. Budgets are rounded up to the nearest tenth of a ton.

The State did not include budgets for VOC, SO_2, or ammonia. As discussed in Section IV.B of this proposed rule, the State submitted a $PM_{2.5}$ precursor demonstration documenting its conclusion that control of these precursors would not significantly contribute to attainment of the 1997 annual $PM_{2.5}$ NAAQS, and the EPA is proposing to approve the precursor demonstration. Therefore, if the EPA approves the demonstration, consistent with the transportation conformity regulation (40 CFR 93.102(b)(2)(v)), the State would not be required to submit budgets for these precursors. The State included a discussion of the significance/insignificance factors for ammonia, SO_2, and VOC to demonstrate a finding of insignificance under the transportation conformity rule.[394]

Conformity Trading Mechanism

The 15 μg/m³ SIP Revision also includes a proposed trading mechanism for transportation conformity analyses that would allow the MPOs in the area to use future decreases in NO_X emissions from on-road mobile sources to offset any on-road increases in direct $PM_{2.5}$ emissions. In the SJV $PM_{2.5}$ Plan, the approximate weighting ratios of the precursor emissions for annual average $PM_{2.5}$ formation in equivalent tons per day of NO_X are 6.5 to 1 (*i.e.,* reducing 6.5 tons of NO_X is equivalent to reducing one ton of $PM_{2.5}$). Therefore, if an MPO found, while preparing a conformity determination that on-road emissions of direct $PM_{2.5}$ were exceeding the direct $PM_{2.5}$ motor vehicle emissions budget, it could use any excess NO_X reductions to offset the excess direct $PM_{2.5}$ emissions by applying the trading ratio of 6.5 tons of NO_X emissions to 1 ton of direct $PM_{2.5}$ emissions. This ratio was derived by performing a sensitivity analysis based on a 30 percent reduction of NO_X or $PM_{2.5}$ emissions and calculating the corresponding effect on design values at sites in Bakersfield and Fresno (*i.e.,* an updated analysis relative to the 2008 $PM_{2.5}$ Plan for the 1997 $PM_{2.5}$ NAAQS). For comparison, in approving the budgets for the 2008 $PM_{2.5}$ Plan for the 1997 $PM_{2.5}$ NAAQS, the EPA approved a trading mechanism for transportation conformity analyses that allowed for such one-way trades (*i.e.,* only excess NO_X can be used to offset $PM_{2.5}$, not vice versa) at a 9 to 1 NO_X to $PM_{2.5}$ ratio.[395]

To ensure that the trading mechanism does not affect the ability of the San Joaquin Valley to meet the NO_X budget, the NO_X emission reductions available to supplement the $PM_{2.5}$ budget would only be those remaining after the NO_X budget has been met.[396] The Plan also provides that the San Joaquin Valley MPOs shall clearly document the calculations used in the trading, along with any additional reductions of NO_X and $PM_{2.5}$ emissions in the conformity analysis.

3. The EPA's Review of the State's Submission

Generally, the EPA first conducts a preliminary review of budgets submitted with an attainment plan for $PM_{2.5}$ for adequacy, prior to taking action on the plan itself, and did so in this case with respect to the $PM_{2.5}$ budgets in the SJV $PM_{2.5}$ Plan. On November 15, 2021, the EPA announced the availability of the 15 μg/m³ SIP Revision with budgets and a 30-day public comment period. This announcement was posted on the EPA's Adequacy website at: *https://www.epa.gov/state-and-local-transportation/state-implementation-plans-sip-submissions-currently-under-epa.* The comment period for this notification ended on December 15, 2021. We did not receive any comments during this comment period.

The EPA determined that the budgets in the 15 μg/m³ SIP Revision are adequate for use for transportation conformity purposes. In a letter dated February 1, 2022, the EPA notified CARB and other agencies involved in the interagency consultation process in the San Joaquin Valley that we had reviewed the 2020 RFP and 2023 attainment year budgets in the 15 μg/m³ SIP Revision and found that they are adequate for transportation conformity purposes.[397] The EPA announced the availability of the budgets and notified the public of the adequacy finding via a **Federal Register** notice on February 10, 2022.[398] This adequacy finding became effective on February 25, 2022 and the budgets have been used in transportation conformity determinations in the San Joaquin Valley area since that date. In this action, we are reviewing the budgets for approval into the California SIP.

Based on our proposal to approve the State's demonstration that emissions of ammonia, SO_2, and VOCs do not contribute significantly to $PM_{2.5}$ levels that exceed the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley, as discussed in Section IV.B of this proposal, and the information about ammonia, SO_2, and VOC emissions in the Plan, the EPA proposes to find that it is not necessary to establish motor vehicle emissions budgets for transportation-related emissions of ammonia, SO_2, and VOC to attain the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley. Based on the information about re-entrained road dust in the Plan,[399] and in accordance with 40 CFR 93.102(b)(3) and 93.122(f), the EPA proposes to find that it is not necessary to include re-entrained road dust emissions in the budgets for 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley.

For the reasons discussed in Sections IV.D and IV.E of this proposed rule, the EPA is proposing to approve the

[394] Id.

[395] 76 FR 69896, 69923 (November 9, 2011).

[396] 15 μg/m³ SIP Revision, Appendix D, pp. D–126 and D–127.

[397] Letter dated February 1, 2022, from Matthew Lakin, Acting Director, Air and Radiation Division, EPA Region IX, to Richard Corey, Executive Officer, CARB.

[398] 87 FR 7834 (February 10, 2022).

[399] 15 μg/m³ SIP Revision, Appendix D, pp. D–121 to D–123.

attainment, RFP, and 5 percent demonstrations, respectively, in the SJV $PM_{2.5}$ Plan. The 2020 RFP and 2023 attainment year budgets, as shown in Table 8 of this proposed rule, are consistent with these demonstrations, are clearly identified and precisely quantified, and meet all other applicable statutory and regulatory requirements including the adequacy criteria in 40 CFR 93.118(e)(4) and (5). For these reasons, the EPA proposes to approve the 2020 and 2023 budgets listed in Table 8. We provide a more detailed discussion in Section VI of the EPA's 1997 Annual $PM_{2.5}$ TSD. We are not proposing to approve the 2017 budgets [400] or the post-attainment year 2026 budgets at this time. The budgets that the EPA is proposing to approve relate only to the 1997 annual $PM_{2.5}$ NAAQS, and our proposed approval does not affect the status of the previously-approved budgets for the 1997 24-hour $PM_{2.5}$ NAAQS, the 2006 $PM_{2.5}$ NAAQS, or the 2012 $PM_{2.5}$ NAAQS and related trading mechanisms that remain in effect for those $PM_{2.5}$ NAAQS.

Although the post-attainment year quantitative milestone is a required element of the Serious area plan, it is not necessary to demonstrate transportation conformity for 2026 or to use the 2026 budgets in transportation conformity determinations until such time as the area fails to attain the 1997 annual $PM_{2.5}$ NAAQS. Therefore, the EPA is not taking action on the submitted budgets for 2026 in the SJV $PM_{2.5}$ Plan at this time. Additionally, the EPA has not yet started the adequacy process for the 2026 budgets.

If the EPA were either to find adequate or to approve the post-attainment milestone year budgets now, those budgets would have to be used in transportation conformity determinations that are made after the effective date of the adequacy finding or approval even if the San Joaquin Valley ultimately attains the $PM_{2.5}$ NAAQS by the attainment date. This would mean that the San Joaquin Valley MPOs would be required to demonstrate conformity for the post-attainment date milestone year and all later years addressed in the conformity determination (*e.g.,* the last year of the metropolitan transportation plan) to the post-attainment date RFP budgets rather than the budgets associated with the attainment year for the area (*i.e.,* the budgets for 2023). The EPA does not believe that it is necessary to demonstrate conformity using these post-attainment year budgets in areas that either the EPA anticipates will attain by the attainment date or in areas that attain by the attainment date.

If the EPA determines that the San Joaquin Valley has failed to attain the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date, the EPA would begin the budget adequacy and approval processes under 40 CFR 93.118 for the 2026 post-attainment year budgets concurrent with such determination that the area failed to attain. If the EPA finds the 2026 budgets adequate or approves them, those budgets must then be used in subsequent transportation conformity determinations.[401] The EPA believes that initiating the process to act on the submitted post-attainment year budgets concurrent with a determination that the area has failed to attain by the applicable attainment date ensures that transportation activities will not cause or contribute to new violations, increase the frequency or severity of any existing violations, or delay timely attainment or any required interim emissions reductions or milestones in the San Joaquin Valley $PM_{2.5}$ nonattainment area, consistent with the requirements of CAA section 176(c)(1)(B).

As noted above, the State included a trading mechanism to be used in transportation conformity analyses that would be used in conjunction with the budgets in the SJV $PM_{2.5}$ Plan, as allowed for under 40 CFR 93.124(b). This trading mechanism would allow MPOs to use future decreases in NO_X emissions from on-road mobile sources to offset any on-road increases in $PM_{2.5}$ emissions using a 6.5 to 1 NO_X to $PM_{2.5}$ ratio in transportation conformity determinations for the 1997 annual $PM_{2.5}$ NAAQS. To ensure that the trading mechanism does not affect the ability to meet the NO_X budget, the Plan provides that the NO_X emissions reductions available to supplement the $PM_{2.5}$ budget would only be those remaining after the NO_X budget has been met. The San Joaquin Valley MPOs will have to document clearly the calculations used in the trading when demonstrating conformity, along with any additional reductions of NO_X and $PM_{2.5}$ emissions in the conformity analysis. The trading calculations must be performed prior to the final rounding to demonstrate conformity with the budgets.

The EPA has reviewed the trading mechanism as described on pages D–125 to D–127 in Appendix D of the 15 $\mu g/m^3$ SIP Revision and finds it is appropriate for transportation conformity purposes in the San Joaquin Valley for the 1997 annual $PM_{2.5}$ NAAQS. The methodology for estimating the trading ratio for conformity purposes is essentially an update (based on newer modeling) of the approach that the EPA previously approved for the 2008 $PM_{2.5}$ Plan for the 1997 $PM_{2.5}$ NAAQS [402] and the 2012 $PM_{2.5}$ Plan for the 2006 24-hour $PM_{2.5}$ NAAQS.[403] The State's approach in the previous plans was to model the ambient $PM_{2.5}$ effect of areawide NO_X emissions reductions and of areawide direct $PM_{2.5}$ emissions reductions, and to express the ratio of these modeled sensitivities as an inter-pollutant trading ratio.

In the updated analysis for the SJV $PM_{2.5}$ Plan, the State completed separate sensitivity analyses for the annual and 24-hour NAAQS and modeled only transportation related sources in the nonattainment area. The ratio the State is proposing to use for transportation conformity purposes is derived from air quality modeling that evaluated the effect of reductions in transportation-related NO_X and $PM_{2.5}$ emissions in the San Joaquin Valley on ambient concentrations at the Bakersfield-California Avenue, Bakersfield-Planz, Fresno-Garland, and Fresno-Hamilton & Winery monitoring sites. The modeling that the State performed to evaluate the effectiveness of NO_X and $PM_{2.5}$ reductions on ambient annual concentrations showed NO_X to $PM_{2.5}$ ratios that range from a high of 7.1 at the Bakersfield-Planz monitor to a low of 6.0 at the two Fresno monitors.[404] In a recent action on the 2018 $PM_{2.5}$ Plan for the 2012 annual $PM_{2.5}$ NAAQS, we found that the State's approach is a reasonable method to use to develop ratios for transportation conformity purposes and approved the 6.5 to 1 NO_X to $PM_{2.5}$ trading mechanism as an enforceable component of the transportation conformity program for the San Joaquin Valley for the 2012 $PM_{2.5}$ NAAQS.[405] Here, we similarly find that the State's approach is reasonable and propose to approve the 6.5 to 1 NO_X for $PM_{2.5}$ trading mechanism as enforceable components of the transportation conformity program for the San Joaquin Valley for

[400] We are not proposing to approve the 2017 budgets because such budgets would not be used in any future transportation conformity determination because the Plan includes budgets for 2020.

[401] See 40 CFR 93.109(c).

[402] 80 FR 1816, 1841 (January 13, 2015) (noting the EPA's prior approval of budgets for the 1997 annual and 24-hour $PM_{2.5}$ standards in the 2008 $PM_{2.5}$ Plan at 76 FR 69896).

[403] 81 FR 59876 (August 31, 2016).

[404] 15 $\mu g/m^3$ SIP Revision, Appendix D, p. D–126.

[405] See 86 FR 49100, 49128 (September 1, 2021) (proposed rule) and 86 FR 67343, 67346 (November 26, 2021) (final rule).

the 1997 annual $PM_{2.5}$ NAAQS. If approved, this trading ratio will replace the 9 to 1 NO_X to $PM_{2.5}$ trading ratio approved for the San Joaquin Valley for analysis years after 2014 for the 1997 annual $PM_{2.5}$ NAAQS.[406]

G. Nonattainment New Source Review Requirements Under CAA Section 189(e)

Section 189(e) of the CAA specifically requires that the control requirements applicable to major stationary sources of direct $PM_{2.5}$ also apply to major stationary sources of $PM_{2.5}$ precursors, except where the Administrator determines that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS in the area.[407] The control requirements applicable to major stationary sources of direct $PM_{2.5}$ in a Serious $PM_{2.5}$ nonattainment area include, at minimum, the requirements of a nonattainment NSR permit program meeting the requirements of CAA sections 172(c)(5) and 189(b)(3). As part of our April 7, 2015 final action to reclassify the San Joaquin Valley area as Serious nonattainment for the 1997 $PM_{2.5}$ standards, we established a May 7, 2016 deadline for the State to submit nonattainment NSR SIP revisions addressing the requirements of CAA sections 189(b)(3) and 189(e) of the Act for the 1997 $PM_{2.5}$ NAAQS.[408]

California submitted nonattainment NSR SIP revisions to address the subpart 4 requirements for the San Joaquin Valley Serious $PM_{2.5}$ nonattainment area on November 20, 2019.[409] On June 28, 2023, the EPA finalized a limited approval and limited disapproval of the nonattainment NSR SIP revisions.[410] We are not taking any further action on the submission at this time.

V. Environmental Justice Considerations

Executive Order 12898 requires that federal agencies, to the greatest extent practicable and permitted by law, identify and address disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations.[411] Additionally, Executive Order 13985 directs federal government agencies to assess whether, and to what extent, their programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups,[412] and Executive Order 14008 directs federal agencies to develop programs, policies, and activities to address the disproportionate health, environmental, economic, and climate impacts on disadvantaged communities.[413]

To identify environmental burdens and susceptible populations in underserved communities in the San Joaquin Valley nonattainment area and to better understand the context of our proposed action on these communities, we rely on the EPA's August 2022 screening-level analysis for $PM_{2.5}$ in the San Joaquin Valley using the EPA's environmental justice (EJ) screening and mapping tool (''EJSCREEN'').[414] [415] Maps showing census block level data for the San Joaquin Valley from EJSCREEN are included in the EPA's 1997 Annual $PM_{2.5}$ TSD. The results of this analysis are being provided for informational and transparency purposes.

Our screening-level analysis indicates that the ''Demographic Index'' for each of the eight counties in the San Joaquin Valley is above the national average, ranging from 48 percent in Stanislaus County to 61 percent in Tulare County, compared to 36 percent nationally. The Demographic Index is the average of an area's percent minority and percent low income populations, *i.e.,* the two populations explicitly named in Executive Order 12898.[416] All eight counties are above the national average for demographic indices of ''Linguistically Isolated Population'' and ''Population with Less than High School Education.''

With respect to pollution, all eight counties are at or above the 97th percentile nationally for the $PM_{2.5}$ index and seven of the eight counties in the San Joaquin Valley are at or above the 90th percentile nationally for the $PM_{2.5}$ EJ index, which is a combination of the Demographic Index and the $PM_{2.5}$ index. Most counties are also above the 80th percentile for each of 11 additional EJ indices included in the EPA's EJSCREEN analysis. In addition, several counties are above the 90th percentile for certain EJ indices, including, for example, the Ozone EJ Index (Fresno, Kern, Madera, Merced, and Tulare counties), the National Air Toxics Assessment (NATA) Respiratory Hazard EJ Index (Madera and Tulare counties), and the Wastewater Discharge Indicator EJ Index (Merced, San Joaquin, Stanislaus, and Tulare counties).[417]

This proposed action would approve the State's plan for attaining the 1997 annual $PM_{2.5}$ NAAQS. Information on the 1997 annual $PM_{2.5}$ NAAQS and its relationship to negative health impacts can be found at 62 FR 38652 (July 18, 1997). We expect that this action and resulting emissions reductions will generally be neutral or contribute to reduced environmental and health impacts on all populations in the San Joaquin Valley, including people of color and low-income populations. At a minimum, this action would not worsen existing air quality and is expected to ensure the area is meeting requirements to attain and/or maintain air quality standards. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

VI. CAA Section 110(a)(2)(E)(i) ''Necessary Assurances'' and Title VI of the Civil Rights Act of 1964

As discussed in Section III of this proposal, a Serious area plan must meet the general requirements applicable to all SIP submissions under section 110 of

[406] 76 FR 69896.

[407] General Preamble, 13539 and 13541–13542.

[408] 80 FR 18528, 18533.

[409] Letter dated November 15, 2019, from Richard W. Corey, Executive Officer, CARB, to Michael Stoker, Regional Administrator, EPA Region IX.

[410] EPA Region IX, ''Air Plan Revisions; California; San Joaquin Valley Air Pollution Control District; Stationary Source Permits,'' final rule signed June 28, 2023.

[411] 59 FR 7629 (February 16, 1994).

[412] 86 FR 7009 (January 25, 2021).

[413] 86 FR 7619 (February 1, 2021).

[414] EJSCREEN provides a nationally consistent dataset and approach for combining environmental and demographic indicators. EJSCREEN is available at *https://www.epa.gov/ejscreen/what-ejscreen.* The EPA used EJSCREEN to obtain environmental and demographic indicators representing each of the eight counties in the San Joaquin Valley. We note that the indicators for Kern County are for the entire county. While the indicators might have slightly different numbers for the San Joaquin Valley portion of the county, most of the county's population is in the San Joaquin Valley portion, and thus the differences would be small. These indicators are included in EJSCREEN reports that are available in the rulemaking docket for this action.

[415] EPA Region IX, ''EJSCREEN Analysis for the Eight Counties of the San Joaquin Valley Nonattainment Area,'' August 2022.

[416] EJSCREEN reports environmental indicators (*e.g.,* air toxics cancer risk, Pb paint exposure, and traffic proximity and volume) and demographic indicators (*e.g.,* people of color, low income, and linguistically isolated populations). The value for a particular indicator measures how the community of interest compares with the state, the EPA region, or the national average. For example, if a given location is at the 95th percentile nationwide, this means that only 5 percent of the U.S. population has a higher value than the average person in the location being analyzed. EJSCREEN also reports EJ indexes, which are combinations of a single environmental indicator with the EJSCREEN Demographic Index. For additional information about environmental and demographic indicators and EJ indexes reported by EJSCREEN, see EPA, ''EJSCREEN Environmental Justice Mapping and Screening Tool—EJSCREEN Technical Documentation,'' Section 2 (September 2019).

[417] Notably, Tulare County is above the 90th percentile for 6 of the 12 EJ indices in the EPA's EJSCREEN analysis, including the $PM_{2.5}$ EJ Index, which is the highest value among all San Joaquin Valley counties.

the CAA, including the requirement to provide necessary assurances that the implementing agencies have adequate personnel, funding, and authority under section 110(a)(2)(E). Section 110(a)(2)(E) of the CAA, in relevant part and with emphasis added, reads as follows:

(2) Each implementation plan submitted by a State under this chapter shall be adopted by the State after reasonable notice and public hearing. Each such plan shall— . . .

(E) provide (i) *necessary assurances* that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan *(and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof),* (ii) requirements that the State comply with the requirements respecting State boards under section 7428 of this title, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision.[418]

The EPA has previously addressed considerations regarding CAA section 110(a)(2)(E)(i) specifically as it regards Title VI of the Civil Rights Act of 1964 (Title VI) in prior SIP actions. In 2012, the EPA explained the following in a SIP action, in response to a comment regarding this provision:

El Comité asserts that California failed to provide a ''demonstration'' that its proposed revisions are not prohibited by Title VI of the Civil Rights Act. Section 110(a)(2)(E), however, does not require a state to ''demonstrate'' it is not prohibited by Federal or State law from implementing its proposed SIP revision. Rather, this section requires a state to provide ''necessary assurances'' of this. Courts have given EPA ample discretion in deciding what assurances are ''necessary'' and have held that a general assurance or certification is sufficient. (''EPA is entitled to rely on a state's certification unless it is clear that the SIP violates state law and proof thereof . . . is presented to EPA.'' *BCCA Appeal Group* v. *EPA,* 355 F.3d 817, 830 fn 11 (5th Cir. 2003)).[419]

The EPA's position on CAA section 110(a)(2)(E)(i) was ultimately upheld by the Ninth Circuit Court of Appeals in a challenge to an EPA SIP action.[420] In that decision, *El Comité,* the Ninth Circuit stated,

El Comité's argument fails because it misconstrues the EPA's burden regarding the ''necessary assurances'' requirement. The EPA has a duty to provide a reasoned judgment as to whether the state has provided ''necessary assurances,'' but what assurances are ''necessary'' is left to the EPA's discretion. *NRDC, Project on Clean Air* v. *EPA,* 478 F.2d 875, 890–91 (1st Cir.1973); *see also Motor Vehicle Mfrs. Ass'n,* 463 U.S. at 43, 103 S.Ct. 2856 (providing that an agency's decision is not arbitrary and capricious if it considered the relevant data and gave a satisfactory explanation for its action).[421]

What is appropriate for purposes of necessary assurances can vary depending upon the nature of the issues in a particular situation. Thus, the EPA evaluates a state's compliance with CAA 110(a)(2)(E)(i) on a case-by-case basis.

For purposes of background context, Title VI prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin. Under the EPA's nondiscrimination regulations, which implement Title VI and other federal civil rights laws,[422] recipients of EPA financial assistance are prohibited from taking actions in their programs or activities that are intentionally discriminatory and/or have an unjustified disparate impact.[423] This includes policies, criteria, or methods of administering programs that are neutral on their face but have the effect of discriminating.[424] Under the EPA's regulation, recipients of EPA financial assistance are also required to have in place certain procedural safeguards, including grievance procedures that assure the prompt and fair resolution of external discrimination complaints.[425]

The EPA carries out its mandate to ensure that recipients of EPA financial assistance comply with their nondiscrimination obligations by investigating administrative complaints filed with the EPA alleging discrimination prohibited by Title VI and the other federal civil rights laws;[426] initiating affirmative compliance reviews;[427] and providing technical assistance to recipients to assist them in meeting their Title VI obligations. The EPA notes that at the time of this proposal, no Title VI complaint has been filed against CARB or the District regarding the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS. Also, the EPA (through the Office of External Civil Rights Compliance (OECRC)) has not initiated and is not currently conducting a compliance review of either CARB or SJVUAPCD.

In a recent supplemental proposal on the San Joaquin Valley attainment plan for the 2012 annual $PM_{2.5}$ NAAQS, the EPA acknowledged that it had not issued national guidance or regulations concerning implementation of section 110(a)(2)(E) as it pertains to consideration of Title VI in the context of the SIP program.[428] While the EPA's work on this SIP-specific guidance is ongoing as of the time of this proposed action, there are resources of general applicability concerning Title VI obligations for recipients of federal financial assistance.[429]

State Submission

On June 15, 2023, CARB submitted to the EPA supplemental information from CARB and the District (''Title VI Supplement'') in which the State outlines its consideration of Title VI in the context of SIP development in order to provide necessary assurances for purposes of CAA section 110(a)(2)(E)(i).[430]

The State's Title VI Supplement discusses actions being taken locally and statewide by CARB and the California legislature. For example, the State's Title VI Supplement discusses California State Assembly Bill 617 (''AB 617''), a State law which requires community-focused and community-driven action to reduce air pollution and improve public health in communities that experience

[418] 42 U.S.C. 7410(a)(2)(E) (emphasis added).

[419] 77 FR 65294, 65302 (October 26, 2012) (footnotes omitted).

[420] *El Comité Para El Bienstar de Earlimart et al. (El Comité)* v. *EPA,* 786 F.3d 688 (9th Cir. 2015).

[421] Id. at 700.

[422] 40 CFR. part 7 and part 5.

[423] 40 CFR 7.30 and 7.35.

[424] 40 CFR 7.35(b).

[425] 40 CFR 7.90.

[426] 40 CFR 7.120.

[427] 40 CFR 7.115.

[428] 87 FR 60494, 60528–30 (October 5, 2022).

[429] See ECRCO's Toolkit Chapter I at: *https://www.epa.gov/sites/default/files/2017-01/documents/toolkit-chapter1-transmittal_letter-faqs.pdf,* January 18, 2017, and Department of Justice ''Title VI Legal Manual (Updated)'' at: *https://www.justice.gov/crt/fcs/T6Manual6.* See also, *e.g.,* EPA, ''Guidance on Considering Environmental Justice During the Development of Regulatory Actions,'' (May 2015); EPA, ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis,'' (June 2016); *El Comite Para el Bienestar de Earlimart* v. *EPA,* 786 F.3d 688 (9th Cir. 2015); and *S. Camden Citizens in Action* v. *New Jersey Dept. of Envtl. Prot.,* 145 F. Supp. 2d 446, 501 (D.N.J. 2001), opinion modified and supplemented, 145 F. Supp. 2d 505 (D.N.J. 2001), rev'd, 274 F.3d 771 (3d Cir. 2001) (agency, as recipient of federal funding, had obligation under Title VI to consider racially disparate adverse impacts when determining whether to issue permit, in addition to applicant's compliance with applicable air quality standards).

[430] Letter dated June 15, 2023, from Steven S. Cliff, Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region IX, with enclosures titled ''Title VI of the Civil Rights Act of 1964: CARB Supplemental Information for EPA in Support of 15 $\mu g/m^3$ Annual $PM_{2.5}$ Standard'' (''CARB Title VI Supplement'') and ''San Joaquin Valley Air Pollution Control District Write-Up on Title VI of the Civil Rights Act of 1964: Supplemental Information for EPA in Support of 15 $\mu g/m^3$ Annual $PM_{2.5}$ Standard'' (''District Title VI Supplement'').

disproportionate burdens from exposure to air pollutants in California. CARB implements AB 617 through its Community Air Protection Program, which began implementation in 2018. As of February 2023, 19 communities have been selected to receive additional support and opportunities for outreach in developing and implementing actions for cleaner air in their communities, including four communities in the San Joaquin Valley.[431] In addition, the Title VI Supplement points to development of community air monitoring networks to learn about local exposures and the development of a racial equity assessment lens to consider benefits and burdens of CARB programmatic work in the planning stages. The EPA acknowledges CARB's and the District's explanation that these types of actions result in engagement with the public in the communities affected by this SIP revision, which helps to provide necessary assurances as contemplated by section 110(a)(2)(E)(i).

Specific to the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS, the submission further describes the early and enhanced public engagement processes that CARB and the District undertook during the development and approval of the 2016 State SIP Strategy, Valley State SIP Strategy, 2018 $PM_{2.5}$ Plan, and 15 $\mu g/m^3$ SIP Revision, all of which formed the basis for the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS. CARB notes that the State prioritized public participation and describes the numerous public meetings and workshops held in Sacramento, Fresno, and Bakersfield for community-based organizations and other stakeholders during the preparation of the SJV $PM_{2.5}$ Plan and related control measures, including the Heavy-Duty I/M measure.[432] CARB and the District also note that Plan documents were made available for public review 30 days prior to board consideration, and that board hearings and workshops offered simultaneous Spanish translation services and that interpretation in other languages was made available on request.[433]

In addition to discussing the State's processes for public engagement during the development of the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS, the State's Title VI Supplement also describes CARB's recent and ongoing efforts to develop and implement the 2022 State SIP Strategy.[434] These efforts include soliciting public input on potential control measures through meetings with individual community-based organizations, workshops, and webinars, and publishing a list of the suggested measures from the public to seek additional input. Seve ral of the measures suggested by the public were ultimately adopted in the 2022 State SIP Strategy,[435] and CARB notes that public processes will continue as each measure is developed, adopted, and implemented by the State.

Finally, the State describes its written Civil Rights Policy and Discrimination Complaint process.[436] CARB's Civil Rights Policy states in part:

> It is the California Air Resources Board (CARB) policy to provide fair and equal access to the benefits of a program or activity administered by CARB. CARB will not tolerate discrimination against any person(s) seeking to participate in, or receive the benefits of, any program or activity offered or conducted by CARB.

The state explains that through its Civil Rights Officer, CARB coordinates compliance efforts, receives inquiries concerning non-discrimination requirements, and ensures the agency is complying with State and federal reporting and record retention requirements, including those required by CARB's Civil Rights Policy, Title VI, and 40 CFR 7.10 *et seq.* CARB's Civil Rights Policy includes a process for filing a complaint of discrimination against CARB if an individual believes they were unlawfully denied full and equal access during the administration of the agency's programs and services offered to the public. A complaint must be filed within one year of the alleged discrimination with the potential for an extension of 90 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the one-year time limit.

In this action, the EPA is proposing to find that the State has provided adequate necessary assurances for purposes of CAA section 110(a)(2)(E)(i) for the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS. The EPA's proposed SIP approval does not constitute a formal finding of compliance with Title VI or 40 CFR part 7. The EPA did not conduct a full Title VI investigation or compliance review.[437] Approval of this SIP submission for purposes of CAA 110(a)(2)(E)(i) does not affect the EPA's discretion to enforce Title VI and/or the EPA's civil rights regulations. The EPA retains full authority to process complaints which may result in conducting a Title VI investigation or compliance review with respect to CARB and/or this SIP action. Nothing in this proposed action is intended to limit or impact the EPA's discretion regarding necessary assurances determinations in other SIP actions.

VII. Summary of Proposed Action and Request for Public Comment

For the reasons discussed in this proposed rule, under CAA section 110(k)(3), the EPA is proposing to approve portions of the SJV $PM_{2.5}$ Plan submitted by California that pertain to the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley nonattainment area as follows:

(1) We are proposing to find that the 2013 base year emissions inventories continue to satisfy the requirements of CAA section 172(c)(3) and 40 CFR 51.1008 for purposes of both the Serious area and the CAA section 189(d) attainment plans, and to find that the forecasted inventories for the years 2017, 2018, 2019, 2020, 2023, and 2026 provide an adequate basis for the BACM, RFP, five percent, and modeled attainment demonstration analyses;

(2) We are proposing to approve the following elements as meeting the Serious nonattainment area planning requirements:

(a) the BACM/BACT demonstration as meeting the requirements of CAA section 189(b)(1)(B) and 40 CFR 51.1010(a);

(b) the demonstration (including air quality modeling) that the Plan provides for attainment as expeditiously as practicable as meeting the requirements of CAA sections 179(d) and 189(b) and 40 CFR 51.1011(b);

(c) the RFP demonstration as meeting the requirements of CAA sections 172(c)(2) and 171(1) and 40 CFR 51.1012; and

(d) the quantitative milestone demonstration as meeting the requirements of CAA section 189(c) and 40 CFR 51.1013;

[431] Id. at 5. The four San Joaquin Valley communities that have been selected into the Community Air Protection Program are South Central Fresno, Shafter, Stockton, and Arvin/Lamont.

[432] CARB Title VI Supplement, pp. 3–4.

[433] CARB Title VI Supplement, p. 3, and District Title VI Supplement.

[434] CARB Title VI Supplement, pp. 4–6.

[435] These measures include a regulation developed in collaboration with the California Department of Pesticide Regulation to reduce VOC emissions from pesticides, and a measure to provide small trucking companies with access to zero-emission truck incentive funding.

[436] Id. at 6–8.

[437] As discussed in Section V of this proposal, the EPA conducted an analysis of environmental burdens and susceptible populations in underserved communities as part of this action. The EPA summarized the results of the EJSCREEN analysis in the EPA's 1997 Annual $PM_{2.5}$ TSD and in a worksheet included in the docket for this action (EPA Region IX, ''EJSCREEN Analysis for the Eight Counties of the San Joaquin Valley Nonattainment Area,'' August 2022).

(3) We are proposing to approve the following elements as meeting the CAA section 189(d) planning requirements:

(a) the BACM/BACT demonstration as meeting the requirements of CAA sections 189(a)(1)(C) [438] and 189(b)(1)(B) and 40 CFR 51.1010(c);

(b) the demonstration that the Plan will, at a minimum, achieve an annual five percent reduction in emissions of NO_X as meeting the requirements of CAA section 189(d) and 40 CFR 51.1010(c);

(c) the demonstration (including air quality modeling) that the Plan provides for attainment as expeditiously as practicable as meeting the requirements of CAA sections 179(d) and 189(d) and 40 CFR 51.1011(b);

(d) the RFP demonstration as meeting the requirements of CAA sections 172(c)(2) and 171(1) and 40 CFR 51.1012; and

(e) the quantitative milestone demonstration as meeting the requirements of CAA section 189(c) and 40 CFR 51.1013;

(4) We are proposing to approve the motor vehicle emission budgets for 2020 and 2023 as shown in Table 8 of this proposed rule because they are derived from approvable RFP and attainment demonstrations and meet the requirements of CAA section 176(c) and 40 CFR part 93, subpart A; and

(5) We are proposing to approve the trading mechanism provided for use in transportation conformity analyses for the 1997 annual $PM_{2.5}$ NAAQS, in accordance with 40 CFR 93.124(b).

As discussed in Section I.B of this document, on November 26, 2021, the EPA partially approved and partially disapproved portions of the 2018 $PM_{2.5}$ Plan that addressed attainment of the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley nonattainment area. The elements that the EPA disapproved include the attainment demonstration, comprehensive precursor demonstration, five percent annual emissions reductions demonstration, BACM demonstration, RFP demonstration, quantitative milestones, motor vehicle emission budgets, and contingency measures. This disapproval was effective on December 27, 2021. Also effective December 27, 2021, the EPA disapproved the contingency measure element of the 2018 $PM_{2.5}$ Plan as it relates to the requirements for the Serious area plan 2006 24-hour $PM_{2.5}$ NAAQS and the Moderate area plan for the 2012 annual $PM_{2.5}$ NAAQS.[439] In our November 26, 2021 final disapprovals, we noted that offset and highway sanctions under CAA sections 179(b)(2) and 179(b)(1), respectively, would not apply if California submits, and we approve, a SIP submission that corrects all of the deficiencies identified in our final actions prior to the imposition of sanctions.[440] This proposed approval, if finalized, would remedy several but not all of the deficiencies because this action does not address the prior disapprovals of the contingency measure requirements for the 1997 annual $PM_{2.5}$ NAAQS, 2006 24-hour $PM_{2.5}$ NAAQS, and 2012 annual $PM_{2.5}$ NAAQS. Therefore, the sanctions will apply in the San Joaquin Valley as outlined in the November 26, 2021 final disapprovals unless or until California submits, and we approve, a SIP submission or submissions meeting the outstanding contingency measure requirements for these NAAQS.

The EPA is soliciting public comments on the issues discussed in this proposed rule. We will accept comments from the public on this proposal for the next 30 days.

VIII. Statutory and Executive Order Reviews

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

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

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The SJVUAPCD did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as is described above in the section titled,

[438] As discussed in Section III.B of this document, a section 189(d) plan must address any outstanding Moderate or Serious area requirements that have not previously been approved. Because we have not previously approved a subpart 4 RACM demonstration for the San Joaquin Valley nonattainment area, we are also proposing to approve the BACM/BACT demonstration in the SJV $PM_{2.5}$ Plan as meeting the subpart 4 RACM/RACT requirement for the area.

[439] 86 FR 67343.

[440] 86 FR 67329.

''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

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

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

Dated: July 5, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

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Part III

The President

Notice of July 12, 2023—Continuation of the National Emergency With Respect to Hostage-Taking and the Wrongful Detention of United States Nationals Abroad

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Presidential Documents

Title 3—

The President

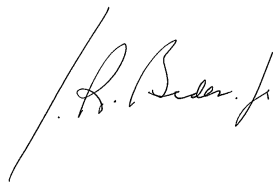
Notice of July 12, 2023

Continuation of the National Emergency With Respect to Hostage-Taking and the Wrongful Detention of United States Nationals Abroad

On July 19, 2022, by Executive Order 14078, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by hostage-taking and the wrongful detention of United States nationals abroad.

Hostage-taking and the wrongful detention of United States nationals are heinous acts that undermine the rule of law. Terrorist organizations, criminal groups, and other malicious actors who take hostages for financial, political, or other gain—as well as foreign states that engage in the practice of wrongful detention, including for political leverage or to seek concessions from the United States—threaten the integrity of the international political system and the safety of United States nationals and other persons abroad. Hostage-taking and the wrongful detention of United States nationals abroad continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared in Executive Order 14078 of July 19, 2022, must continue in effect beyond July 19, 2023. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 14078 with respect to hostage-taking and the wrongful detention of United States nationals abroad.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
July 12, 2023.

[FR Doc. 2023–15138
Filed 7–13–23; 11:15 am]
Billing code 3395–F3–P

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