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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 984

**[Doc. No. 22–J–0011; AMS–SC–22–0010; SC22–981–1]**

## Walnuts Grown in California; Order Amending Marketing Order No. 984

**AGENCY:** Agricultural Marketing Service, Department of Agriculture (USDA).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Marketing Order No. 984, which regulates the handling of walnuts grown in California. USDA approved and adopted amendments proposed by the California Walnut Board (the Board) after due consideration of a public hearing record, and after California walnut producers voted in favor of such amendments in a referendum. This rule eliminates mandatory inspection and certification of inshell and shelled walnuts, and of shelled walnuts for processing; creates a new mechanism for determining and collecting handler assessments; adds the authority to charge interest for late payments; establishes an assessment rate of $0.0125 per inshell pound of walnuts; expands the definition of ''to handle'' to include ''receive''; and removes volume control authority. In addition, the Agricultural Marketing Service (AMS) made necessary changes to the marketing order to conform to the amendments adopted.

**DATES:** This rule is effective September 20, 2023.

**FOR FURTHER INFORMATION CONTACT:** Geronimo Quinones, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 308–2339 or Matthew Pavone, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: *Geronimo.Quinones@usda.gov* or *Matthew.Pavone@usda.gov.*

Small businesses may request information on this proceeding by contacting Richard E. Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: *Richard.Lower@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing published in the April 1, 2022, issue of the **Federal Register** (87 FR 19020); a Recommended Decision published in the October 25, 2022, issue of the **Federal Register** (87 FR 64385); and a Secretary's Decision and Referendum Order published in the March 7, 2023, issue of the **Federal Register** (88 FR 14083).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Orders 12866, 13563, and 13175.

Notice of this rulemaking action was provided to Tribal governments through the USDA Office of Tribal Relations.

### Preliminary Statement

This action finalizes amendments to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California. Part 984 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The final rule was formulated on the record of a public hearing held via videoconference technology on April 19 and 20, 2022. The hearing was conducted pursuant to the provisions of the Act, and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900). Notice of this hearing was published in the **Federal Register** on April 1, 2022 (87 FR 19020), and outlined each of the proposed amendments to the Order.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on November 4, 2022, filed with the Hearing Clerk, USDA, a Recommended Decision and Opportunity to File Written Exceptions thereto by November 25, 2022. No exceptions were filed.

A Secretary's Decision and Referendum Order published in the **Federal Register** on March 7, 2023 (88 FR 14083), directed that a referendum be conducted during the period of April 3 through April 21, 2023, among eligible California walnut growers to determine whether they favored the amendments to the Order. To become effective, per the Order, the proposed amendments required approval by at least two-thirds of those growers voting, or by voters representing at least two-thirds of the volume of walnuts represented by voters voting in the referendum. The amendment to eliminate mandatory inspection and certification of inshell and shelled walnuts, and of shelled walnuts for processing was favored by 81.06 percent of the growers voting in the referendum, representing 87.95 percent of the total volume of walnuts produced by those voting. The amendment to create a new mechanism for determining handler assessments and to add the authority to charge interest for late payments was favored by 81.39 percent of the growers voting in the referendum, representing 86.74 percent of the total volume of walnuts produced by those voting. The amendment to establish an assessment rate of $0.0125 per inshell pound of walnuts was favored by 77.25 percent of the growers voting in the referendum, representing 84.69 percent of the total volume of walnuts produced by those voting. The amendment to create a new mechanism for collecting handler assessments and to expand the definition of ''to handle'' to include ''receive'' was favored by 85.56 percent of the growers voting in the referendum, representing 89.16 percent of the total volume of walnuts produced by those voting. The amendment to remove volume control authority was favored by 86.34 percent of the growers voting in the referendum, representing 91.40 percent of the total volume of walnuts produced by those voting.

The amendments favored by voters included in this final rule remove from the Order quality and size regulations, including mandatory inspection and

certification requirements, and retain the authority to allow the Board to recommend new handling regulations in the future; modify the method of calculation of assessments to be based on inshell pounds and add the authority to allow the Board to recommend late payment charges and/or interest; establish an initial assessment rate of $0.0125 per inshell pound of walnuts; expand the definition of ''to handle'' to include ''receive''; and remove volume control authority, including reserve pool authority, and revise subsequent sections of the Order to remove volume control provisions.

AMS also recommended changes as necessary to the Order to conform to the amendments adopted, or to correct minor inconsistencies and typographical errors. Accordingly, AMS did the following: added language regarding exemptions in § 984.67; removed the reference to the term ''merchantable'' in § 984.22 and from the headings and paragraphs in §§ 984.72 and 984.472(a) and (c); revised the heading in § 984.21 from ''Eligibility'' to ''Handler inventory''; revised §§ 984.69(e) and 984.89(b)(4) to replace the term ''fiscal period'' with ''marketing year''; revised the figure in § 984.347; and revised 984.69(e) to replace ''current season's certifications'' with ''current marketing year''.

AMS reinserted language regarding exemptions under § 984.67 after determining that the language was inadvertently omitted in a prior rulemaking conducted in May 2020. AMS removed the term ''merchantable'' in § 984.22 and from the headings and paragraphs in §§ 984.72 and 984.472(a) and (c) after determining that there would be no grade and size regulations in effect to distinguish ''merchantable'' walnuts from other walnuts due to the elimination of mandatory inspection and certification. AMS revised the heading in § 984.21 from ''Eligibility'' to ''Handler inventory'' after determining that the heading, ''Eligibility'', did not reflect the purposes of the provision, which defines handler inventory. AMS revised §§ 984.69(e) and 984.89(b)(4) to replace the term ''fiscal period'' with ''marketing year'' after determining that the term ''fiscal period'' is not defined in the Order, whereas ''marketing year'' is defined and already used throughout the Order. This rule revises § 984.347 to establish an assessment rate of $0.0125 per pound of inshell walnuts.[1] Finally, 7 CFR 984.69(d) currently refers to permitting advanced assessments when assessments based on the ''current season's certifications'' are not yet available. AMS determined that because § 984.51 will be removed, assessments will no longer be based on certifications, and we amended the language in revised § 984.69(e) to refer to ''assessments from the current marketing year.'' The regulatory text included in this final rule reflects these changes.

[1] A typographical error in the April 1, 2022, hearing notice listed a proposed assessment rate of $0.125 per pound of inshell walnuts, which was subsequently corrected at the hearing and in the Recommended and Secretary's Decisions.

**Small Business Considerations**

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS considered the economic impact of this action on small entities. Accordingly, AMS prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. The RFA requires, where feasible, an estimate of the number of small businesses affected by the rule. This regulatory flexibility analysis estimates the proportion of small businesses because it is not feasible to estimate numbers.

According to the hearing record, there are approximately 4,500 producers and 85 handlers in the production area. Record evidence includes reference to a study showing that the walnut industry contributes 85,000 jobs to the economy, directly and indirectly.

The Small Business Administration (SBA) establishes size standards that determine whether a business entity is defined as a small business. The size standards are based on the entity's economic activity, or industry, and generally use the North American Industry Classification System (NAICS). The size standards are expressed in annual receipts in millions of dollars or in number of employees, and indicate the maximum allowed for an entity to be considered a small business.

The SBA defines small agricultural service firms (handlers) as those having annual receipts (sales) equal to or less than $34 million (Postharvest Crop Activities, NAICS code 115114). Small walnut producers are defined as those having annual receipts equal to or less than $3.75 million (Tree Nut Farming, NAICS code 111335). (*See* 13 CFR 121.201.)

Effective May 2, 2022, SBA issued a final rule updating small business size standards for agriculture (86 FR 18607). The tree nut farming (NAICS 111335) size standard changed from $1 million to $3.25 million. Effective December 19, 2022, SBA issued a final rule again updating the tree nut size small business size standard, raising it to $3.75 million.

The witnesses who identified themselves as small producers did so using the SBA size standard in effect at the time of the hearing ($1.0 million of gross annual receipts); they are also small under the current standard of $3.75 million of gross annual receipts.

Record evidence showed that approximately 82 percent of California walnut handlers (70 out of 85) shipped walnuts valued under $34 million during the 2018–2019 marketing year and would therefore be considered small handlers according to the SBA definition.

Data in the hearing record from the 2017 Agricultural Census, published by USDA'S National Agricultural Statistics Service (NASS), showed that 4,885 California farms growing walnuts (86.06 percent of the total) had walnut sales of less than $1 million which is well below the SBA small business size threshold of equal to or less than $3.75 million. In the 2017 Agricultural Census, the largest sales value size category for walnuts was $1.0 million.

To obtain an alternative estimate of the number and percentage of small walnut farms, using NASS data from the hearing record, the first step was computing a 3-year average crop value, which was roughly $1.077 billion for the period 2018–19 to 2020–21. The average walnut bearing acreage over that same 3-year period was 372,500 acres. Dividing crop value by bearing acreage shows a per acre revenue estimate of $2,891. Using these numbers, it would take approximately 1,297 acres ($3,750,000 divided by $2,891) to yield roughly $3,750,000 in annual walnut sales. The 2017 Agricultural Census data show that 5,330 walnut farms in 2017 (93.9 percent of the total) were below 1,000 acres. One thousand acres is the Census size category closest to the 1,297-acre estimate for an average walnut farm to have $3.75 million in annual receipts). Therefore, 5,330 of the California walnut farms counted in the 2017 Agricultural Census (93.9 percent or more), would be considered small businesses according to the current SBA definition of $3.75 million or less in gross annual receipts.

During the hearing held April 19 and 20, 2022, interested parties were invited to present evidence on the probable regulatory impact of the amendments to the Order on small businesses. The hearing record showed that none of the

amendments would have a significant economic impact on a substantial number of small agricultural growers or firms.

**Material Issues**

This action amends the Order to eliminate mandatory inspection and certification of inshell and shelled walnuts, and of shelled walnuts for processing; create a new mechanism for determining and collecting handler assessments; add the authority to charge interest for late payments; establish an assessment rate of $0.0125 per inshell pound of walnuts; expand the definition of ''to handle'' to include ''receive''; and remove volume control authority.

The hearing record showed that a key reason for the amendments is to reduce the costs and administrative burden to handlers and the Board while providing a cost savings to growers. Witnesses (both large and small) testified to major technological improvements in sorting, processing and storage, and the adoption of new varieties, as key evidence of how current industry practices result in walnut quality that exceeds USDA standards, making the mandatory inspection requirement redundant. Record evidence also showed that the elimination of mandatory inspection and certification will result in cost savings of approximately $6 million per year and will benefit all handlers and producers.

The new assessment mechanism is based on walnuts received instead of walnuts certified, and the calculation of assessments is based on receipts submitted to the Board. Invoicing begins after January 15, and billings are generated in January, April, and July and as prescribed by the Board. Payments are due to the Board in February, May, and August. Hearing evidence showed that this new mechanism is an equitable change that decreases the administrative burden for all handlers and the Board.

Hearing evidence also showed that producers and handlers of all sizes will benefit from the amendments adopted and that there will be no negative implications on small agricultural firms. Handlers will benefit from reduced operational process redundancies, resulting in lower associated costs and administrative burdens. In addition, producers will benefit from higher grower returns through cost savings passed on from increased handler efficiencies. Consumers are also anticipated to benefit from lower prices resulting from reduced handler costs.

Lastly, the volume control authority in the Order has been suspended for over 30 years. The record showed that a key reason for removing volume control authority from the Order is that the walnut industry is comprised of mostly small businesses which do not intend to use volume regulation in the future.

These amendments align the Order with current market-driven practices that result in a more efficient industry for producers and handlers of all sizes. USDA did not identify any relevant Federal rules that duplicate, overlap or conflict with this final rule. These amendments are intended to improve the operation and administration of the Order and to assist in the marketing of California walnuts.

AMS is committed to complying 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.

**Paperwork Reduction Act**

Current information collection requirements that are part of the Federal marketing order for California walnuts (7 CFR part 984) are approved under OMB No. 0581–0178 Vegetables and Specialty Crops. No changes in these requirements are anticipated because of this proceeding. Should any such changes become necessary, they would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

**Civil Justice Reform**

The amendments to the Order herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. The amendments do not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

**Order Amending the Order Regulating the Handling of Walnuts Grown in California** [2]

*Findings and Determinations*

The findings and determinations hereinafter set forth are supplementary to the findings and determinations that were previously made in connection with the issuance of the marketing order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon proposed further amendment of Marketing Order No. 984, regulating the handling of walnuts grown in California.

Upon the basis of the record, it is found that:

(1) The marketing order, as amended, and as hereby further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby further amended, regulates the handling of walnuts grown in the production area in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order upon which a hearing has been held;

(3) The marketing order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area that is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby further amended, prescribes, insofar as practicable, such

[2] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of walnuts grown in California; and

(5) All handling of walnuts grown in the production area as defined in the marketing order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

**Order Relative To Handling**

It is therefore ordered, that on and after the effective date hereof, all handling of walnuts grown in California shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing order amending the Order contained in the Recommended Decision published in the October 25, 2022, issue of the **Federal Register** (87 FR 64385), and as revised in the Secretary's Decision (88 FR 14083), will be and are the terms and provisions of this order amending the Order and are set forth in full herein.

**List of Subjects in 7 CFR Part 984**

Marketing agreements, Nuts, Reporting and recordkeeping requirements.

**Recommended Further Amendment of the Marketing Order**

For the reasons set out in the preamble, the Agricultural Marketing Service amends 7 CFR part 984 as follows:

## PART 984—WALNUTS GROWN IN CALIFORNIA

■ 1. The authority citation for part 984 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Revise § 984.12 to read as follows:

**§ 984.12 Substandard walnuts.**

*Substandard walnuts* means all walnuts (whether inshell or shelled) that do not meet the minimum standard prescribed for merchantable walnuts whenever regulations are in effect pursuant to § 984.50.

■ 3. Revise § 984.13 to read as follows:

**§ 984.13 To handle.**

*To handle* means to receive, pack, sell, consign, transport, or ship (except as a common or contract carrier of walnuts owned by another person), or in any other way to put walnuts, inshell or shelled, into the current of commerce either within the area of production or from such area to any point outside thereof, or for a manufacturer or retailer within the area of production to purchase directly from a grower. However, sales and deliveries by a grower to handlers, hullers, or other processors within the area of production shall not, in itself, be considered as handling by a grower. The term ''to handle'' shall not include sales and deliveries within the area of production between handlers.

■ 4. Amend § 984.21 by revising the section heading to read as follows:

**§ 984.21 Handler inventory.**

* * * * *

**§ 984.22 [Amended]**

■ 5. Amend § 984.22 by removing the word ''merchantable'' in paragraphs (a) and (b).

**§§ 984.23 and 984.26 [Removed and Reserved]**

■ 6. Amend §§ 984.23 and 984.26 by lifting the stay of May 7, 2020, and removing and reserving the sections.

■ 7. Revise § 984.32 to read as follows:

**§ 984.32 To certify.**

*To certify* means the issuance of a certification of inspection of walnuts in accordance with regulations issued pursuant to § 984.50.

**§ 984.33 [Removed and Reserved]**

■ 8. Amend § 984.33 by lifting the stay of May 7, 2020, and removing and reserving the section.

■ 9. Amend § 984.37 by revising paragraphs (b) and (c)(4) to read as follows:

**§ 984.37 Nominations.**

* * * * *

(b) Nominations for handler members shall be submitted on ballots mailed by the Board to all handlers in their respective Districts. All handlers' votes shall be weighted by the weight of inshell walnuts handled by each handler during the preceding marketing year. Each handler in the production area may vote for handler member nominees and their alternates. However, no handler with less than 35% of the crop shall have more than one member and one alternate member. The person receiving the highest number of votes for each handler member position shall be the nominee for that position.

(c) * * *

(4) Nominations for handler members representing handlers that do not handle 35% or more of the crop shall be submitted on ballots mailed by the Board to those handlers. The votes of these handlers shall be weighted by the weight of inshell walnuts handled by each handler during the preceding marketing year. Each handler in the production area may vote for handler member nominees and their alternates of this paragraph (c)(4). However, no handler shall have more than one person on the Board either as member or alternate member. The person receiving the highest number of votes for a handler member position of this paragraph (c)(4) shall be the nominee for that position.

* * * * *

■ 10. Amend § 984.48 by:

■ a. Revising paragraph (a) introductory text;

■ b. Removing the words ''merchantable and substandard'' in paragraph (a)(3);

■ c. Lifting the stay of May 7, 2020, on paragraphs (a)(6) and (7) and removing both paragraphs; and

■ d. Redesignating paragraphs (a)(8) and (9) as paragraphs (a)(6) and (7), respectively.

The revision reads as follows:

**§ 984.48 Marketing estimates and recommendations.**

(a) Each marketing year the Board shall hold a meeting, prior to October 20, for the purpose of recommending to the Secretary a marketing policy for such year. Each year such recommendation shall be adopted by the affirmative vote of at least 60% of the Board and shall include the following:

* * * * *

**§ 984.49 [Removed and Reserved]**

■ 11. Amend § 984.49 by lifting the suspension of paragraph (b)(1) of August 7, 1995, and the stay of May 7, 2020, and removing and reserving the section.

■ 12. Amend § 984.50 by lifting the stay of May 7, 2020, on paragraph (e) and revising the section to read as follows:

**§ 984.50 Grade, quality, and size regulations.**

(a) The Board may recommend, subject to the approval of the Secretary, regulations that:

(1) Establish handling requirements for particular grades, sizes, or qualities, or any combination thereof, of any or all varieties or classifications of walnuts during any period;

(2) Establish different handling requirements and tolerance limits for particular grades, sizes, or qualities, or any combination thereof, for different market destinations;

(3) Establish different handling requirements for the processing of shelled walnuts and the handling thereof; and

(4) Establish inspection and certification requirements for the purposes of this paragraph (a) and paragraph (b) of this section.

(b) During any period, regulations issued under this section are in effect, no handler shall handle or process walnuts into manufactured items or products unless they meet the applicable requirements under this section as evidenced by certification acceptable to the Board.

(c) Regulations issued under this section may be amended, modified, suspended, or terminated whenever it is determined:

(1) That such action is warranted upon recommendation of the Board and approval by the Secretary, or other available information; or

(2) That regulations issued under this section no longer tend to effectuate the declared policy of the Act.

**§§ 984.51 and 984.52 [Removed and Reserved]**

■ 13. Remove and reserve §§ 984.51 and 984.52

**§§ 984.54 and 984.56 [Removed and Reserved]**

■ 14. Amend §§ 984.54 and 984.56 by lifting the stay of May 7, 2020, and removing and reserving the sections.

■ 15. Revise § 984.64 to read as follows:

**§ 984.64 Disposition of substandard walnuts.**

During any period when regulations are in effect pursuant to § 984.50, substandard walnuts may be disposed of only for manufacture into oil, livestock feed, or such other uses as the Board determines to be noncompetitive with existing domestic and export markets for merchantable walnuts and with proper safeguards to prevent such walnuts from thereafter entering channels of trade in such markets. Each handler shall submit, in such form and at such intervals as the Board may determine, reports of his production and holdings of substandard walnuts and the disposition of all substandard walnuts to any other person, showing the quantity, lot, date, name and address of the person to whom delivered, the approved use and such other information pertaining thereto as the Board may specify.

**§ 984.66 [Removed and Reserved]**

■ 16. Amend § 984.66 by lifting the stay of May 7, 2020, and removing and reserving the section.

■ 17. Amend § 984.67 by:

■ a. Lifting the stay of May 7, 2020, on paragraph (a) and removing the paragraph;

■ b. Redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively; and

■ c. Revising newly designated paragraph (a).

The revision reads as follows:

**§ 984.67 Exemptions.**

(a) *Exemptions from assessments and quality regulations*—(1) *Sales by growers direct to consumers.* Any walnut grower may handle walnuts of his production free of the regulatory and assessment provisions of this part if he sells such walnuts in the area of production directly to consumers under the following types of exemptions:

(i) At roadside stands and farmers' markets;

(ii) In quantities not exceeding an aggregate of 500 pounds of inshell walnuts or 200 pounds of shelled walnuts during any marketing year (at locations other than those specified in paragraph (a)(1)(i) of this section); and

(iii) If shipped by parcel post or express in quantities not exceeding 10 pounds of inshell walnuts or 4 pounds of shelled walnuts to any one consumer in any one calendar day.

(2) *Green walnuts.* Walnuts which are green and which are so immature that they cannot be used for drying and sale as dried walnuts may be handled without regard to the provisions of this part.

(3) *Noncompetitive outlets.* Any person may handle walnuts, free of the provisions of this part, for use by charitable institutions, relief agencies, governmental agencies for school lunch programs, and diversion to animal feed or oil manufacture pursuant to an authorized governmental diversion program.

* * * * *

■ 18. Amend § 984.69 by lifting the stay of May 7, 2020, on paragraph (b) and revising the section to read as follows:

**§ 984.69 Assessments.**

(a) *Requirement for payment.* Each handler shall pay the Board, on demand, his or her pro rata share of the expenses authorized by the Secretary for each marketing year. Each handler's pro rata share shall be the rate of assessment per inshell pound of walnuts fixed by the Secretary times the pounds of walnuts received by him or her for his or her own account (except as to receipt from other handlers on which assessments have been paid). At any time during or after the marketing year the Secretary may increase the assessment rate as necessary to cover authorized expenses and each handler's pro rata share shall be adjusted accordingly.

(b) *Assessment rate.* The assessment rate set out may be modified by the Secretary, based upon a recommendation of the Board or other available data.

(c) *Late payment.* If a handler does not pay assessments within the time prescribed by the Board, the assessment may be increased by a late payment charge and/or an interest rate charge at amounts prescribed by the Board with approval of the Secretary.

(d) *Accounting.* If at the end of a marketing year the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (d)(2) or (3) of this section, it shall be refunded to handlers from whom collected, and each handler's share of such excess funds shall be the amount of assessments he or she has paid in excess of his or her pro rata share of the actual expenses of the Board.

(2) Excess funds may be used temporarily by the Board to defray expenses of the subsequent marketing year provided each handler's share of such excess shall be made available to him or her by the Board within five months after the end of the year.

(3) The Board may carry over such excess into subsequent marketing years as a reserve: Provided, that funds already in reserve do not exceed approximately two years' budgeted expenses. In the event that funds exceed two marketing years' budgeted expenses, future assessments will be reduced to bring the reserves to an amount that is less than or equal to two marketing years' budgeted expenses. Such reserve funds may be used:

(i) To defray expenses, during any marketing year, prior to the time assessment income is sufficient to cover such expenses;

(ii) To cover deficits incurred during any year when assessment income is less than expenses;

(iii) To defray expenses incurred during any period when any or all provisions of this part are suspended; and

(iv) To meet any other such costs recommended by the Board and approved by the Secretary.

(e) *Advanced assessments and commercial loans.* To provide funds for the administration of the provisions of this part during the part of a marketing year when neither sufficient operating reserve funds nor sufficient revenue from assessments for the current marketing year are available, the Board may accept payment of assessments in

advance or may borrow money from a commercial lending institution for such purposes.

(f) *Termination.* Any money collected from assessments hereunder and remaining unexpended in the possession of the Board upon termination of this part shall be distributed in such manner as the Secretary may direct.

■ 19. Revise § 984.72 to read as follows:

**§ 984.72 Reports of walnuts handled.**

Each handler who handles walnuts, inshell or shelled, at any time during a marketing year shall submit to the Board in such form and at such intervals as the Board may prescribe, reports showing the quantity so handled and such other information pertinent thereto as the Board may specify.

■ 20. Revise § 984.77 to read as follows:

**§ 984.77 Verification of reports.**

For the purpose of verifying and checking reports filed by handlers or the operations of handlers, the Secretary and the Board through its duly authorized representatives shall have access to any premises where walnuts and walnut records are held. Such access shall be available at any time during reasonable business hours. Authorized representatives shall be permitted to inspect any walnuts held and any and all records of the handler with respect to matters within the purview of this part. Each handler shall maintain complete records on the receiving, holding, and disposition of both inshell and shelled walnuts. Each handler shall furnish all labor necessary to facilitate such inspections at no expense to the Board or the Secretary. Each handler shall store all walnuts held by him or her in such manner as to facilitate inspection and shall maintain adequate storage records, which will permit accurate identification of respective lots and of all such walnuts held or disposed of theretofore. The Board, with the approval of the Secretary, may establish any methods and procedures needed to verify reports.

**§ 984.89 [Amended]**

■ 21. Amend § 984.89 in paragraph (b)(4) by removing the term ''fiscal period'' and adding in its place the term ''marketing year''.

■ 22. Revise § 984.347 to read as follows:

**§ 984.347 Assessment rate.**

On and after September 1, 2023, an assessment rate shall be fixed at $0.0125 per inshell pound of California walnuts.

**§ 984.450 [Removed and Reserved]**

■ 23. Amend § 984.450 by lifting the stay of May 7, 2020, on paragraphs (a) and (b) and removing and reserving the section.

**§ 984.451 [Removed and Reserved]**

■ 24. Amend § 984.451 by lifting the stay of May 7, 2020, on paragraph (c) and removing and reserving the section.

**§ 984.452 [Removed and Reserved]**

■ 25. Remove and reserve § 984.452.

**§ 984.456 [Removed and Reserved]**

■ 26. Amend § 984.456 by lifting the stay of May 7, 2020, and removing and reserving the section.

**§ 984.459 [Amended]**

■ 27. Amend § 984.459 by removing and reserving paragraph (a)(3).

**§ 984.464 [Removed and Reserved]**

■ 28. Amend § 984.464 by lifting the stay of May 7, 2020, on paragraph (a) and removing and reserving the section.

■ 29. Revise § 984.472 to read as follows:

**§ 984.472 Reports of walnuts, received, shipped, and committed.**

(a) Reports of walnuts shipped during a month shall be submitted to the Board on California Walnut Board (CWB) Form No. 6 not later than the 5th day of the following month. Such reports shall include all shipments during the preceding month and shall show for inshell and shelled walnuts: the quantity shipped; whether they were shipped into domestic or export channels; and for exports, the quantity by country of destination. If a handler makes no shipments during any month, he/she shall submit a report marked ''None.'' If a handler has completed his/her shipments for the season, he/she shall mark the report ''Completed,'' and he/she shall not be required to submit any additional CWB Form No. 6 reports during the remainder of that marketing year.

(b) Reports of walnuts purchased directly from growers by handlers who are manufacturers or retailers shall be submitted to the Board on CWB Form No. 6, not later than the 5th day of the month following the month in which the walnuts were purchased. Such reports shall show the quantity of walnuts purchased.

(c) Reports of walnuts on which handlers have made purchase commitments with buyers during the month, but which have not yet been shipped, shall be submitted to the Board on CWB Form No. 6, not later than the 5th day of the month following the month in which the walnuts were committed. Such reports shall show the quantity of walnuts committed in either inshell or shelled pounds. If the handler made no commitments during any month, he/she shall mark ''None'' in the ''Purchase Commitments'' section of CWB Form No. 6.

■ 30. Revise § 984.476 to read as follows:

**§ 984.476 Report of walnut receipts produced outside California or the United States.**

Each handler who receives walnuts from outside California or the United States shall file with the Board, on CWB Form No. 7, a report of the receipt of such walnuts. The report shall be filed as follows: On or before December 5 for such walnuts received during the period September 1 to November 30; on or before March 5 for such walnuts received during the period December 1 to February 28 (February 29 in a leap year); on or before June 5 for such walnuts received during the period March 1 to May 31; and on or before September 5 for such walnuts received during the period June 1 to August 31. The report shall include the quantity of such walnuts received, the country of origin for such walnuts, and whether such walnuts are inshell or shelled.

**Erin Morris,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2023–17753 Filed 8–18–23; 8:45 am]

**BILLING CODE P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 50, 52 and 100

**[NRC–2021–0133]**

### Regulatory Guide: Use of ARCON Methodology for Calculation of Accident-Related Offsite Atmospheric Dispersion Factors

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final guide; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing a new Regulatory Guide (RG) 1.249 (Revision 0), ''Use of ARCON Methodology for Calculation of Accident-Related Offsite Atmospheric Dispersion Factors.'' This new RG describes an approach for reactor applicants and licensees for determining atmospheric relative concentration ($\chi$/Q) values in support of modeling onsite releases to offsite

boundaries from a design-basis accident. Also, this RG implements the methodology in RG 1.194, ''Atmospheric Relative Concentrations for Control Room Radiological Habitability Assessments at Nuclear Power Plants,'' for offsite dose locations at boundaries.

**DATES:** Revision 0 to RG 1.249 is available on August 21, 2023.

**ADDRESSES:** Please refer to Docket ID NRC–2021–0133 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0133. Address questions about Dockets IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.*
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

Revision 0 to RG 1.249 and the regulatory analysis may be found in ADAMS under Accession Nos. ML22024A241 and ML21165A007, respectively.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

**FOR FURTHER INFORMATION CONTACT:** Kevin Quinlan, Office of Nuclear Reactor Regulation, telephone: 301–415–6809, email: *Kevin.Quinlan@nrc.gov,* or Jason White, Office of Nuclear Reactor Regulation, telephone: 301–415–3212, email: *Jason.White@nrc.gov,* or Harriet Karagiannis, Office of Nuclear Regulatory Research, telephone: 301–415–2493, email: *Harriet.Karagiannis@nrc.gov.* All are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

## I. Discussion

The NRC is issuing a new guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

For clarification, Revision 0 of RG 1.249 was issued for public comment with a temporary identification of draft Regulatory Guide (DG), DG–4030, to RG 4.28, titled, ''Use of ARCON Methodology for Calculation of Accident-Related Offsite Atmospheric Dispersion Factors.'' After further consideration of the applicability of this RG, the staff decided that it is more suitable to be listed under the RGs of Division 1, titled, ''Power Reactors.'' As a result, the RG number was changed to RG 1.249 using the same RG title, instead of being listed under Division 4, titled, ''Environmental and Siting,'' as RG 4.28. The content of the RG did not change due to it being issued under Division 1 instead of Division 4.

## II. Additional Information

The NRC published a notice of the availability of DG–4030 (ADAMS Accession No. ML21165A005), in the **Federal Register** on August 17, 2021 (86 FR 46024), for a 30-day public comment period. The public comment period closed on September 16, 2021. The staff received 5 comment submissions and a total of 30 public comments. Public comments on DG–4030 and the staff responses to the public comments are available in ADAMS under Accession No. ML22024A245.

This new RG provides guidance to industry for complying with and implementing the NRC requirements by endorsing the use of the ARCON computer code to calculate offsite dispersion values out to distances of 1,200 m (3937 ft) that could include the exclusion area boundary and/or low-population zone.

RG 1.194 (ADAMS Accession No. ML031530505) endorses the use of the ARCON96 computer code for calculating accident-related onsite (control room and technical support center) atmospheric dispersion values which are direct inputs to habitability dose assessments. In addition, RG 1.145 (ADAMS Accession No. ML12216A014) provides the present methodology incorporated into the PAVAN computer code, as reviewed by the staff using NUREG–0800 at *https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/index.html* (ADAMS Accession No. ML070810350), Standard Review Plan (SRP) Section 2.3.4 for calculating accident-related related, offsite atmospheric dispersion values.

RG 1.249 will provide new guidance for applicants and licensees subject to part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities''; 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants''; and 10 CFR part 100, ''Reactor site criteria.''

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this document is being published in the ''Rules'' section of the **Federal Register** to comply with publication requirements under 1 CFR chapter I.

## III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

## IV. Backfitting, Forward Fitting, and Issue Finality

Issuance of RG 1.249, Revision 0, does not constitute backfitting as that term is defined in 10 CFR 50.109, ''Backfitting'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests'' (ADAMS Accession No. ML18093B087); constitute forward fitting as that term is defined and described in MD 8.4; or affect issue finality of any approval issued under 10 CFR part 52. As explained in RG 1.249, applicants and licensees are not required to comply with the positions set forth in this regulatory guide.

## V. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: August 16, 2023.

For the Nuclear Regulatory Commission.

**Michael A. Eudy,**

*Acting Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. 2023–17908 Filed 8–18–23; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 50, 52 and 100

**[NRC–2020–0076]**

## Regulatory Guide: Volcanic Hazards Assessment for Proposed Nuclear Power Reactor Sites

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final guide; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 1 to Regulatory Guide (RG) 4.26 ''Volcanic Hazards Assessment for Proposed Nuclear Power Reactor Sites,'' to restore text and a Section heading inadvertently omitted from Section C, ''Staff Regulatory Guidance,'' of Revision 0. The restored text appeared in the draft guide released for public comment. In addition, there is a minor update of the Paperwork Reduction Act text in the RG. The changes do not represent substantive changes in the NRC staff's regulatory positions.

**DATES:** Revision 1 to RG 4.26 is available on August 21, 2023.

**ADDRESSES:** Please refer to Docket ID NRC–2020–0076 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0076. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* Revision 1 to RG 4.26 ''Volcanic Hazards Assessment for Proposed Nuclear Power Reactor Sites,'' is available in ADAMS under Accession No. ML23167A078.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

**FOR FURTHER INFORMATION CONTACT:** Jenise Thompson, Office of Nuclear Reactor Regulation, telephone: 301–415–0381, email: *Jenise.Thompson@nrc.gov* and Edward O'Donnell, Office of Nuclear Regulatory Research, telephone: 301–415–3317, email: *Edward.ODonnell@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

### I. Discussion

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The NRC typically seeks public comment on a draft version of a RG by announcing its availability for comment in the **Federal Register**. However, as explained in NRC's Management Directive 6.6 ''Regulatory Guides,'' (ADAMS Accession No. ML22010A233) the NRC may directly issue a final RG without a draft version or public comment period if the changes to the RG are non-substantive.

The NRC is issuing Revision 1 of RG 4.26 directly as a final RG because the changes between Revision 1 and Revision 0 are non-substantive. The NRC issued Revision 0 of RG 4.26 in June 2021 (86 FR 34057) to provide guidance for facilitating the NRC staff's review of volcanic hazards assessments performed by applicants to support the siting of new nuclear power reactors. Recently it was noted that there was an administrative error in omission of text and a subheading of the guidance in Section C ''Staff Regulatory Guidance.'' Also, in the discussion of Step 4: ''Evaluate Eruption Potential and/or Hazard Potential,'' two paragraphs and two bullet points discussing model support are missing as well as the subheading for the following section, Step 5: ''Develop Risk Insights,'' despite their inclusion in the draft guide released for public comment (ADAMS Accession No. ML20007D621) and a subsequent draft revised in light of public comments that was presented to NRC's Advisory Committee on Reactor Safeguards for review in spring 2021 (ADAMS Accession No. ML20022A214). In addition, there is an update of the contact information in Paperwork Reduction Act text in the RG.

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this document is being published in the ''Rules'' section of the **Federal Register** to comply with publication requirements under 1 CFR chapter I.

### II. Backfitting, Forwarding, and Issue Finality

Issuance of RG 4.26, Revision 1, does not constitute backfitting as defined in section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), (the Backfit Rule), and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. The changes in Revision 1 of RG 4.26 are limited to editorial changes to improve clarity and the correction of a title. These changes do not fall within the kinds of agency actions that constitute backfitting or are subject to limitations in the issue finality provisions of part 52. Accordingly, the NRC did not address the Backfit Rule or issue finality provisions of part 52.

### III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

### IV. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: August 15, 2023.

For the Nuclear Regulatory Commission.

**Michael A. Eudy,**

*Acting Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. 2023–17867 Filed 8–18–23; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2023–1047; Project Identifier MCAI–2022–01601–T; Amendment 39–22524; AD 2023–16–05]**

**RIN 2120–AA64**

## Airworthiness Directives; De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain De Havilland Aircraft of Canada Limited Model DHC–8–401 and –402 airplanes. This AD was prompted by reports of the main landing gear (MLG) aft door not opening when using the alternate extension system. This AD requires a one-time inspection of the spring box assembly, repetitive inspections of the cam assembly and alternate release cable assembly, corrective actions if necessary, and a replacement of certain alternate release cable assemblies. In addition, this AD requires certain aircraft maintenance manuals tasks when installing the cam assembly or alternate release cable assembly. This AD also prohibits the installation of affected parts. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective September 25, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 25, 2023.

**ADDRESSES:**

*AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1047; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

*Material Incorporated by Reference:*

- For service information identified in this final rule, contact De Havilland Aircraft of Canada Limited, Dash 8 Series Customer Response Centre, 5800 Explorer Drive, Mississauga, Ontario, L4W 5K9, Canada; telephone North America (toll-free): 855–310–1013, Direct: 647–277–5820; email: *thd@dehavilland.com;* website: *dehavilland.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–2023–1047.

**FOR FURTHER INFORMATION CONTACT:** Gabriel Kim, 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:**

### Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Model DHC–8–401 and –402 airplanes. The NPRM published in the **Federal Register** on June 1, 2023 (88 FR 35788). The NPRM was prompted by AD CF–2022–69, dated December 16, 2022, issued by Transport Canada, which is the aviation authority for Canada (referred to after this as the MCAI). The MCAI states that several instances occurred where the maintenance crew using the MLG alternate extension system did not open the MLG aft doors. An investigation found that the associated cam assembly failed due to a fractured cam assembly lever, a damaged spring box assembly, or a broken alternate release cable assembly.

In the NPRM, the FAA proposed to require a one-time inspection of the spring box assembly, repetitive inspections of the cam assembly and alternate release cable assembly, corrective actions if necessary, and a replacement of certain alternate release cable assemblies. In addition, the NPRM also proposed to require certain aircraft maintenance manuals tasks when installing the cam assembly or alternate release cable assembly. The NPRM also proposed to prohibit the installation of affected parts. The FAA is issuing this AD to address possible cam assembly, spring box assembly, and alternate release cable assembly failures. The unsafe condition, if not addressed, could result in asymmetric main landing gear configuration at landing, and a runway excursion.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1047.

### Discussion of Final Airworthiness Directive

### Comments

The FAA received a comment from Air Line Pilots Association, International (ALPA) who supported the NPRM without change.

### Conclusion

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

### Related Service Information Under 1 CFR Part 51

The FAA reviewed De Havilland Aircraft of Canada Limited Service Bulletin 84–32–159, dated June 28, 2019. This service information specifies procedures for performing a general visual inspection of the cam assembly (part number (P/N) 48510–5) for discrepancies (such as the cam assembly does not return to its original rested position, or signs of an increased gap between the roller and the cam guide); a general visual inspection of the alternate release cable assembly (or uplock cable assembly) (P/N 48503–3) for discrepancies (such as a broken cable); a one-time general visual inspection for discrepancies (such as any bend on the plunger) of the left and right MLG spring box assembly (P/N 48504–1); and corrective actions. Corrective actions include replacing the cam assembly with a new cam assembly, replacing the alternate release cable assembly with a new alternate release cable assembly, and replacing

the spring box assembly with a new spring box assembly.

The FAA also reviewed De Havilland Aircraft of Canada Limited Service Bulletin 84–32–172, dated August 16, 2022, including Collins Aerospace Service Bulletin 48500–32–152, dated July 18, 2022. This service information specifies procedures for replacing the left and right MLG alternate release cable assemblies, P/N 48503–3, with the redesigned alternate release cable assembly, P/N 48503–5.

The FAA also reviewed De Havilland Aircraft of Canada Limited Temporary Revision 32–603, dated December 1, 2022, which describes aircraft maintenance manual (AMM) TASK 32–34–16–400–804, ''Installation of the Alternate Extension Cables-Center Fuselage to Nacelle.''

The FAA also reviewed AMM TASK 32–34–26–400–801, ''Installation of the MLG Alternate-Extension Cam-Mechanism Assembly'' of Subject 32–34–26, ''Cam Mechanism Assembly-MLG Alternative Extension'' in Chapter 32, ''Landing Gear,'' of the De Havilland Aircraft of Canada Limited Aircraft Maintenance Manual, Revision 76, dated March 5, 2022. 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.

**Costs of Compliance**

The FAA estimates that this AD affects 55 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| Up to 5 work-hour × $85 per hour = $425 | $4,780 | Up to $5,205 | Up to $286,275. |

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

| Labor cost | Parts cost | Cost per product |
|---|---|---|
| 4.5 work-hours × $85 per hour = $383 | $41,328 | $41,711 |

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

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

**The Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2023–16–05 De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.):** Amendment 39–22524; Docket No. FAA–2023–1047; Project Identifier MCAI–2022–01601–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective September 25, 2023.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to De Havilland Aircraft of Canada Limited (type certificate previously held by Bombardier, Inc.) Model DHC–8–401 and –402 airplanes, certificated in any category, having serial numbers 4001 and 4003 through 4633 inclusive.

**(d) Subject**

Air Transport Association (ATA) of America Code: 32, Landing Gear.

**(e) Unsafe Condition**

This AD was prompted by reports of the main landing gear (MLG) aft door not opening when using the alternate extension system. The FAA is issuing this AD to address possible cam assembly, spring box assembly, and alternate release cable assembly failures. The unsafe condition, if not addressed, could result in asymmetric MLG configuration at landing, and a runway excursion.

**(f) Compliance**

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

**(g) One-Time Inspection**

Within 2,400 flight hours or 12 months, whichever occurs first, after the effective date of this AD, do a one-time general visual inspection for discrepancies on the left and right MLG spring box assemblies (part number (P/N) 48504–1), in accordance with Section 3.B., Part A, of the Accomplishment Instructions of De Havilland Aircraft of Canada Limited Service Bulletin 84–32–159, dated June 28, 2019. If any discrepancy is discovered in the spring box assembly, before further flight, replace with a new spring box assembly, in accordance with Section 3.B. Part B, of the Accomplishment Instructions of De Havilland Aircraft of Canada Limited Service Bulletin 84–32–159, dated June 28, 2019.

**(h) Repetitive Inspections**

(1) Within 2,400 flight hours or 12 months, whichever occurs first, after the effective date of this AD, do a general visual inspection for discrepancies of the cam assemblies (P/N 48510–5) on the left and right MLG, in accordance with Section 3.B. Part A, of the Accomplishment Instructions of De Havilland Aircraft of Canada Limited Service Bulletin 84–32–159, dated June 28, 2019. Thereafter, repeat the inspection at intervals not to exceed 2,400 flight hours or 12 months, whichever occurs first. If any discrepancy is discovered in the cam assembly, before further flight, replace with a new cam assembly, in accordance with Section 3.B. Part B, of the Accomplishment Instructions of De Havilland Aircraft of Canada Limited Service Bulletin 84–32–159, dated June 28, 2019.

(2) Within 2,400 flight hours or 12 months, whichever occurs first, after the effective date of this AD, do a general visual inspection for discrepancies of the alternate release cable assemblies (P/N 48503–3) on the left and right MLG, in accordance with Section 3.B., Part A, of the Accomplishment Instructions of De Havilland Aircraft of Canada Limited Service Bulletin 84–32–159, dated June 28, 2019. Thereafter, repeat the inspection at intervals not to exceed 2,400 flight hours or 12 months, whichever occurs first. If any discrepancy is found, before further flight, replace the alternate release cable assembly with a redesigned alternate release cable assembly P/N 48503–5, in accordance with Section 3.B. of the Accomplishment Instructions of De Havilland Aircraft of Canada Limited Service Bulletin 84–32–172, dated August 16, 2022, including Collins Aerospace Service Bulletin 48500–32–152, dated July 18, 2022. Accomplishing the replacement required by paragraph (i) of this AD terminates the inspections required by this paragraph.

**(i) Replacement**

Within 5,500 flight hours or 30 months, whichever occurs first, after the effective date of this AD, replace the left and right MLG alternate release cable assemblies, P/N 48503–3, with the redesigned alternate release cable assembly, P/N 48503–5, in accordance with Section 3.B. of the Accomplishment Instructions of De Havilland Aircraft of Canada Limited Service Bulletin 84–32–172, dated August 16, 2022, including Collins Aerospace Service Bulletin 48500–32–152, dated July 18, 2022.

**(j) Maintenance Task Requirement**

As of the effective date of this AD, when installing an MLG alternate extension system cam assembly and when installing an alternate release cable assembly, the following aircraft maintenance manual (AMM) tasks must be used, as applicable:

(1) For the alternate release cable assembly: AMM TASK 32–34–16–400–804, ''Installation of the Alternate Extension Cables-Center Fuselage to Nacelle'' as specified in De Havilland Aircraft of Canada Limited Temporary Revision 32–603, dated December 1, 2022.

(2) For the MLG alternate extension system cam assembly: AMM TASK 32–34–26–400–801, ''Installation of the MLG Alternate-Extension Cam-Mechanism Assembly'' of Subject 32–34–26, ''Cam Mechanism Assembly-MLG Alternative Extension'' in Chapter 32, ''Landing Gear,'' of the De Havilland Aircraft of Canada Limited Aircraft Maintenance Manual, Revision 76, dated March 5, 2022.

**(k) Parts Installation Prohibition**

As of the effective date of this AD, no person may install, on any airplane, an alternate release cable assembly P/N 48503–3.

**(l) 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 manager of the International Validation Branch, mail it to ATTN: Program Manager, Continuing Operational Safety, at the address identified in paragraph (m)(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, International Validation Branch, FAA; or Transport Canada; or De Havilland Aircraft of Canada Limited's Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

**(m) Additional Information**

(1) Refer to Transport Canada AD CF–2022–69, dated December 16, 2022, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1047.

(2) For more information about this AD, contact Gabriel Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

**(n) 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) De Havilland Aircraft of Canada Limited Service Bulletin 84–32–159, dated June 28, 2019.

(ii) De Havilland Aircraft of Canada Limited Service Bulletin 84–32–172, dated August 16, 2022, including Collins Aerospace Service Bulletin 48500–32–152, dated July 18, 2022.

**Note 1 to paragraph (n)(2)(ii):** De Havilland issued De Havilland Service Bulletin 84–32–172, dated August 16, 2022, with Collins Aerospace Service Bulletin 48500–32–152, dated July 18, 2022, attached as one ''merged'' file for the convenience of affected operators.

(iii) De Havilland Aircraft of Canada Limited Temporary Revision 32–603, dated December 1, 2022.

(iv) AMM TASK 32–34–26–400–801, ''Installation of the MLG Alternate-Extension Cam-Mechanism Assembly,'' of Subject 32–34–26, ''Cam Mechanism Assembly-MLG Alternative Extension'' in Chapter 32, ''Landing Gear,'' of the De Havilland Aircraft of Canada Limited Aircraft Maintenance Manual, Revision 76, dated March 5, 2022.

(3) For service information identified in this AD, contact De Havilland Aircraft of Canada Limited, Dash 8 Series Customer Response Centre, 5800 Explorer Drive, Mississauga, Ontario, L4W 5K9, Canada; telephone North America (toll-free): 855–310–1013, Direct: 647–277–5820; email: *thd@dehavilland.com;* website: *dehavilland.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 August 7, 2023.

**Victor Wicklund,**

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

[FR Doc. 2023–17777 Filed 8–18–23; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2022–1483; Project Identifier MCAI–2022–00435–T; Amendment 39–22522; AD 2023–16–03]**

**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:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. This AD was prompted by a report from the supplier of a manufacturing quality escape in which some sensing elements were manufactured with insufficient salt fill. This could result in an inability to detect hot bleed air leaks. This AD requires, depending on airplane serial number, reviewing the airplane maintenance records for affected bleed leak detection system sensing elements, testing the sensing elements, replacing those that fail, and witness marking those that pass, as specified in a Transport Canada AD, which is incorporated by reference. This AD also prohibits the installation of affected parts under certain conditions. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective September 25, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 25, 2023.

**ADDRESSES:**

*AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1483; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

*Material Incorporated by Reference:*

- For Transport Canada material incorporated by reference in this AD, 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* You may find this material on the Transport Canada website at *tc.canada.ca/en/aviation.*
- For Kidde Aerospace & Defense service information incorporated by reference in this AD, contact Kidde Aerospace & Defense, 4200 Airport Drive NW, Building B, Wilson, NC 27896; telephone: 319–295–5000; website: *kiddetechnologies.com/aviation.com.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. MCAI–2022–00435–T.

**FOR FURTHER INFORMATION CONTACT:** Thomas Niczky, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7347; email: *9-avs-nyaco-cos@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. The NPRM published in the **Federal Register** on November 25, 2022 (87 FR 72416). The NPRM was prompted by CF–2022–13, dated March 28, 2022, issued by Transport Canada, which is the aviation authority for Canada (Transport Canada AD CF–2022–13). The MCAI states that Airbus Canada Limited Partnership received disclosure letters from the supplier that reported a manufacturing quality escape in which some of the overheat detection sensing elements were manufactured with insufficient salt fill. These sensing elements are used by the bleed air leak detection system for temperature detection in the event of a hot bleed air leak. Insufficient salt fill can result in an inability to detect hot bleed air leaks, which can cause damage to surrounding structures and systems that could prevent continued safe flight and landing.

In the NPRM, the FAA proposed to require, depending on airplane serial number, reviewing the airplane maintenance records for affected bleed leak detection system sensing elements, testing the sensing elements, replacing those that fail, and witness marking those that pass, as specified in Transport Canada AD CF–2022–13. The NPRM also proposed to prohibit the installation of affected parts under certain conditions. The FAA is issuing this AD to address the unsafe condition on these products.

Since the NPRM was issued, Transport Canada revised AD CF–2022–13 and issued Transport Canada AD CF–2022–13R1, dated April 18, 2023 (Transport Canada AD CF–2022–13R1) (also referred to as the MCAI). Transport Canada AD CF–2022–13R1 clarifies the definition of the affected part. Also, Airbus Canada Limited Partnership issued updated Service Bulletins BD500–362002 Issue 002, dated July 26, 2023, and BD500–362003 Issue 002, dated July 26, 2023. These updated service bulletins removed redundant steps and corrected that only failed sensing elements and not a failed loop needs to be replaced.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1483.

### Discussion of Final Airworthiness Directive

### Comments

The FAA received comments from Air Line Pilots Association, International (ALPA), who supported the NPRM without change.

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

### Request To Delay Final Rule

Delta requested that the FAA delay the final rule until a revised Transport Canada AD is issued. Delta stated the current definition of an ''Affected Part'' in Transport Canada AD CF–2022–13 does not provide a clear and concise method for compliance for operators to comply with the proposed AD. Delta stated that it wants to review the new Transport Canada AD and submit comments on a new NPRM.

The FAA agrees that the definition for ''Affected Part'' should be revised for

clarity. As stated previously, Transport Canada has revised Transport Canada AD CF–2022–13 to update the definition for ''Affected Part.'' The FAA has revised this AD to refer to Transport Canada AD CF–2022–13R1. However, the FAA disagrees with the request to issue a supplemental NPRM. The FAA notes that the updated definition does not result in new requirements and therefore a supplemental NPRM is not necessary. In addition, the FAA has added paragraph (i) to this AD to provide credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Transport Canada AD CF–2022–13.

**Request To Add Exception To Refer to Affected Parts**

Delta requested that the FAA add an exception to paragraph (h) of the proposed AD to specify that where paragraphs a. and b. of Part III. of Transport Canada AD CF–2022–13 specify to ''test the sensing elements,'' replace that text with ''test affected parts.'' Delta stated that the safety concern is only applicable to an ''Affected Part'' as identified in Transport Canada AD CF–2022–13 and not all sensing elements on an airplane. Delta explained that as currently written, Transport Canada AD CF–2022–13 requires operators to test all sensing elements, regardless of if they are an ''affected part'' or not. Delta stated that specifying ''affected part'' will allow operators to initially inspect each sensing element, determine if it is an ''affected part'', and test (apply corrective actions) only those affected parts; thereby minimizing labor hours.

The FAA agrees the language in paragraphs a. and b. of Part III of Transport Canada AD CF–2022–13 should be revised to specify the ''affected part'' as defined in Transport Canada AD CF–2022–13. Transport Canada has updated paragraphs a. and b. of Part III of Transport Canada AD CF–2022–13R1 to refer to the affected parts. As stated previously, this AD now refers to Transport Canada AD CF–2022–13R1. Paragraphs a. and b. of Part III of Transport Canada AD CF–2022–13R1 now narrow the scope to testing of only affected parts. Therefore, an exception to Transport Canada AD CF–2022–13R1 is not needed in this AD.

**Request To Add an Exception for Replacing Parts**

Delta requested that the FAA add an exception to paragraph (h) of the proposed AD to change the replacement parts. Delta stated that where Appendix A through Appendix J of Airbus Canada Limited Partnership Service Bulletin BD500–362002 Issue 001, dated February 18, 2022; and Appendix A through Appendix C of Airbus Canada Limited Partnership Service Bulletin BD500–362003 Issue 001, dated February 18, 2022, specify ''remove and replace any failed loop,'' replace with ''remove and replace any failed sensing element.'' Delta stated that, as written, the appendices specifies that if a sensing element fails, then the entire loop is to be removed and replaced under the Required for Compliance (RC) procedure. Delta stated Airbus Canada specified that more than one sensing element can be within a single loop and that only sensing elements that fail the test need to be replaced. Delta concluded that the recommended exception will provide more clarity on what parts need to be removed and replaced to address the safety concern.

The FAA agrees that the affected parts are sensing elements and if a sensing element fails, only that sensing element must be replaced as specified in paragraphs a. and b. of Part III, Transport Canada AD CF–2022–13R1. The FAA has added an exception in paragraph (h)(5) of this AD to state that where the appendixes of Issue 001 of the service information referenced in ''First SB'' and ''Second SB'' of Transport Canada AD CF–2022–13R1 specify steps to remove and replace any failed loop, this AD requires replacing only any failed sensing element. In addition, Airbus Canada Limited Partnership Service Bulletins BD500–362002 Issue 002, dated July 26, 2023, and BD500–362003 Issue 002, dated July 26, 2023, removed the statements ''remove and replace any failed loop'' and now specify only replacing a failed sensing element. As defined in ''First SB'' and ''Second SB'' of Transport Canada AD CF–2022–13R1, later revisions of the service information are allowed for compliance, which includes Airbus Canada Limited Partnership Service Bulletins BD500–362002 Issue 002, dated July 26, 2023, and BD500–362003 Issue 002, dated July 26, 2023.

**Request To Add Exception To Exclude Redundant Marking**

Delta requested that the FAA add an exception to paragraph (h) of the proposed AD to exclude redundant steps for adding ''witness marks.'' Delta listed multiple steps for adding ''witness marks'' within the parts in the procedures of Airbus Canada Limited Partnership Service Bulletin BD500–362002 Issue 001, dated February 18, 2022; and Airbus Canada Limited Partnership Service Bulletin BD500–362003 Issue 001, dated February 18, 2022. Delta stated those steps are redundant to a step for adding ''witness marks'' in the appendixes of Airbus Canada Limited Partnership Service Bulletin BD500–362002 Issue 001, dated February 18, 2022; and Airbus Canada Limited Partnership Service Bulletin BD500–362003 Issue 001, dated February 18, 2022. Delta stated that following completion of an appendix, the associated part procedure is done. Delta stated both steps cannot be deviated from because both are within the RC procedure section of the service information. Delta stated that Airbus Canada confirmed that the marking of sensing elements only needs to be done once.

The FAA agrees that the steps for adding ''witness marks'' within the procedures parts in the Accomplishment Instructions are redundant with the steps in the appendices of Airbus Canada Limited Partnership Service Bulletin BD500–362002 Issue 001, dated February 18, 2022; and Airbus Canada Limited Partnership Service Bulletin BD500–362003 Issue 001, dated February 18, 2022. The FAA agrees that redundant steps are not required to be performed. Airbus Canada Limited Partnership Service Bulletins BD500–362002 Issue 002, dated July 26, 2023, and BD500–362003 Issue 002, dated July 26, 2023, removed the redundant marking steps from the appendices. The FAA has added an exception to paragraph (h)(6) of this AD to clarify that adding ''witness marks'' is only done once when using Issue 001 of the service information referenced in ''First SB'' and ''Second SB'' of Transport Canada AD CF–2022–13R1. Paragraph (h)(6) of this AD also clarifies that replacing an affected part if a test is unsatisfactory is only done once, which addresses the following comment about additional redundant steps.

**Request To Add Exception To Exclude Redundant Replacements**

Delta requested that the FAA add an exception to paragraph (h) of the proposed AD to exclude redundant replacement steps. Delta listed multiple steps to remove the sensing element if the test is unsatisfactory and install a new sensing element within the procedures of the parts of Airbus Canada Limited Partnership Service Bulletin BD500–362002 Issue 001, dated February 18, 2022; and Airbus Canada Limited Partnership Service Bulletin BD500–362003 Issue 001, dated February 18, 2022. Delta stated those steps are redundant to steps to ''replace a failed sensing element'' as well as steps to ''replace a failed loop'' (which

Delta noted it has asked to be revised to ''replace any failed sensing element'' in its previous comment) in the appendixes of Airbus Canada Limited Partnership Service Bulletin BD500–362002 Issue 001, dated February 18, 2022; and Airbus Canada Limited Partnership Service Bulletin BD500–362003 Issue 001, dated February 18, 2022. Delta stated that following completion of an appendix, the associated part procedure is done. Delta stated both steps cannot be deviated from because both are within the RC procedure section of the service information. Delta stated that Airbus Canada confirmed that the replacement of failed sensing elements only needs to be done once.

The FAA agrees that the steps to remove the sensing element if the test is unsatisfactory and install a new sensing element that are within the procedures of the parts of the Accomplishment Instructions are redundant with the steps in the appendices of Airbus Canada Limited Partnership Service Bulletin BD500–362002 Issue 001, dated February 18, 2022; and Airbus Canada Limited Partnership Service Bulletin BD500–362003 Issue 001, dated February 18, 2022. The FAA agrees that redundant steps are not required to be performed. Airbus Canada Limited Partnership Service Bulletins BD500–362002 Issue 002, dated July 26, 2023, and BD500–362003 Issue 002, dated July 26, 2023, removed the redundant replacement steps from the appendices. As stated previously, the FAA has added an exception to paragraph (h)(6) of this AD to clarify that replacing affected parts is only done once when using Issue 001 of the service information referenced in ''First SB'' and ''Second SB'' of Transport Canada AD CF–2022–13R1.

**Change to Paragraph (h)(4) of the Proposed AD**

The exception in paragraph (h)(4) of the proposed AD to the parts installation prohibition specified in Transport Canada AD CF–2022–13 referred to ''ACLP SB BD500–362002 Issue 001, dated February 18, 2022'' and ''ACLP SB BD500–362003 Issue 001, dated February 18, 2022'' for the prohibited sensing elements. The FAA has revised paragraph (h)(4) of this AD to specify prohibited sensing elements are identified in either Issue 001 or Issue 002 of the service information, *i.e.,* ''ACLP SB BD500–362002 Issue 001, dated February 18, 2022, or Issue 002, dated July 26, 2023'' and ''ACLP SB BD500–362003 Issue 001, dated February 18, 2022, or Issue 002, dated July 26, 2023.''

**Conclusion**

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

**Related Service Information Under 1 CFR Part 51**

Transport Canada AD CF–2022–13R1 specifies procedures for, depending on airplane serial number, reviewing the airplane maintenance records for affected bleed leak detection system sensing elements, testing the sensing elements, replacing those that fail, and witness marking those that pass. Transport Canada AD CF–2022–13R1 also prohibits the installation of any affected parts unless it is a serviceable part.

Kidde Aerospace & Defense Service Bulletin CFD–26–1, Revision 6, dated February 28, 2022, specifies affected continuous fire detector (CFD) part numbers and testing procedures.

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.

**Costs of Compliance**

The FAA estimates that this AD affects 69 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| Up to 125 work-hours × $85 per hour = $10,625 (for Group A, 52 airplanes) .. | $0 | Up to $10,625 ..... | Up to $552,500. |
| Up to 1 work-hour × $85 per hour = $85 (for Group B, 17 airplanes) ..... | $0 | Up to $85 ..... | Up to $1,445. |

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

| Labor cost | Parts cost | Cost per product |
|---|---|---|
| Up to 58 work-hours × $85 per hour = $4,930 (for Group A airplanes) ..... | Up to $101,045 ... | Up to $105,975. |
| Up to 183 work-hours × $85 per hour = $15,555 (for Group B airplanes) ..... | Up to $101,045 ... | Up to $116,600. |

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

**Authority for This Rulemaking**

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA

with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

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

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

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

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

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

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

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

**The Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2023–16–03 Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.):** Amendment 39–22522; Docket No. FAA–2022–1483; Project Identifier MCAI–2022–00435–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective September 25, 2023.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes, certificated in any category, as identified in Transport Canada AD CF–2022–13R1, dated April 18, 2023 (Transport Canada AD CF–2022–13R1).

**(d) Subject**

Air Transport Association (ATA) of America Code 36, Pneumatic.

**(e) Unsafe Condition**

This AD was prompted by a report from the supplier of overheat detection sensing elements that there was a manufacturing quality escape in which some sensing elements were manufactured with insufficient salt fill. The FAA is issuing this AD to address insufficient salt fill of the overheat detection sensing elements. The unsafe condition, if not addressed, could result in an inability to detect hot bleed air leaks, which can cause damage to surrounding structures and systems that could prevent continued safe flight and landing.

**(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–2022–13R1.

**(h) Exception to Transport Canada AD CF–2022–13R1**

(1) Where Transport Canada AD CF–2022–13R1 refers to April 11, 2022 (the effective date of Transport Canada AD CF–2022–13, dated March 28, 2022), or to its effective date, this AD requires using the effective date of this AD.

(2) Where Transport Canada AD CF–2022–13R1 refers to hours air time, this AD requires using flight hours.

(3) Where Transport Canada AD CF–2022–13R1 defines ''Affected part'' and refers to part numbers in a certain service bulletin, for this AD, operators must use Kidde Aerospace & Defense Service Bulletin CFD–26–1, Revision 6, dated February 28, 2022, to determine the part number.

(4) Where ''Part I'' of Transport Canada AD CF–2022–13R1 specifies the parts installation prohibition for certain airplanes, replace the text ''associated with Part A through Part J of the first SB or Part A through Part C of the second SB'' with ''associated with Part A through Part J of ACLP SB BD500–362002 Issue 001, dated February 18, 2022, or Issue 002, dated July 26, 2023; or Part A through Part C of ACLP SB BD500–362003 Issue 001, dated February 18, 2022, or Issue 002, dated July 26, 2023.''

(5) Where the appendixes of Issue 001 of the service information referenced in ''First SB'' and ''Second SB'' of Transport Canada AD CF–2022–13R1 specify steps to ''remove and replace any failed loop,'' this AD requires replacing only any failed sensing element as specified in Transport Canada AD CF–2022–13R1.

(6) Where the appendixes and the procedure sections of Issue 001 of the service information referenced in ''First SB'' and ''Second SB'' of Transport Canada AD CF–2022–13R1 specify redundant steps to remove and replace any failed loops or any failed sensing elements and steps to add ''witness marks (dots),'' this AD requires those steps be performed only once. Also, as stated in paragraph (h)(5) of this AD only the failed sensing element must be replaced and not a failed loop.

**(i) 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 Transport Canada AD CF–2022–13, dated March 28, 2022.

**(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 manager of the International Validation Branch, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, International Validation Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. 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 (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 Thomas Niczky, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite

410, Westbury, NY 11590; telephone: 516–228–7347; email: *9-avs-nyaco-cos@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) Transport Canada AD CF–2022–13R1, dated April 18, 2023.

(ii) Kidde Aerospace & Defense Service Bulletin CFD–26–1, Revision 6, dated February 28, 2022.

(3) For Transport Canada AD CF–2022–13R1, 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*. You may find this Transport Canada AD on the Transport Canada website at *tc.canada.ca/en/aviation*.

(4) For Kidde Aerospace & Defense service information, contact Kidde Aerospace & Defense, 4200 Airport Drive NW, Building B, Wilson, NC 27896; telephone: 319–295–5000; website: *kiddetechnologies.com/aviation.com*.

(5) 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.

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

Issued on August 3, 2023.

**Victor Wicklund,**

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

[FR Doc. 2023–17774 Filed 8–18–23; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 31501; Amdt. No. 4073]**

## 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 August 21, 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 August 21, 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 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 type 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 August 4, 2023.

**Thomas J Nichols,**

*Aviation Safety, Flight Standards Service Manager, 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 7 September 2023**

Athens, GA, KAHN, VOR RWY 27, Amdt 13B, CANCELED
Alexandria, MN, KAXN, Takeoff Minimums and Obstacle DP, Amdt 2
Dallas, TX, KADS, ILS OR LOC RWY 34, Amdt 3D
Grand Prairie, TX, KGPM, RNAV (GPS) RWY 36, Amdt 1
Grand Prairie, TX, KGPM, VOR RWY 36, Amdt 2

**Effective 5 October 2023**

Birmingham, AL, KBHM, ILS OR LOC RWY 6, ILS RWY 6 (CAT II), Amdt 43B
Mobile, AL, KBFM, Takeoff Minimums and Obstacle DP, Amdt 2
Parker, AZ, P20, RNAV (GPS) RWY 2, Amdt 1
Parker, AZ, P20, Takeoff Minimums and Obstacle DP, Amdt 2
Redding, CA, O85, REDDING ONE, Graphic DP
Redding, CA, O85, RNAV (GPS)-A, Orig
Redding, CA, O85, RNAV (GPS)-B, Orig
Redding, CA, O85, Takeoff Minimums and Obstacle DP, Orig
Umatilla, FL, X23, RNAV (GPS)-A, Amdt 1
Umatilla, FL, X23, RNAV (GPS)-B, Amdt 1
Umatilla, FL, X23, Takeoff Minimums and Obstacle DP, Amdt 1
Atlanta, GA, KCCO, VOR–A, Amdt 8A, CANCELED
Tallulah, LA, KTVR, ILS OR LOC RWY 36, Amdt 1
Hagerstown, MD, KHGR, ILS OR LOC RWY 9, Amdt 2
Hagerstown, MD, KHGR, ILS OR LOC RWY 27, Amdt 12
Hagerstown, MD, KHGR, RNAV (GPS) RWY 9, Amdt 2
Hagerstown, MD, KHGR, RNAV (GPS) RWY 27, Amdt 2
Tulsa, OK, KTUL, ILS OR LOC RWY 18R, Amdt 9
Tulsa, OK, KTUL, RNAV (GPS) RWY 18R, Amdt 2A

*Rescinded:* On July 28, 2023 (88 FR 48722), the FAA published an Amendment in Docket No. 31499, Amdt No. 4071, to part 97 of the Federal Aviation Regulations under §§ 97.33, and 97.37. The following entries for Leonardtown, MD, effective October 5, 2023, are hereby rescinded in their entirety:

Leonardtown, MD, 2W6, RNAV (GPS) RWY 11, Amdt 3
Leonardtown, MD, 2W6, Takeoff Minimums and Obstacle DP, Amdt 1

[FR Doc. 2023–17850 Filed 8–18–23; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 31502; Amdt. No. 4074]**

## 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 August 21, 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 August 21, 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 August 4, 2023.

**Thomas J Nichols,**

*Aviation Safety, Flight Standards Service, Manager, 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 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 |
|---|---|---|---|---|---|---|
| 7–Sep–23 .... | CA | Petaluma ..... | Petaluma Muni ..... | 3/6291 | 6/29/23 | This NOTAM, published in Docket No. 31500, Amdt No. 4072, TL 23–19, (88 FR 48720, July 28, 2023) is hereby rescinded in its entirety. |

| AIRAC date | State | City | Airport name | FDC No. | FDC date | Procedure name |
|---|---|---|---|---|---|---|
| 7–Sep–23 .... | CA | Petaluma ..... | Petaluma Muni ..... | 3/6292 | 6/29/23 | This NOTAM, published in Docket No. 31500, Amdt No. 4072, TL 23–19, (88 FR 48720, July 28, 2023) is hereby rescinded in its entirety. |
| 7–Sep–23 .... | FL | Orlando ..... | Exec ..... | 3/1313 | 7/25/2023 | ILS OR LOC RWY 7, Amdt 24B |
| 7–Sep–23 .... | IN | South Bend ..... | South Bend Intl ..... | 3/8911 | 7/24/2023 | ILS OR LOC RWY 27L, ILS RWY 27L (SA CAT I), ILS RWY 27L (SA CAT II), Amdt 36A. |
| 7–Sep–23 .... | IN | South Bend ..... | South Bend Intl ..... | 3/8912 | 7/24/2023 | RNAV (GPS) RWY 9L, Amdt 1C. |
| 7–Sep–23 .... | IN | South Bend ..... | South Bend Intl ..... | 3/8913 | 7/24/2023 | VOR RWY 18, Amdt 7E. |
| 7–Sep–23 .... | IN | South Bend ..... | South Bend Intl ..... | 3/8914 | 7/24/2023 | ILS OR LOC RWY 9R, Amdt 10C. |
| 7–Sep–23 .... | IN | South Bend ..... | South Bend Intl ..... | 3/8915 | 7/24/2023 | RNAV (GPS) RWY 27L, Orig-C. |
| 7–Sep–23 .... | IN | South Bend ..... | South Bend Intl ..... | 3/8916 | 7/24/2023 | RNAV (GPS) RWY 27R, Amdt 1A. |
| 7–Sep–23 .... | IN | South Bend ..... | South Bend Intl ..... | 3/8917 | 7/24/2023 | RNAV (GPS) RWY 18, Amdt 1C. |

[FR Doc. 2023–17851 Filed 8–18–23; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### 15 CFR Part 738

**[Docket No. 230815–0195]**

**RIN 0694–AJ25**

## Expansion of Nuclear Nonproliferation Controls on the People's Republic of China and Macau; Correction

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Correcting amendment.

**SUMMARY:** The Bureau of Industry and Security (BIS) is correcting a final rule, *Expansion of Nuclear Nonproliferation Controls on the People's Republic of China and Macau,* that appeared in the **Federal Register** on August 14, 2023. That rule intended to amend the Export Administration Regulations (EAR) by adding additional nuclear nonproliferation controls on China and Macau. There was an inadvertent error in one of the regulatory instructions for that rule; this final rule corrects that inadvertent error.

**DATES:** Effective August 17, 2023, and applicable beginning August 11, 2023.

**FOR FURTHER INFORMATION CONTACT:** Logan Norton, Regulatory Policy Division, *RPD2@bis.doc.gov,* (202) 482–2440.

**SUPPLEMENTARY INFORMATION:** This is a summary of the erratum, published in the **Federal Register** of Monday, August 14, 2023 (88 FR 54875). This is the first set of corrections.

The regulatory text of 88 FR 54875 became enforceable as of August 11, 2023.

### List of Subjects in 15 CFR Part 738

Exports.

Accordingly, 15 CFR part 738 is corrected by making the following correcting amendments:

## PART 738—COMMERCE CONTROL LIST OVERVIEW AND THE COUNTRY CHART

■ 1. The authority citation for part 738 continues to read as follows:

**Authority:** 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 8720; 10 U.S.C. 8730€; 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 2. In supplement no. 1 to part 738, the table is amended by revising the entries for China and Macau. The revisions read as follows:

COMMERCE COUNTRY CHART

[Reason for control]

| Countries | Chemical & biological weapons | | Nuclear non-proliferation | | National security | | Missile tech | Regional stability | | Fire-arms con-vention | Crime control | | | Anti-terrorism | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| CB 1 | CB 2 | CB 3 | NP 1 | NP 2 | NS 1 | NS 2 | MT 1 | RS 1 | RS 2 | FC 1 | CC 1 | CC 2 | CC 3 | AT 1 | AT 2 |
| * | * | | * | | * | | * | | * | | * | | | | |
| China | X | X | X | X | X | X | X | X | X | X | | X | | X | |
| * | * | | * | | * | | * | | * | | * | | | | |
| Macau | X | X | X | X | X | X | X | X | X | X | | X | | X | |
| * | * | | * | | * | | * | | * | | * | | | | |

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**Matthew S. Borman,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 2023–18047 Filed 8–17–23; 4:15 pm]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Parts 880, 888, 903, 905, 964, 970, and 983

**[Docket No. FR–6361–N–01]**

## Rental Assistance Demonstration: Supplemental Guidance on Revised RAD Notice

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner and Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Announcement of changes to the Rental Assistance Demonstration.

**SUMMARY:** The Rental Assistance Demonstration (RAD) provides the opportunity to test the conversion of assistance of public housing properties and other HUD-assisted properties to long-term, project-based Section 8 rental assistance. This document announces the posting of a supplement to the most current notice (Revised RAD Notice Revision 4, H–2019–09/PIH–2019–23 (HA)). As provided by the RAD Statute, this document addresses the requirement that RAD may proceed after publication of notice of its terms in the **Federal Register**. This document summarizes the key changes made to the H–2019–09/PIH–2019–23 (HA) through the RAD Supplemental Notice 4B, H–2023–08/PIH–2023–19 (HA). This document also meets the RAD statutory requirement to publish waivers and alternative requirements at least 10 days before effect, while this does not prevent the demonstration, as modified, from proceeding immediately.

**DATES:** The RAD Supplemental Notice 4B, H–2023–08/PIH–2023–19 (HA) other than those items listed as new statutory or regulatory waivers or alternative requirements specified in this document, is effective August 21, 2023.

The new statutory and regulatory waivers and alternative requirements are effective August 31, 2023.

**ADDRESSES:** Interested persons are invited to submit questions or comments electronically to *rad@hud.gov*.

**FOR FURTHER INFORMATION CONTACT:** William A. Lavy, Director of Program Administration, Office of Recapitalization, Office of Multifamily Programs, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6230, Washington, DC 20410; telephone 202–402–2465. (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*. To assure a timely response, please direct written requests for further information electronically to the email address *rad@hud.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Originally authorized by the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 122–55, approved November 18, 2011) (2012 Appropriations Act) and later amended, RAD allows for the conversion of assistance of public housing properties, Rent Supplement (Rent Supp), Rental Assistance (RAP), Moderate Rehabilitation (Mod Rehab), Mod Rehab Single Room Occupancy (SRO), Section 202 Project Rental Assistance Contract (202 PRAC), and Section 811 Project Rental Assistance Contract (811 PRAC) programs (collectively, ''covered programs'') to long-term, renewable assistance under Section 8.[1] The most recent version of the RAD notice is H–2019–09/PIH–2019–23 (HA), located at *https://www.hud.gov/sites/dfiles/OCHCO/documents/2019-09hsgn.pdf*.

### II. Key Changes Made to RAD

The following highlights key changes to RAD that are included in the RAD Supplemental Notice (the Notice):

1. RAD for PRAC Initial Contract Rent Setting. The Consolidated Appropriations Acts, 2022 and 2023, each provided $6 million to support preservation transactions of housing for the elderly originally developed with a Section 202 Capital Advance and assisted with a Project Rental Assistance Contract (PRAC). HUD is implementing this provision of the Consolidated Appropriations Acts, 2022 and 2023 in Section I of the Notice by allowing additional rent-setting flexibilities to promote and incentivize projects where the conversion supports long-term preservation by enhancing climate resiliency, energy and water efficiency, and the design of housing appropriate for the elderly to age-in-place. It further implements waiver authority provided in the Consolidated Appropriations Acts, 2022 and 2023 to ensure the continuation of resident services previously provided at Section 202 PRAC properties that are converting through RAD and to avoid reductions in rental revenue at such properties.

2. Resident Engagement. Section II of the Notice amends the Resident Engagement requirements for PHAs to ensure that the residents are better informed and engaged in the RAD conversion process and that HUD can adequately monitor resident engagement. The Notice enhances the descriptions of resident engagement that must be submitted with the RAD application and modifies the resident meeting requirements to provide for more frequent and meaningful updates to residents.

3. Energy Efficiency and Climate Resilience. Section III of the Notice amends the RAD Notice, Rev-4 to raise the minimum energy efficiency standards applicable to new construction activities by reference to updated energy codes incorporating higher, cost-effective standards and requires PHAs to participate in climate resilience planning.

4. Harmonizing Radon Policies in RAD Conversions. Section IV of the Notice amends the RAD Notice, Rev-4 to ensure that all projects converting assistance under RAD are evaluated for radon. RAD Notice, Rev-4 introduced requirements for radon testing for properties converting under RAD but exempted certain scenarios from the requirement. It also inadvertently omitted Mod Rehab conversions from the requirement. HUD's subsequent amendments to Chapter 9 of the MAP Guide further narrowed the exempted scenarios. Through the Notice, HUD is eliminating the remaining exemptions, subjecting all Converting Projects to radon testing requirements.

5. Treatment of Zero-HAP families. Section V of the Notice amends the treatment of families whose total tenant payment (TTP) exceeds the Gross Rent on the RAD HAP Contract including families present at the time of

[1] The RAD statutory requirements were amended by the Consolidated Appropriations Act, 2014 (Pub. L. 113–76, approved January 17, 2014), the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235, approved December 16, 2014), the Consolidated Appropriations Act, 2016 (Pub. L. 114–113, approved December 18, 2015), the Consolidated Appropriations Act, 2017 (Pub. L. 115–31, approved May 5, 2017), the Consolidated Appropriations Act, 2018 (Pub. L. 115–141, approved March 23, 2018), and the Consolidated Appropriations Act, 2022 (Pub. L. 117–103, approved March 15, 2022). The statutory provisions of the 2012 Appropriations Act pertaining to RAD, as amended, are referred to collectively as the ''RAD Statute'' in this document.

conversion and families newly admitted to the property after conversion.

6. Faircloth-to-RAD Developments. Section VI and Section II of the Notice make changes to the RAD Notice, Rev-4 in order to support PHAs that are developing public housing units to replace public housing units previously removed from the PHA's portfolio. PHAs can secure a conditional pre-completion approval to convert newly developed public housing units to a long-term Section 8 contract through RAD following completion of the public housing development process. The changes make it simpler for PHAs to reserve RAD conversion authority, allow PHAs to utilize HAP reserves in order to augment RAD rents for such units at conversion, and set forth alternative resident notification procedures that a PHA may employ.

7. Housing Quality Standards. Section VII of the Notice amends the RAD Notice, Rev-4 to clarify applicability of HQS during the work period for occupied units and adds a certification requirement regarding the condition of the unit prior to the execution of the HAP Contract.

8. RAD/Section 18 Blend Streamlining. Section VIII of the Notice extends additional waivers to non-RAD project-based vouchers (PBVs) at the Converted Project in order to facilitate uniform treatment of residents and units.

## III. New Waivers and Alternative Requirements

The RAD Statute provides that waivers and alternative requirements authorized under the First Component must be published by notice in the **Federal Register** no later than 10 days before the effective date of such notice. Under the Second Component of RAD, HUD is authorized to waive or alter the provisions of subparagraphs (C) and (D) of Section 8(o)(13) of the United States Housing Act of 1937 (42 U.S.C. 1437f) (the 1937 Act).

HUD has previously published its waivers and alternative requirements for RAD on July 26, 2012 (77 FR 43850), July 2, 2013 (78 FR 39759), June 26, 2015 (80 FR 36830), January 19, 2017 (82 FR 6615), July 3, 2018 (83 FR 31169), and October 10, 2019 (84 FR 54630). This document only includes waivers and alternative requirements not previously published or that have changed from previous publications. Although waivers and alternative requirements authorized under the Second Component are not subject to a **Federal Register** publication requirement, new Second Component waivers and alternative requirements are included in this document as a matter of convenience.

The new waivers and alternative requirements are:

1. Initial Contract Rent Setting for converting Section 202 PRAC projects. *Provisions affected:* Initial Section 8 Housing Assistance Payment contract rents shall not exceed 120% of the applicable fair market rents (FMR) less any utility allowances. *Waiver:* HUD is waiving the limitation under Section 8(c)(1)(A) of the 1937 Act (42 U.S.C. 1437f) on setting initial contract rents no higher than 120% of FMR, less any utility allowances. *Alternative requirement:* HUD is implementing an alternative requirement permitting initial contract rents be set at the higher of (a) 120% of the applicable FMR (consistent with the requirements of Section 8(c)(1) of the 1937 Act), less any utility allowances, plus the current cost of provision and coordination of services, or (b) the approved PRAC rents, as necessary to ensure the ongoing provision and coordination of services or to avoid a reduction in project subsidy.

2. Treatment of Zero-HAP families. *Provisions affected:* A PHA may select an occupied unit to be included under the PBV HAP Contract only if the unit's occupants are eligible for housing assistance payments. Also, a PHA must remove a unit from the HAP Contract when no assistance has been paid for 180 days because the family's TTP has risen to a level that is equal to or greater than the Gross Rent. *Waiver:* For RAD PBV units, the provisions of 24 CFR 983.53(c) does not apply in order to provide RAD PBV assistance to residents who were living in the Converting Project prior to conversion. To implement the alternative requirement and allow units where families are receiving no rental assistance remain under contract, HUD is waiving 24 CFR 983.258 and 983.211, as well as the provisions of Section 8(o)(13)(H) of the Act and the regulations at 24 CFR 983.201 as modified by Section 1.6.B.5 of Notice H–2019–09/PIH–2019–23 (HA). *Alternative requirements:* HUD is implementing alternative requirements that pre-conversion families with a TTP that equals or exceeds Gross Rent who would otherwise qualify for assistance in the unit shall be admitted and allowed to occupy the RAD PBV unit. HUD is also requiring that the units occupied by such families shall be placed on and/or remain under the RAD PBV HAP Contract when TTP equals or exceeds the Gross Rent. These waivers only apply to ''new admission families'' (*i.e.,* families that were not residents of the Converting Project at the time of conversion) if a PHA requests and receives a waiver for the new admission families in accordance with the requirements of RAD Supplemental Notice 4B, H–2023–08/PIH–2023–19 (HA).

3. Housing Quality Standards. *Provisions affected:* A unit covered under a HAP Contract must be inspected for compliance with Housing Quality Standards (HQS) before assistance can be paid on behalf of a household, unless the PHA is using HOTMA non-life threatening and alternative inspection provisions. In addition, HAP Contract units must be inspected to ensure compliance with HQS prior to payment of any assistance on behalf of a family. *Waiver:* HUD is waiving and establishing an alternative requirement to 24 CFR 983.103(b) and section 8(o)(8)(A) of the 1937 Act. *Alternative Requirements:* When work is occurring under RAD, HUD requires that all units undergo inspection for HQS no later than the date of completion of the work as indicated in the RAD Conversion Commitment (RCC). To place the unit under HAP contract and commence making payments, the PHA may rely on the owner's certification that the owner has no reasonable basis to have knowledge that life-threatening conditions exist in the unit or units in question instead of conducting an initial inspection. During the period of the work, HQS requirements apply. The PHA must enforce the Project Owner's obligations under this paragraph and conduct inspections when needed, for example in response to tenant complaints or other information coming to its attention, and the owner must correct any deficiencies in accordance with HQS requirements (*i.e.,* no more than 24 hours for a life-threatening deficiency, and within no more than 30 calendar days or any PHA approved extension for other defects, but no later than the date of the completion of the work as indicated in the RCC).

4. RAD/Section 18 Blend Streamlining.

a. PBV Percentage Limitation: *Provisions affected:* A PHA is permitted to project-base up to 20 percent of its authorized housing choice voucher units. *Waiver:* HUD is waiving the provisions of section 8(o)(13)(B) of the 1937 Act as well as 24 CFR 983.6. *Alternative requirements:* HUD is establishing an alternative requirement that all PBV units in a Covered Projects that replace former public housing units at the time of conversion at a new location are also excluded from both the numerator and the denominator when

calculating the percent of vouchers that may be project-based by a PHA.

b. Owner Proposal Selection Procedures: *Provisions affected:* A PHA must give written public notice of the opportunity to submit site and owner proposals for selection to receive project base vouchers from the Housing Choice Voucher program. *Waiver:* HUD is waiving the provisions of 24 CFR 983.51. *Alternative requirements:* HUD is establishing alternative requirements that a RAD PBV HAP contract is never subject to competitive selection requirements.

## IV. Program Notice Availability

The RAD Supplemental Notice 4B (H–2023–08/PIH–2023–19 (HA)) can be found on RAD's website, *www.hud.gov/rad*.

## V. Finding of No Significant Impact

A Finding of No Significant Impact with respect to the environment has been completed in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel; Department of Housing and Urban Development; 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding 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 speech and 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*.

**Julia R. Gordon,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

**Richard J. Monocchio,**

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

[FR Doc. 2023–17737 Filed 8–18–23; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

**[Docket Number USCG–2023–0671]**

**RIN 1625–AA08**

## Special Local Regulation; Glass City Glowtacular, Maumee River: Toledo, OH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard will establish and enforce a special local regulation for the Glass City Glowtacular. This special local regulation is necessary to safely control vessel movements in the vicinity of the paddle event, provide for the safety of the general boating public, and commercial shipping. During this enforcement period, no person or vessel may enter the regulated area without the permission of the Coast Guard Patrol Commander.

**DATES:** This special local regulation will be enforced from 7 p.m. through 11 p.m. on September 16, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0671 in the ''SEARCH'' box and click ''SEARCH.'' Next, in the Document Type column, select ''Supporting & Related Material.''

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email MST1 Karl Dirksmeyer, Marine Safety Unit Toledo, Coast Guard; telephone (419) 392–0324, email *D09-SMB-MSUToledo-WWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

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

## II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because we must establish this special local regulation by September 16, 2023.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this regulation would be impracticable.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Detroit (COTP) has determined that potential hazards associated with the Glass City Glowtacular on September 16, 2023, will be a safety concern within all waters of the Maumee River from Middlegrounds Metro Park down river to the Glass City Metro Park for four hours. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters near the Middlegrounds and Glass City Metro Parks, Toledo, OH.

## IV. Discussion of the Rule

This rule establishes a special local regulation from 7:00 p.m. through 11:00 p.m. on September 16, 2023. In light of the aforementioned hazards, the COTP has determined that a special local regulation is necessary to protect spectators, vessels, and participants. The special local regulation will encompass the following waterway: all U.S. navigable waters of the Maumee River in Toledo, OH, between the Middleground Metro Park, and the Glass City Metro Park. The COTP or his designated on-scene representative will notify the public of the enforcement of this rule by all appropriate means, including a Broadcast Notice to Mariners.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a

''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration and time-of-day of the special local regulation. Vessel traffic will not be able to safely transit around this regulated area which would impact a small designated area of Maumee River for a short duration, during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

*B. Impact on Small Entities*

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

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

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

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

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This special local regulation lasts four hours that will prohibit entry of the waters of the Maumee River, between the Middlegrounds Metro Park and the Glass City Metro Park. It is categorically excluded from further review under paragraph L[61] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T09–0671 to read as follows:

### § 100.T09–0671 Special Local Regulations; Glass City Glowtacular, Toledo, OH.

(a) *Location.* This special local regulation in this section lasts 4 hours and will limit entry within the navigable waters of the Maumee River between the Middleground Metro Park located at position 41°38′21.4″ N, 083°32′0.1″ W, and the Glass City Metro Park at position 41°39′30.5″ N, 083°30′58.0″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Enforcement period.* The regulation in this section will be enforced from 7 p.m. through 11 p.m. on September 16, 2023. The Captain of the Port Detroit will announce specific enforcement periods by Broadcast Notice to Mariners (BNM).

(c) *Regulations.* (1) In accordance with the general regulations in § 100.911(b), No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(2) Vessel operators desiring to enter or operate within the regulated area shall contact the Coast Guard Patrol Commander to obtain permission to do so. Vessel operators given permission to enter or operate within the regulated area must comply with all directions given to them by the Coast Guard Patrol Commander.

Dated: August 15, 2023.

**Richard P. Armstrong,**

*Captain, U.S. Coast Guard, Captain of the Port Detroit.*

[FR Doc. 2023–17884 Filed 8–18–23; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2023–0667]**

**RIN 1625–AA00**

## Safety Zone; Operation Safe Harbor Exercise, Mackinaw Island, MI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain navigable waters of Lake Huron between St. Ignace, MI and Mackinaw Island, MI. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by aerial and water-borne activities during an emergency response exercise. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Sault Sainte Marie.

**DATES:** This rule is effective from September 7, 2023, 7 a.m. through September 8, 2023, 6 p.m. local time.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0667 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rule, call or email LT Rebecca Simpson, Sector Sault Sainte Marie Waterways Division, U.S. Coast Guard; telephone 906–635–3223, email *Rebecca.a.simpson@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
COTP Captain of the Port

### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because of the potential hazards that exist with respect to the exercise. It is impracticable to publish an NPRM because we must establish this safety zone by September 7, 2023.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with helicopters carrying sling loads across the waterway during the exercise.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Sault Sainte Marie (COTP) has determined that potential hazards associated with a Mackinaw County Emergency Exercise September 7, 2023, will be a safety concern for anyone within a box bound by the following four points: 45–53.5′ N 084–43.52′ W, 45–3.83′ N 084–44′ W, 45–53.09′ N 084–38.78′ W, 45–52.22′ N, 084–38.94′ W. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the exercise is happening.

### IV. Discussion of the Rule

This rule establishes a safety zone during daylight hours from 7 a.m. through 6 p.m. on September 7, 2023, and from 7 a.m. through 6 p.m. on September 8, 2023. The safety zone will cover all navigable waters within a box bound by the following four points: 45–53.5′ N 084–43.52′ W, 45–3.83′ N 084–44′ W, 45–53.09′ N 084–38.78′ W, 45–52.22′ N 084–38.94′ W. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the exercise is happening. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

### V. Regulatory Analyses

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

#### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day for each safety zone. Vessel traffic will be able to safely transit around all safety zones which will impact small designated areas within the COTP zone for short durations of time. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

#### *B. Impact on Small Entities*

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the

reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 2 days, during daylight hours, that will prohibit entry within a box bound by the following four points: 45–53.5′ N 084–43.52′ W, 45–3.83′ N 084–44′ W, 45–53.09′ N 084–38.78′ W, 45–52.22′ N 084–38.94′ W. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0667 to read as follows:

**§ 165.T09–0667 Safety Zone; Operation Safe Harbor Exercise, Mackinaw Island, MI.**

(a) *Location.* The following area is a safety zone: All waters between St. Ignace, MI and Mackinaw Island, MI within a box bound by the following four points: 45–53.5′ N 084–43.52′ W, 45–3.83′ N 084–44′ W, 45–53.09′ N 084–38.78′ W, 45–52.22′ N 084–38.94′ W.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sault Sainte Marie (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF Channel 16 or telephone at (906) 635–3233. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. The safety zone will be enforced during daylight hours, specifically from 8 a.m. through 6 p.m. on September 7th and 8th.

(d) *Enforcement period.* This section will be enforced during daylight hours, specifically, 8 a.m. through 6 p.m. on September 7th and 8th, 2023.

Dated: August 15, 2023.

**J.R. Bendle,**

*Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.*

[FR Doc. 2023–17900 Filed 8–18–23; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG–2023–0688]**

**RIN 1625–AA00**

## Safety Zone; Youth for the Future Fireworks, St. Clair River; Algonac, MI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters on the St. Clair River in Algonac, MI. The safety zone is necessary and intended to protect personnel, vessels, and the marine environment from potential hazards associated with fireworks displays created by the Youth for the Future organization. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Detroit, or his designated representative.

**DATES:** This rule is effective from 9 through 10:30 p.m. September 16, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0688 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Tracy Girard, Waterways Department, Sector Detroit, Coast Guard; telephone (313) 568–9564, email *Tracy.M.Girard@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

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

### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event sponsor notified the Coast Guard with insufficient time to publish an NPRM and immediate action is necessary to protect personnel, vessels, and the marine environment on the St. Clair River. It is impracticable and contrary to the public interest to publish a NPRM because we must establish this safety zone by September 16, 2023.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with a fireworks display.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Detroit (COTP) has determined that potential hazards associated with fireworks displays will be a safety concern for anyone within a 280-yard radius of the launch site. The likely combination of recreational vessels, darkness punctuated by bright flashes of light, and fireworks debris falling into the water presents risks of collisions which could result in serious injuries or fatalities. This rule is necessary to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display.

### IV. Discussion of the Rule

This rule establishes a safety zone from 9 p.m. until 10:30 p.m. on September 16, 2023. The safety zone will encompass all U.S. navigable waters of the St. Clair River within a 280-yard radius of the fireworks launch site located 42°39.038′ N, 082°31.67′ W, in Algonac, MI. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated representative. The Captain of the Port Detroit or his designated representative may be contacted via VHF Channel 16.

### V. Regulatory Analyses

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

#### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small, designated area of the St. Clair River for approximately one and a half hours during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM Marine Channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

#### *B. Impact on Small Entities*

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

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

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

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

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

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 1.5 hours that will prohibit entry within 280-yard radius of where the fireworks display will be conducted. It is categorically excluded from further review under paragraph L[60] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—Regulated Navigation Areas and Limited Access Areas

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

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

■ 2. Add § 165.T09–0688 to read as follows:

**§ 165.T09–0688 Safety Zone; Youth for the Future Fireworks, St. Clair River; Algonac, MI.**

(a) *Location.* The following area is a temporary safety zone: all U.S. navigable waters of the St. Clair River within a within a 280-yard radius of the fireworks launch site located at position 42°39.038′ N, 082°31.67′ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Enforcement Period.* This regulation will be enforced from 9 p.m. through 10:30 p.m. on September 16, 2023. The Captain of the Port Detroit, or a designated representative may suspend enforcement of the safety zone at any time.

(c) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Detroit (COTP) in the enforcement of the safety zone.

(d) *Regulations.*

(1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated representative.

(2) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Detroit or his designated representative. The COTP Detroit or his designated representative may be contacted via VHF Channel 16.

Dated: August 15, 2023.

**Richard P. Armstrong,**

*Captain, U.S. Coast Guard, Captain of the Port Detroit.*

[FR Doc. 2023–17882 Filed 8–18–23; 8:45 am]

**BILLING CODE 9110–04–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

**[EPA–HQ–OPP–2017–0128; FRL–10840–02–OCSPP]**

**RIN 2070–ZA16**

## Pesticide Tolerances; Implementing Registration Review Decisions for Certain Pesticides; Aluminum tris (O-ethylphosphonate), Carbon disulfide, et al.; Technical Correction

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

**ACTION:** Final rule; technical correction.

**SUMMARY:** EPA issued a final rule in the **Federal Register** of July 19, 2023, finalizing several tolerance actions under the Federal Food, Drug, and Cosmetic Act (FFDCA) that the Agency determined were necessary or appropriate during the registration review conducted under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). That document inadvertently instructed the **Federal Register** to designate a tolerance for ginseng as time-limited, with an expiration date, but used an incorrect footnote number and neglected to include the expiration date. Elsewhere, an instruction to redesignate a paragraph was not clearly stated. This technical correction to the final rule will address these errors.

**DATES:** This final rule correction is effective August 21, 2023.

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0128, is available online at *https://www.regulations.gov* or in person at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. Additional instructions for visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Christina Scheltema, Pesticide Re-Evaluation Division (7508M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–2272; email address: *scheltema.christina@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Does this action apply to me?

The Agency included in the July 19, 2023, final rule a list of those who may be potentially affected by this action.

### II. What do these corrections do?

EPA issued a final rule in the **Federal Register** of July 19, 2023 (88 FR 40677) (FRL–10840–01–OCSPP) that finalized several tolerance actions identified during the registration review of several pesticide chemicals. This technical correction addresses inadvertent typographical errors related to the redesignations of a paragraph and subparagraph in 40 CFR 180.414 (d) and the numbering of a footnote and omission of footnote text for a tolerance for Ginseng in 40 CFR 180.415. Specifically, the regulatory text published in the July 19,2023 final rule inadvertently omitted the designation of paragraph (d)(1) in 40 CFR 180.414, and incorrectly numbered the footnote for the tolerance for Ginseng and omitted the footnote text in 40 CFR 180.415.

### III. Why are these corrections issued as a final rule?

Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making these corrections final without prior proposal and opportunity for comment, because EPA inadvertently omitted instructions to the **Federal Register** to redesignate 40 CFR 180.414 paragraph (d) as paragraph (d)(1); and incorrectly instructed the **Federal Register** to add footnote number 1 to the tolerance for Ginseng in 40 CFR 180.415 rather than correctly numbering it as footnote number 2. The Agency neglected to provide the text for the body of the footnote. Because these are corrections of typographical errors in the regulatory text of a final tolerance rule and because the correct information was contained in the rule preamble, EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

### IV. Do any of the statutory and executive order review apply to this action?

No. For a detailed discussion concerning the statutory and executive order review refer to Unit V. of the July 19, 2023, final rule.

### V. Congressional Review Act

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

### List of Subjects in 40 CFR part 180

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

Dated: August 14, 2023.

**Edward Messina,**

*Director, Office of Pesticide Programs.*

Therefore, for the reasons stated in the preamble, 40 CFR part 180 is corrected by making the following correcting amendments:

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

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

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

■ 2. Amend § 180.414 by:
■ a. Redesignating the text of paragraph (d) introductory text as paragraph (d)(1) introductory text;
■ b. Revising newly designated paragraph (d)(1) introductory text;
■ c. Adding a heading to the table in newly designated paragraph (d)(1); and
■ d. Adding paragraph (d)(2).

The revision and additions read as follows.

**§ 180.414 Cyromazine; tolerances for residues.**

* * * * *

(d) * * *

(1) Tolerances are established for indirect or inadvertent residues of the insecticide cyromazine, including its metabolites and degradates, in or on the commodities in table 1 to this paragraph (d)(1) when present therein as a result of the application of cyromazine to growing crops listed in paragraph (a)(1) of this section. Compliance with the tolerance levels specified in this paragraph (d)(1) is to be determined by measuring only cyromazine, *N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine, in or on the commodity.

**Table 2 to Paragraph (d)(1)**

* * * * *

(2) Tolerances are established for indirect or inadvertent residues of the

insecticide cyromazine, including its metabolites and degradates, in or on the commodities in the table 3 to this paragraph (d)(2) when present therein as a result of the application of poultry manure-based fertilizer containing cyromazine to soil in which the crops identified in this section are grown. Compliance with the tolerance levels specified in this paragraph (d)(2) is to be determined by measuring only cyromazine, *N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine, in or on the commodity.

TABLE 3 TO PARAGRAPH (d)(2)

| Commodity | Parts per million |
|---|---|
| Grain, cereal, forage, fodder and straw, group 16 | 0.6 |
| Grain, cereal, group 15 | 0.6 |
| Herbs and spices, group 19 | 0.6 |
| Oilseed, group 20 | 0.6 |
| Onion, bulb, subgroup 3–07A | 0.6 |
| Strawberry | 0.6 |
| Vegetable, foliage of legume, group 7 | 0.6 |
| Vegetable, fruiting, group 8–10 | 0.6 |
| Vegetable, leaves of root and tuber, group 2 | 0.6 |
| Vegetable, legume, group 6 | 0.6 |
| Vegetable, root and tuber, group 1 | 0.6 |

■ 3. In § 180.415, amend table 1 to paragraph (a) by:
■ a. Removing the entry ''Ginseng [1]'' and adding in its place the entry ''Ginseng [2]''; and
■ b. Redesignating the second footnote 1 as footnote 2.

The addition reads as follows:

**§ 180.415 Aluminum tris (*O*-ethylphosphonate); tolerances for residues.**

* * * * *

TABLE 1 TO PARAGRAPH (a)

| Commodity | Parts per million |
|---|---|
| * * * * * * * | |
| Ginseng [2] | 0.1 |
| * * * * * * * | |

[2] This tolerance expires on January 19, 2024.

* * * * *

[FR Doc. 2023–17800 Filed 8–18–23; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2022–0235; FRL–10953–01–OCSPP]**

## Pyraclostrobin; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of pyraclostrobin in or on stevia, dried leaves and stevia, fresh leaves and revises the tolerance for residues of pyraclostrobin in or on coffee, green bean. The Interregional Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective August 21, 2023. Objections and requests for hearings must be received on or before October 20, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0235, is available at *https://www.regulations.gov* or in-person at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, please visit *https://www.epa.gov/dockets.*

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

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2022–0235 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before October 20, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2022–0235, by one of the following methods:

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

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

## II. Summary of Petitioned-For Tolerances

In the **Federal Register** of April 28, 2022 (87 FR 25178) (FRL–9410–12–OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP1E8981) by IR–4 Project Headquarters, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606. The petition requested that 40 CFR 180.582 be amended to establish tolerances for residues of the fungicide pyraclostrobin, (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy] methyl]phenyl]methoxy-, methyl ester) and its desmethoxy metabolite (methyl-N-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl] phenylcarbamate), calculated as the stoichiometric equivalent of pyraclostrobin in or on the following raw agricultural commodities: stevia, dried leaves at 150 parts per million (ppm) and stevia, fresh leaves at 40 ppm. The petition also requested the revision of the tolerance for residues of pyraclostrobin in or on coffee, green bean at 0.3 ppm to support the domestic use on coffee rather than being a tolerance on coffee imported into the U.S. One comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

## III. Aggregate Risk Assessment and Determination of Safety

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

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

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

EPA has previously published tolerance rulemakings for pyraclostrobin in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to pyraclostrobin and established tolerances for residues of that chemical. In this rulemaking, EPA is incorporating previously published sections from the September 20, 2021, rulemaking (86 FR 52083) (FRL–8857–01–OCSPP) as described further below, as they remain unchanged.

*Toxicological profile.* For a discussion of the Toxicological Profile of pyraclostrobin, see Unit III.A. of the September 20, 2021, rulemaking.

*Toxicological points of departure/Levels of concern.* For a summary of the Toxicological Points of Departure/Levels of Concern used for the human risk assessment, see Unit III.B. of the September 20, 2021, rulemaking and pages 11–13 of the document titled ''Pyraclostrobin. Human Health Risk Assessment of Proposed Tolerances and Uses on Coffee, Green Bean; Stevia, Dried Leaves; and Stevia, Fresh Leaves'' (hereinafter ''Pyraclostrobin Human Health Risk Assessment'') in docket ID number EPA–HQ–OPP–2022–0235.

*Exposure assessment.* Much of the exposure assessment remains the same, although updates have occurred to account for exposures from the petitioned-for tolerances. These updates are discussed in this section; for a description of the rest of the EPA approach to and assumptions for the exposure assessment, please reference Unit III.C. of the September 20, 2021, rulemaking.

EPA's dietary exposure assessments have been updated to include the additional exposures from the new uses of pyraclostrobin on coffee and stevia. In conducting the acute dietary

exposure assessment, EPA used the Dietary Exposure Evaluation Model software with the Food and Commodity Intake Database (DEEM–FCID) Version 4.02. This software uses the 2005–2010 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). The acute dietary exposure assessment is partially refined, assuming tolerance level residues or highest field trial residues and 100 percent crop treated (PCT) for all crop and livestock commodities.

The chronic dietary exposure assessment also uses the DEEM–FCID Version 4.02 software with the 2005–2010 NHANES/WWEIA data. The chronic dietary exposure assessment is refined and uses the same assumptions as the Unit III.C.1.ii in the September 20, 2021, rulemaking; specifically, anticipated residues based on average field trial residue levels for plant raw agricultural commodities or tolerance-level residues, PCT information where available, and experimentally determined processing factors where available. Anticipated residues for livestock commodities were also calculated and incorporated into the assessment.

*Anticipated residue and PCT information.* For a discussion of the FFDCA requirements regarding use of anticipated residue and PCT information and the PCT assumptions used in the chronic dietary exposure assessment, see Unit III.C.1.iv. of the September 20, 2021, rulemaking.

*Drinking water exposure.* The new uses do not result in an increase in the estimated residue levels in drinking water, so EPA used the same estimated drinking water concentrations in the acute and chronic dietary exposure assessments as identified in Unit III.C.2. of the September 20, 2021, rulemaking.

*Non-occupational exposure.* There are no new proposed residential (non-occupational) uses expected for pyraclostrobin at this time; however, pyraclostrobin is currently registered for uses on turf, ornamental, and residential fruit and nut trees that may result in residential handler and post-application exposures from commercial and residential use. For a summary of those exposures, see Unit III.C.3 of the September 20, 2021, rulemaking as it has not changed since then.

*Cumulative exposure.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to pyraclostrobin and any other substances. For purposes of this tolerance action, therefore, EPA has not assumed that pyraclostrobin has a common mechanism of toxicity with other substances.

*Safety factor for infants and children.* EPA continues to conclude that there are reliable data to support the reduction of the Food Quality Protection Act (FQPA) safety factor from 10X to 1X. See Unit III.D. of the September 20, 2021, rulemaking for a discussion of the Agency's rationale for that determination as nothing has changed since the 2021 rulemaking.

*Aggregate risk and determination of safety.* EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing dietary exposure estimates to the acute population adjusted dose (aPAD) and the chronic population adjusted dose (cPAD). Short-, intermediate-, and chronic term aggregate risks are evaluated by comparing the estimated total food, water, and residential exposure to the appropriate points of departure to ensure that an adequate margin of exposure (MOE) exists.

Acute dietary risks are below the Agency's level of concern of 100% of the aPAD; they are 86% of the aPAD for females 13 to 49 years old, the only population subgroup for which an acute toxic effect was identified. Chronic dietary risks are below the Agency's level of concern of 100% of the cPAD; they are 54% of the cPAD for children 1 to 2 years, the most highly exposed population subgroup.

EPA determined that it is inappropriate to combine the oral route of exposure with dermal and inhalation exposures because of dissimilar toxic response observed from exposures to pyraclostrobin via the oral, dermal and inhalation routes. Therefore, the short-term aggregate exposure assessment includes dietary (food and drinking water) and incidental oral hand to mouth exposure from high contact lawn activity on treated lawns for children 1 to less than 2 years old. The short-term aggregate MOE is 260 and is not of concern because it is above the Agency's level of concern of 100.

Pyraclostrobin is classified as ''Not Likely to Be Carcinogenic to Humans'' due to an absence of carcinogenicity in the available studies; therefore, EPA does not expect pyraclostrobin exposures to pose an aggregate cancer risk.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to pyraclostrobin residues. More detailed information on this action can be found in the Pyraclostrobin Human Health Risk Assessment in docket ID EPA–HQ–OPP–2022–0235.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

For a discussion of the available analytical enforcement method for various crops, see Unit IV.A of the September 20, 2021, rulemaking.

### *B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4).

The U.S. tolerance for pyraclostrobin in or on coffee, green bean is harmonized with the Codex MRL at 0.3 ppm. There are no Codex MRLs for stevia.

### *C. Response to Comments*

One comment was received in response to the notice of filing, which opposed EPA establishing the requested tolerances and objected to the use of pesticides on crops. Although the Agency recognizes that some individuals believe that pesticides should be banned on agricultural crops, the existing legal framework provided by section 408 of the FFDCA authorizes EPA to establish tolerances when it determines that the tolerance is safe. Upon consideration of the validity, completeness, and reliability of the available data as well as other factors the FFDCA requires EPA to consider, EPA has determined that pyraclostrobin tolerances are safe. The commenter has provided no information indicating that a safety determination cannot be supported.

## V. Conclusion

Therefore, tolerances are established for residues of pyraclostrobin, (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy] methyl]phenyl]methoxy-, methyl ester) and its desmethoxy metabolite (methyl-N-[[[1-(4-chlorophenyl)-1H-pyrazol-3-

yl]oxy]methyl] phenylcarbamate) in or on stevia, dried leaves at 150 ppm and stevia, fresh leaves at 40 ppm. The established tolerance for residues of pyraclostrobin in or on coffee, green bean at 0.3 ppm is revised to remove footnote 1.

Additionally, EPA is correcting the active ingredient name in the introductory paragraph from ''pyradostrobin'' to ''pyraclostrobin''. EPA is also removing the Section 18 emergency exemption tolerance for residues of pyraclostrobin in or on endive, Belgium at 11.0 ppm as a housecleaning measure since that tolerance expired on December 31, 2013. These changes have no substantive effect and can be accomplished without further notice and comment.

## VI. Statutory and Executive Order Reviews

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

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

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

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

## VII. Congressional Review Act

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

## List of Subjects in 40 CFR Part 180

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

Dated: August 8, 2023.

**Charles Smith,**

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

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

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

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

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

■ 2. In § 180.582:

■ a. In paragraph (a)(1):

■ i. In the introductory text,'';

■ ii. Amend the table by adding the heading ''Table 1 to Paragraph (a)(1)'';

■ b. In Table 1 to Paragraph (a)(1):

■ i. Revise the entry for ''Coffee, green bean'';

■ ii. Add, in alphabetical order, the entries ''Stevia, dried leaves'' and ''Stevia, fresh leaves'';

■ iii. Remove footnote 1 from the end of the table.

■ c. Remove and reserve paragraph (b).

The additions and revision read as follows:

### § 180.582 Pyraclostrobin; tolerances for residues.

(a) * * *

(1) Tolerances are established for residues of the fungicide pyraclostrobin, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of pyraclostrobin (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy] methyl]phenyl]methoxy-, methyl ester) and its desmethoxy metabolite (methyl-N-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl] phenylcarbamate), calculated as the stoichiometric equivalent of pyraclostrobin, in or on the commodity.

TABLE 1 TO PARAGRAPH (a)(1)

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Coffee, green bean | 0.3 |
| * * * * * | |
| Stevia, dried leaves | 150 |
| Stevia, fresh leaves | 40 |
| * * * * * | |

* * * * *

(b) [Reserved]

* * * * *

[FR Doc. 2023–17431 Filed 8–18–23; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket No. 220919–0193; RTID 0648–XD222]**

## Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Closure of the General Category June Through August Fishery for 2023

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS closes the General category fishery for large medium and giant (*i.e.,* measuring 73 inches (185 cm) curved fork length or greater) Atlantic bluefin tuna (BFT) for the remainder of the June through August time period. This action applies to Atlantic Tunas General category (commercial) permitted vessels and highly migratory species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT. This action also waives the previously-scheduled restricted-fishing days (RFDs) for the remainder of the June through August time period. With the RFDs waived during the closure, fishermen aboard General category permitted vessels and HMS Charter/Headboat permitted vessels may tag and release BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs. On September 1, 2023, the fishery will reopen automatically and previously-scheduled RFDs for September will resume.

**DATES:** Effective 11:30 p.m., local time, August 17, 2023, through August 31, 2023.

**FOR FURTHER INFORMATION CONTACT:** Becky Curtis, *becky.curtis@noaa.gov,* 301–427–8503, or Larry Redd, Jr., *larry.redd@noaa.gov,* 301–427–8503.

**SUPPLEMENTARY INFORMATION:** Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

Under § 635.28(a)(1), NMFS files a closure action with the Office of the Federal Register for publication when a BFT quota (or subquota) is reached or is projected to be reached. Retaining, possessing, or landing BFT under that quota category is prohibited on or after the effective date and time of a closure notice for that category until the opening of the relevant subsequent quota period or until such date as specified.

As described in § 635.27(a), the current baseline U.S. BFT quota is 1,316.14 metric tons (mt) (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). The current baseline quota for the General category is 710.7 mt. The General category baseline quota is suballocated to different time periods. Relevant to this action, the baseline subquota for the June through August time period is 355.4 mt.

### Closure of the June Through August 2023 General Category Fishery

To date, reported landings for the General category June through August time period total approximately 344 mt. Based on these landings, NMFS has determined that the June through August time period subquota of 355.4 mt is projected to be reached and exceeded shortly. Therefore, retaining, possessing, or landing large medium or giant (*i.e.,* measuring 73 inches (185 cm) curved fork length or greater) BFT by persons aboard vessels permitted in the Atlantic Tunas General category and HMS Charter/Headboat permitted vessels (while fishing commercially) must cease at 11:30 p.m. local time on August 17, 2023. This action applies to Atlantic Tunas General category (commercial) permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT and is taken consistent with the regulations at § 635.28(a)(1). The General category will automatically reopen September 1, 2023, for the September 2023 time period.

### Adjustment of Daily Retention Limit for Selected Dates

On May 25, 2023 (88 FR 33839), NMFS published a final rule implementing RFDs every Tuesday, Friday, and Saturday from July 1 through November 30, 2023. Since the fishery will be closed for the remainder of the June through August time period, NMFS has decided to waive the previously-scheduled RFDs for the remainder of that time period. Previously-scheduled RFDs will resume on September 1, 2023.

With the RFDs waived during the closure, consistent with § 635.23(a)(4), fishermen aboard General category permitted vessels and HMS Charter/Headboat permitted vessels may tag and release BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. All BFT that are released must be handled in a manner that will maximize their survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the ''Careful Catch and Release'' brochure available at *https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure/.*

### Monitoring and Reporting

NMFS will continue to monitor the BFT fisheries closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *https://www.hmspermits.noaa.gov,* using the HMS Catch Reporting app, or calling 888–872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

After the fishery reopens on September 1, depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent

adjustments will be published in the **Federal Register**. In addition, fishermen may access *https://www.hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

**Classification**

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and opportunity to provide comment on this action, as notice and comment would be impracticable and contrary to the public interest for the following reasons. Specifically, the regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments and fishery closures to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Providing for prior notice and an opportunity to comment is impracticable and contrary to the public interest as this fishery is currently underway and, based on landings information, the available time period subquota is projected to be reached shortly. Delaying this action could result in BFT landings exceeding the June through August time period subquota. Taking this action does not raise conservation or management concerns. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria.

For all of the above reasons, the AA also finds that pursuant to 5 U.S.C. 553(d), there is good cause to waive the 30-day delay in effective date.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 16, 2023.

**Kelly Denit,**

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

[FR Doc. 2023–17915 Filed 8–16–23; 4:15 pm]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 230306–0065; RTID 0648–XD263]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; reallocation.

**SUMMARY:** NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear, trawl catcher vessels, and catcher vessels greater than or equal to 60 feet (18.3 meters (m)) length overall (LOA) using hook-and-line gear to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 2023 total allowable catch (TAC) of Pacific cod to be harvested.

**DATES:** Effective August 18, 2023, through 2400 hours, Alaska local time (A.l.t.), December 31, 2023.

**FOR FURTHER INFORMATION CONTACT:** Krista Milani, 907–581–2062.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2023 Pacific cod TAC specified for vessels using jig gear in the BSAI is 748 metric tons (mt) as established by the final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023), correction (88 FR 18258, March 28, 2023), and reallocation (88 FR 18443, March 29, 2023).

The 2023 Pacific cod TAC specified for trawl catcher vessels in the BSAI is 26,807 mt as established by the final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023) and correction (88 FR 18258, March 28, 2023).

The 2023 Pacific cod TAC specified for catcher vessels greater than or equal to 60 feet (18.3 m) LOA using hook-and-line gear in the BSAI is 241 mt as established by the final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023) and correction (88 FR 18258, March 28, 2023).

The 2023 Pacific cod TAC allocated to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI is 3,360 mt as established by final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023), correction (88 FR 18258, March 28, 2023), and reallocation (88 FR 18443, March 29, 2023).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that jig vessels will not be able to harvest 650 mt of the 2023 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*1*), trawl catcher vessels will not be able to harvest 500 mt of the 2023 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*9*), and catcher vessels greater than or equal to 60 feet (18.3 m) LOA using hook-and-line gear will not be able to harvest 230 mt of the 2023 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*3*).

Therefore, in accordance with § 679.20(a)(7)(iv)(C), NMFS apportions 650 mt of Pacific cod from the jig vessels to the annual amount specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. Also, in accordance with § 679.20(a)(7)(iii)(A), NMFS reallocates 500 mt from trawl catcher vessels, and 230 mt from the catcher vessels greater than or equal to 60 feet (18.3 m) LOA using hook-and-line gear to the annual amount specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

The harvest specifications for 2023 Pacific cod included in final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023), correction (88 FR 18258, March 28, 2023), and reallocation (88 FR 18443, March 29, 2023) is revised as follows: 98 mt to vessels using jig gear, 26,307 mt to trawl catcher vessels, 11 mt to catcher vessels greater than or equal to 60 feet (18.3 m) LOA using hook-and-line gear, and 4,740 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

**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. This requirement is 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 allow for harvests that exceed the originally specified apportionment of the Pacific cod TAC. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 15, 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: August 15, 2023.

**Kelly Denit,**

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

[FR Doc. 2023–17910 Filed 8–18–23; 8:45 am]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 88, No. 160
Monday, August 21, 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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

**[NRC–2018–0289]**

**RIN 3150–AK21**

### American Society of Mechanical Engineers 2021–2022 Code Editions

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule; correction.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is correcting the preamble of a proposed rule that was published in the **Federal Register** on August 8, 2023, to amend its regulations to incorporate by reference the 2021 Edition of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code and the 2022 Edition of the American Society of Mechanical Engineers Operation and Maintenance of Nuclear Power Plants, Division 1: OM Code: Section IST, for nuclear power plants. This action is necessary to correct an editorial error to include reference to missing standards.

**DATES:** The correction takes effect on August 21, 2023.

**ADDRESSES:** Please refer to Docket ID NRC–2018–0289 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2018–0289. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.*
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Tyler Hammock, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–1381, email: *Tyler.Hammock@nrc.gov* and Michael Benson, Office of Nuclear Reactor Regulation, telephone: 301–415–2425, email: *Michael.Benson@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:** The NRC is announcing the following correction to proposed rule FR Doc. 2023–16686, published at 88 FR 53384 on August 8, 2023. On page 53387, in the second column, the last sentence of the first full paragraph is corrected to read, ''Therefore, the NRC is proposing a condition to prohibit the use of Subpart 2.19 in NQA–1–2017, NQA–1–2019, and NQA–1–2022.''

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2018–0289. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) navigate to the docket folder (NRC–2018–0289); (2) click the ''Subscribe'' link; and (3) enter an email address and click on the ''Subscribe'' link.

Dated: August 16, 2023.

For the Nuclear Regulatory Commission.

**Cindy K. Bladey,**

*Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2023–17902 Filed 8–18–23; 8:45 am]

**BILLING CODE 7590–01–P**

## FEDERAL TRADE COMMISSION

### 16 CFR Part 432

**RIN 3084–AB62**

### Trade Regulation Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products

**AGENCY:** Federal Trade Commission.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Federal Trade Commission (''FTC'' or ''Commission'') seeks public comment on proposed amendments to the Trade Regulation Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products (''Amplifier Rule'' or ''Rule''). The proposed amendments modify the previous proposal by updating a required test condition (total harmonic distortion), improving differentiation between power output disclosures that comply with the Rule's testing methods and those that do not, and modernizing as well as clarifying Rule language considering the foregoing modifications. Additionally, the proposed amendments now formalize prior Commission guidance on applying the Rule to multichannel amplifiers.

**DATES:** Written comments must be received on or before October 20, 2023. Parties interested in an opportunity to present views orally should submit a request to do so as explained below, and such requests must be received on or before October 20, 2023.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Amplifier Rule Review; Project No. P974222'' on your comment and file your comment online through *https://www.regulations.gov.* If you prefer to file your comment on paper,

mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex A), Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Hong Park, Attorney, (202) 326–2158, *hpark@ftc.gov,* Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Mail Stop CC–6316, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Commission promulgated the Amplifier Rule in 1974 to address sellers' failure to provide essential pre-purchase information regarding the performance of home entertainment amplifiers.[1] Specifically, manufacturers described their products' performance through power output claims (*e.g.,* ''25 Watts''), but tested their amplifiers under a variety of conditions and procedures. Thus, consumers could not effectively use advertised wattage claims to compare brands or determine how individual amplifiers would perform. At the time, the Commission noted, ''[s]ince the mid-50's the [audio] industry'' had failed ''to agree upon a single industry standard which is meaningful to the consumer.'' [2] Accordingly, the Rule standardized the measurement and disclosure of some, but not all, performance characteristics of power amplification equipment to ''assure that . . . performance characteristics are based upon conditions of normal use by the consumer, *i.e.,* conditions which are encountered in the home.'' [3]

Under the Rule, sellers making certain power claims (*i.e.,* for power output, power band or power frequency response, or distortion characteristics) must disclose power output measured under specified test conditions. For example, amplifiers must be tested at an ambient air temperature of at least 77 °F (25 °C).[4] The Rule, however, does not specify values for three test conditions that strongly affect power output measurements: (1) load impedance; [5] (2) rated power band or power frequency response; [6] and (3) total harmonic distortion (''THD'').[7] Instead, the original Rule required disclosure of these values wherever sellers made certain power claims.[8] In 2000, the Commission eliminated this disclosure requirement in ''media advertising'' but retained the requirement in product brochures and manufacturer specification sheets.[9]

Pursuant to its ongoing regulatory review schedule, on December 18, 2020, the Commission published an advance notice of proposed rulemaking (''ANPR'') seeking comment on the Amplifier Rule. 85 FR 82391 (Dec. 18, 2020). Specifically, the ANPR sought comments regarding possible Rule improvements, the continuing need for the Rule, the Rule's costs and benefits, as well as whether, and how, technological or economic changes have affected the Rule.

In response, the Commission received 530 unique comments, including from amplifier and speaker manufacturers, amplifier sellers and purchasers, and engineers or journalists in the audio field.[10] All but one commenter supported retaining the Rule.[11] Based on this near universal support, the Commission concluded there was a continuing need for the Rule.

Although commenters overwhelmingly supported the Rule, some recommended amendments. For example, many commenters urged the Commission to require uniform power band, load impedance, and THD limits to prevent manipulation of these three test conditions.[12]

Consistent with these comments, Commission staff found this manipulation ubiquitous in the marketplace. Specifically, staff found dozens of examples of the same equipment advertised with significantly different power output claims (*e.g.,* some sellers advertised a particular

[1] 39 FR 15387 (May 3, 1974).

[2] *Id.* at 15388.

[3] *Id.* at 15392. Merely testing amplifiers under identical test conditions will not produce useful consumer information if the test conditions differ significantly from normal use conditions.

[4] This requirement prevents testing with cooling equipment while driving amplifiers to high power outputs that would overheat amplifiers during normal use. *See* 16 CFR 432.3(d) (''The preconditioning and testing shall be in still air and an ambient temperature of at least 77 °F (25 °C) . . . .'').

[5] The current Rule sets a default load impedance of 8 ohms for measuring power output but permits measurement at a different load impedance if the amplifier is designed primarily for that impedance. 16 CFR 432.2(a). ''[T]he lower the load impedance utilized in testing . . . equipment, the higher the output of the amplifier.'' 39 FR 15387, 15390 (May 3, 1974). For example, an amplifier that outputs 550 watts into 2 ohms might only output 350 watts into 4 ohms and 215 watts into 8 ohms. *See Speaker Impedance Changes Amplifier Power,* Geoff the Grey Geek, *https://geoffthegreygeek.com/speaker-impedance-changes-amplifier-power/* (last visited Mar. 22, 2023).

[6] High quality amplifiers can output a broad range of frequencies, such as the sounds of all the instruments in an orchestra, at high power. Lower quality amplifiers can only output certain frequencies, such as 1 kHz (*e.g.,* the sound of a trumpet), at high power, and output lower frequencies (*e.g.,* a timpani or bass) or higher frequencies (*e.g.,* a piccolo) at lower power. Power output measurements made at a single frequency or over a limited power band do not permit consumers to distinguish between these quality differences in amplifiers. The Commission has stated ''a measurement [on a 1 kHz test signal] is inherently deceptive to the consumer who expects that a piece of equipment represented as being capable of a stated power output will deliver that power output across its full audio range.'' 39 FR 15387, 15390 (May 3, 1974).

[7] The output of an amplifier driven to increasingly higher power will distort and sound different from the original performance. When the Commission promulgated the Rule, it received evidence that distortion limits during testing affect power output measurements. For example, the same amplifier might output 20 watts if driven only until the output reaches 0.5% THD, and output 30 watts when driven to 5% THD. The Rule requires disclosure of the THD during testing so consumers can determine the value of power output measurements. *See* 39 FR 15387, 15391–92 (May 3, 1974).

[8] 16 CFR 432.2 (1974).

[9] 65 FR 81232 (Dec. 22, 2000).

[10] These comments are available at *https://www.regulations.gov/document/FTC-2020-0087-0001/comment.* In this publication, commenters are referred to by name, the acronym for the notice to which the commenter responded (either ANPR or NPRM), and the number assigned to each comment. For example, the comment to the ANPR from Garry Grube, which was assigned ID FTC–2020–0087–0187 on *www.regulations.gov,* is referred to as ''Garry Grube (ANPR 187).''

[11] The one commenter did not provide a substantive comment.

[12] For instance, Alan McConnaughey (ANPR 5) commented, ''More rules should be [enacted] to require 8 ohm ratings so everything is apples do *[sic]* apples.'' Jim McCabe (ANPR 378) commented that amplifiers should be tested ''driven from 20 to 20k'' to ''stop the lying.'' Danny Anonymous (ANPR 4325) commented that, ''[t]o eliminate confusion, just use Output Watts@1%THD.'' *See also, e.g.,* comments from Dennis Murphy, Philharmonic Audio (ANPR 525) and David Rich (ANPR 548). In all, twenty-seven commenters recommended specifying the load impedance; 36 recommended specifying the power band to be 20 Hz to 20 kHz; 26 recommended specifying a THD or requiring a low THD; and 159 recommended, in conjunction with a recommendation regarding multichannel amplifier testing, specifying values for all three test conditions.

model with 45 watts output per channel, while others advertised the same model with 100 watts per channel [13]). Using specification sheets on manufacturers' websites, staff confirmed these widely divergent claims resulted from different testing parameters.

Based on the comments and staff's review, the Commission found requiring disclosure of test conditions is unlikely to prevent deceptive power output claims. Test conditions are highly technical and require complex calculations to convert claims into apples-to-apples power output comparisons. Thus, the average consumer is unlikely to understand or use the disclosed test conditions to avoid deception.[14] This problem is amplified by the fact that consumers now shop online more frequently, providing fewer opportunities to listen to equipment before purchasing.

To address widespread misleading power output claims, the Commission published a notice of proposed rulemaking (''NPRM''), proposing an amendment to the Amplifier Rule to standardize the three test conditions.[15] Specifically, the Commission proposed the following standard values: (1) a load impedance of 8 ohms; (2) a power band of 20 Hz to 20 kHz (except for self-powered subwoofer systems); and (3) a THD limit of less than 0.1%. Staff's review found amplifiers are generally designed to drive a nominal load impedance of 8 ohms; 20 Hz to 20 kHz covers the normal range of human hearing; [16] and 0.1% THD does not audibly distort a signal. Several commenters suggested these test conditions, and many manufacturers' specification sheets already disclose power outputs tested at 8 ohms, 20 Hz to 20 kHz, and at THD limits of, or slightly below, 0.1%.

## II. Comments Received in Response to NPRM

The Commission received nine unique comments in response to the NPRM.[17] Seven either broadly supported the regulation of power output claims or the standardization of test conditions.[18] Two of these commenters, however, expressed concern about the THD limit. They explained many vacuum tube and solid state amplifiers ''would not be able to qualify for a power output claim'' under the proposed 0.1% limit.[19] Accordingly, they recommended the Commission allow manufacturers to disclose their chosen THD level rather than setting a fixed limit. Additionally, one commenter recommended replacing the term ''total harmonic distortion'' with ''THD with noise,'' or ''THD+N,'' to align the Rule with the Commission's original intent.[20]

Only one commenter opposed the Commission's proposal in its entirety. The Consumer Technology Association (''CTA'') stated the Commission's proposal is unnecessary for component audio devices because manufacturers ''generally already use [the Commission's proposed] parameters to test their devices.'' [21] As for integrated audio devices, such as soundbars, CTA stated that standardizing the power output test conditions would be irrelevant to consumers. According to CTA, consumers do not evaluate ''specific technical capabilities of individual components,'' such as power output, but rather look to the ''immersive audio experience'' reviewed in online videos and other online sources. Therefore, CTA urged the Commission to reject the proposal, or at a minimum, to narrow its application to component audio devices and not integrated audio devices.

## III. Analysis and Additional Proposed Amendments to the Rule

After reviewing these comments, the Commission reaffirms its proposed approach of standardizing power output test conditions governing impedance, power band, and distortion. The Commission proposed standardizing these conditions based on the vast majority of comments,[22] as well as Commission staff's research, indicating standardization is necessary to eliminate conflicting and confusing power output claims. CTA's comments do not change this conclusion. CTA asserts such standardization is unnecessary with respect to component audio devices because manufacturers ''generally'' use the Commission's proposed standard. However, staff found numerous instances of sellers advertising component audio devices using power output standards that differed from each other and from the Commission's proposal.[23] CTA also

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[13] *See, e.g., Onkyo TX–8220,* Crutchfield, *https://www.crutchfield.com/p_580TX8220/Onkyo-TX-8220.html* (last visited on Oct. 1, 2021); *Onkyo TX–8220, Amazon.com, https://www.amazon.com/Onkyo-TX-8220-Channel-Receiver-Bluetooth/dp/B075P831VY/ref=sr_1_1?dchild=1&keywords=Onkyo+TX-8220&qid=1633096775&sr=8-1* (viewed on Oct. 1, 2021; advertisement subsequently revised).

[14] Staff has surveyed numerous academic articles finding that consumers are not able to effectively comprehend highly technical disclosures; no surveyed research found to the contrary. *See, e.g.,* Omri Ben-Shahar and Carl E. Schneider, *The Failure of Mandated Disclosure,* 159 U. Pa. L. Rev. 647, *available at http://www.jstor.org/stable/41149884.* The Commission promulgated the Rule so consumers would not need to perform complex calculations to derive useful power ratings. It found that, prior to the Rule, consumers had to ''deduct 10 to 25 percent [from the ''music power'' ratings previously claimed] and divide by 2'' to derive power ratings that reflected normal usage. 39 FR 15387, 15388 (May 3, 1974). Additionally, the Commission has previously concluded that ''an insufficient number of consumers . . . understand the meaning and significance of . . . disclosures concerning power bandwidth and impedance.'' 63 FR 37238, 37239 (July 9, 1998).

[15] 87 FR 45047 (July 27, 2022).

[16] The Commission's NPRM proposal excluded amplifiers in self-powered subwoofers used in systems that employ two or more amplifiers dedicated to different portions of the audio frequency spectrum from being tested over a power band of 20 Hz to 20 kHz. The Commission has previously recognized that, while ''stand-alone . . . amplifiers . . . must reproduce signals covering the full musical frequency bandwidth,'' ''self-powered subwoofer systems . . . incorporate crossover circuitry that filters out frequencies above the bass range,'' and the amplifiers in self-powered subwoofer systems only amplify bass frequencies. 64 FR 38610, 38613–4 (July 19, 1999). Consequently, the Commission proposed to limit the power band for testing self-powered subwoofer amplifiers to the frequencies within those amplifiers' intended operating bandwidth. The proposed amendments would require testing amplifiers in self-powered full-range loudspeakers, such as full-range Bluetooth speakers that output more than two watts, over a power band of 20 Hz to 20 kHz.

[17] These comments can be found at *https://www.regulations.gov/document/FTC-2022-0048-0001.* The Commission received a total of 11 comments. However, two of these comments neither responded to the NPRM nor discussed any aspect of the Rule. A third comment raised concerns outside the scope of this proceeding (*e.g.,* health risks posed by amplifiers) and did not supply any supporting evidence. *See* Chelsy Graves (NPRM 5).

[18] *See, e.g.,* Travis Surprenant (NPRM 2) (''It needs to be a uniform rating to ensure consumers are comparing products on a level playing field.''); Peiyan Wang (NPRM 4) (''A uniform testing method could provide convenience for consumers to compare different products.''); Kiet Hoang (NPRM 10) (''I believe it needs to be a uniform testing method in order to provide the customers to compare the products on a comparable basis.'').

[19] Dennis Murphy (NPRM 9) (stating that all the tube amplifiers reviewed by the audio publication Stereophile over the past 10 years and many solid state amplifiers could not meet the 0.1% maximum THD requirement); *see also* E.W. Blackwood (NPRM 7) (''0.1% total harmonic distortion (THD) is too restrictive and would have an impact on many manufacturers.'').

[20] E.W. Blackwood (NPRM 7).

[21] CTA (NPRM 8).

[22] *See* 87 FR 45047, 45049 (July 27, 2022).

[23] *See, e.g., Denon PMA–600NE Stereo Integrated Amplifier, Amazon.com, https://www.amazon.com/Denon-PMA-600NE-Integrated-Amplifier-Connectivity/dp/B07XL4TM3M/ref=sr_1_4?crid=3VROHBG0858SO&keywords=integrated%2Bamplifier&qid=1678911254&sprefix=integrated%2Bamplifier%2Caps%2C92&sr=8-4&th=1* (last visited on Mar. 22, 2023) (advertising 70 watts at 4 ohms, 1kHz, THD 0.7%); *Onkyo A–9110 Home Audio Integrated Stereo Amplifier—Black, Amazon.com, https://www.amazon.com/Onkyo-A-9110-Integrated-Stereo-Amplifier/dp/B07J2S755K/ref=sr_1_6?crid=3VROHBG0858SO&keywords=integrated+amplifier&qid=1678911254&sprefix=integrated+amplifier%2Caps%2C92&sr=8-6* (last visited on

contends power output information is irrelevant to consumers of integrated home audio equipment. In contrast, Commission staff easily found multiple instances of sellers advertising such equipment using power output claims, presumably because they believe consumers find power output information relevant to their purchasing decision.[24]

Based on the comments, however, the Commission modifies its NPRM proposal in three ways. First, it proposes replacing the Rule's reference to ''total harmonic distortion'' with ''total harmonic distortion plus noise'' (''THD+N'').[25] As one commenter observed, the modern audio equipment industry distinguishes between THD and THD+N.[26] THD measures only the discrepancy in harmonics between the original audio signal and the amplified signal (harmonic distortion).[27] In contrast, THD+N measures both harmonic distortion and noise introduced by the power line, the electronics of the amplifier, and other sources.[28] When the Commission originally promulgated the Rule, it intended the term ''total harmonic distortion'' to capture both harmonic distortion and noise signified by the broader term THD+N.[29] The modified proposal preserves this original meaning.[30]

Second, the Commission proposes raising the THD+N limit to 1.0% to address commenters' concerns that a significant number of amplifiers on the market cannot qualify for any power output claim under the NPRM proposal's 0.1% limit.[31] Staff research confirms that a number of entry-level solid state amplifiers cannot rate the power output at a 0.1% THD+N limit but most can rate at a 1.0% limit.[32] Although the new proposal allows a higher percentage of distortion, research referenced by commenter Dennis Murphy indicates the average consumer cannot audibly detect distortion at the 1.0% level, especially when listening to content typically played on home audio equipment, such as music and movie programming.[33] The Commission

Mar. 22, 2023) (advertising 50 watts at 4 ohms, 20Hz-20kHz, 0.9% THD); *Russound P75,* Crutchfield, *https://www.crutchfield.com/p_543P75/Russound-P75.html?tp=48757* (Mar. 22, 2023) (advertising 60 watts into 8 ohms, 1kHz, 1% THD).

[24] *See, e.g., Nakamichi Shockwafe Ultra 9.2.4 Channel 1000W Dolby Atmos/DTS:X Soundbar with Dual 10'' Subwoofers (Wireless) & 4 Rear Surround Speakers. Enjoy Plug and Play Explosive Bass & High End Cinema Surround, Amazon.com, https://www.amazon.com/Nakamichi-Shockwafe-Ultra-9-2Ch-DTS/dp/B07HHZ94BW/ref=sr_1_2_sspa?c=ts&keywords=Home+Theater+Systems&qid=1678919591&s=aht&sr=1-2-spons&ts_id=281056&psc=1&spLa=ZW5jcnlwdGVkUXVhbGlmaWVyPUEzR0VUSE9aNjNEUDlIJmVuY3J5cHRlZElkPUEwODM4ODgyMlE1VDYyMVBUTVRCVSZlbmNyeXB0ZWRBZElkPUEwMzkwOTY1Mk9WSjkwMjNPNkg1QSZ3aWRnZXROYW1lPXNwX2F0ZiZhY3Rpb249Y2xpY2tSZWRpcmVjdCZkb05vdExvZ0NsaWNrPXRydWU=* (advertising 1000 watts); *Bobtot Home Theater Systems Surround Sound Speakers—1200 Watts 10 inch Subwoofer 5.1/2.1 Channel Home Audio Stereo System, Amazon.com, https://www.amazon.com/Bobtot-Theater-System-Surround-Speakers/dp/B09MRW83PZ/ref=sxin_16_pa_sp_search_thematic_sspa?c=ts&content-id=amzn1.sym.711b623b-fef6-4340-9590-f21d01371ab3%3Aamzn1.sym.711b623b-fef6-4340-9590-f21d01371ab3&cv_ct_cx=Home+Theater+Systems&keywords=Home+Theater+Systems&pd_rd_i=B09MRW83PZ&pd_rd_r=d167b2e2-a2f1-4119-9562-90cc123dce28&pd_rd_w=W8eOP&pd_rd_wg=f6w1j&pf_rd_p=711b623b-fef6-4340-9590-f21d01371ab3&pf_rd_r=ZDVKAESB3BDAQR1KTNJA&qid=1678919591&s=aht&sbo=RZvfv%2F%2FHxDF%2BO5021pAnSA%3D%3D&sr=1-1-2b34d040-5c83-4b7f-ba01-15975dfb8828-spons&ts_id=281056&psc=1&spLa=ZW5jcnlwdGVkUXVhbGlmaWVyPUEzR0VUSE9aNjNEUDlIJmVuY3J5cHRlZElkPUEwMTM2MzA1MkNRTkFXTVg2NVUzTyZlbmNyeXB0ZWRBZElkPUEwNzgwNDkxVUxPRFRWSlBWVEI4JndpZGdldE5hbWU9c3Bfc2VhcmNoX3RoZW1hdGljJmFjdGlvbj1jbGlja1JlZGlyZWN0JmRvTm90TG9nQ2xpY2s9dHJ1ZQ==* (last visited on Mar. 22, 2023) (advertising 1200 watts); *Rockville HTS56 1000w 5.1 Channel Home Theater System/Bluetooth/USB+8'' Subwoofer, Amazon.com, https://www.amazon.com/Rockville-HTS56-Channel-Bluetooth-Subwoofer/dp/B076R7HYKN/ref=sr_1_6?c=ts&keywords=Home+Theater+Systems&qid=1678919591&s=aht&sr=1-6&ts_id=281056* (last visited on Mar. 22, 2023) (advertising 1000 watts).

[25] *See infra* proposed 16 CFR 432.3(e).

[26] E.W. Blackwood (NPRM 7).

[27] Typically, the original audio signal used in measuring distortion is a sinusoidal wave with a defined frequency called a ''fundamental frequency.'' Amplifying the original audio signal may generate harmonics, which are sinusoidal waves with frequencies that are a positive integer multiple of the fundamental frequency. Harmonic distortion is the measure of the harmonics introduced into the amplified output signal. *See THD And THD+N—Similar But Not The Same,* Audio Precision, Inc., *https://www.ap.com/blog/thd-and-thdn-similar-but-not-the-same/* (last visited on Mar. 22, 2023); *What Is Total Harmonic Distortion Plus Noise (THD+N)?,* Audio Interfacing (Nov. 15, 2022), *https://audiointerfacing.com/total-harmonic-distortion-plus-noise/#:~:text=THD%20is%20a%20measure%20of,relative%20to%20the%20input%20signal.; Understanding, Calculating, and Measuring Total Harmonic Distortion (THD),* All About Circuits (Feb. 20, 2017), *https://www.allaboutcircuits.com/technical-articles/the-importance-of-total-harmonic-distortion/#:~:text=Harmonics%20or%20harmonic%20frequencies%20of,of%20a%20periodic%20signal%20shows.*

[28] *See, e.g., What Is Total Harmonic Distortion Plus Noise (THD+N)?,* Audio Interfacing (Nov. 15, 2022), *https://audiointerfacing.com/total-harmonic-distortion-plus-noise/#:~:text=THD%20is%20a%20measure%20of,relative%20to%20the%20input%20signal.; More About THD+N And THD,* Audio Precision, Inc. (Feb. 1, 2013), *https://www.ap.com/technical-library/more-about-thdn-and-thd/; Not All Distortion Is Created Equal—A Guide to THD & THD+N,* Bandwidth Audio, *https://www.bandwidthaudio.com/post/not-all-distortion-is-created-equal-a-guide-to-thd-thd-n* (last visited Mar. 22, 2023).

[29] For instance, the Commission's intent to include noise in using the term ''total harmonic distortion'' is demonstrated by its explanation of § 432.3(a) when it first promulgated the Rule. That section requires AC power lines for testing equipment capable of using AC as a power source. The Commission explained that testing cannot artificially eliminate the ''hum and noise factor'' present in AC power lines by using a battery to power equipment capable of AC power. 39 FR 15387, 15393 (May 3, 1974).

[30] The modified proposal also reduces the burden on industry. Measuring THD+N is simpler because it does not require the additional step of separating harmonic distortion from noise for measuring THD. *See, e.g., THD And THD+N—Similar But Not The Same,* Audio Precision, Inc., *https://www.ap.com/blog/thd-and-thdn-similar-but-not-the-same/* (last visited on Mar. 22, 2013) (''[T]he test setup [for measuring THD] is inherently more complicated than the THD+N technique.''); *What Is Total Harmonic Distortion Plus Noise (THD+N)?,* Audio Interfacing (Nov. 15, 2022), *https://audiointerfacing.com/total-harmonic-distortion-plus-noise/#:~:text=THD%20is%20a%20measure%20of,relative%20to%20the%20input%20signal.* (''[I]n practice THD+N is easier to measure than THD.'').

[31] *See infra* proposed 16 CFR 432.3(e).

[32] FTC staff examined graphs of THD+N vs. 1kHz continuous output power into 8 ohms for a sampling of solid state amplifier devices on *www.stereophile.com.* 8 out of 30 devices were not capable of generating any power output at a maximum THD+N threshold of 0.1%, but all 30 devices were capable of generating a power output at a maximum THD+N threshold of 1.0%. Similarly, FTC staff reviewed a sampling of solid state amplifier devices available on *www.crutchfield.com.* Out of the 50 devices reviewed, 10 advertised power output ratings at THD levels that exceeded 0.1% but that were within the 1.0% limit. As for vacuum tube amplifiers, many of the reviews on *www.stereophile.com* did not provide the THD or THD+N level for the rated power output. However, FTC staff's online research suggests that these amplifiers generally produce a higher level of distortion than solid state amplifiers. *See, e.g., Why Tubes Sound Better,* Ken Rockwell, *https://www.kenrockwell.com/audio/why-tubes-sound-better.htm#:~:text=Tube%20amplifiers%20have%20much%20more,same%20note%2C%20an%20octave%20above* (last visited on Mar. 22, 2023) (''Tube amplifiers have much more distortion than solid-state amplifiers . . .''). ''In addition, one commenter stated he independently evaluated all of the tube amplifiers reviewed by *www.stereophile.com* and found that ''none achieved THD levels as low as .1% over a 20 Hz to 20kHz bandwidth into 8 Ohms, even when driven with as little as 3 watts.'' Dennis Murphy (NPRM 9).

[33] Dennis Murphy (NPRM 9). Mr. Murphy noted ''the published research has found that consumers cannot begin to detect distortion on music program material until it reaches at least 1% [THD] . . .'' *Id.* (citing Mark Sanfilipo, *Human Hearing—Distortion Audibility Part 3,* Audioholics (Apr. 22, 2005), *available at https://www.audioholics.com/room-acoustics/human-hearing-distortion-audibility-part-3*). The *www.audioholics.com* web page cited by Mr. Murphy references 6 studies, 4 of which support the notion that the average consumer cannot detect distortion below 1%. Other internet sources seem to support this conclusion. *See, e.g., What Is Total Harmonic Distortion (THD)?,* Lifewire, *https://www.lifewire.com/total-harmonic-distortion-3134704* (last visited Mar. 28, 2023) (''As long as THD is less than one percent, most listeners will not hear any distortion.''); *Understanding Amplifier Power,* Geoff the Grey Geek, *https://geoffthegreygeek.com/understanding-amplifier-power/* (last visited on Mar. 28, 2023) (stating THD or THD+N ''should be 1% or less'' to avoid inflated power output claims achieved at unacceptably high

Continued

recognizes some amplifiers would not qualify for a power output rating even at the 1.0% THD+N limit. However, these sellers may voluntarily disclose power output ratings that do not conform to the FTC's testing standard, provided their disclosures comply with the Rule's requirements governing ''Optional Disclosures'' set forth in § 432.4.[34]

Third, the Commission proposes requiring sellers to use specific language to clearly distinguish power output disclosures under § 432.2 from Optional Disclosures under § 432.4. By standardizing the test conditions for power output claims under § 432.2, the Commission anticipates more sellers would also use Optional Disclosures to distinguish specific features of their products. While such claims can be useful to consumers seeking particular audio qualities, they raise the specter of confusion. To address this issue, the Commission proposes to amend both § 432.2 and § 432.4 to require sellers to designate disclosures that meet the FTC's standard with the words ''FTC Power Output Rating,'' and those that do not (*i.e.,* disclosures that fall within the Optional Disclosures section) with the words ''This rating does not meet the FTC standard.'' [35] This information should alert consumers to the type of power output claim being made and facilitate an apples-to-apples comparison across different brands and models.

Additionally, the Commission proposes making four non-substantive changes to update and clarify the language of the Rule. First, the Commission proposes eliminating language in § 432.4 that currently incorporates § 432.2's requirement to disclose the test conditions.[36] As explained above, the proposed amendments to the Rule eliminate this requirement because such highly technical disclosures are unlikely to protect the general consumer from deceptive power output claims.

Second, the Commission proposes to consolidate all provisions that standardize test conditions into a single section. Doing so should improve the Rule's useability. Currently, the Rule has two sections that contain standard test conditions. Section 432.3 entitled ''Standard Test Conditions'' contains most of the Rule's test condition requirements; however, the requirement to test using ''minimum sine wave continuous average power output, in watts, per channel . . .'' appears in § 432.2(a). Consolidating these requirements into § 432.3 should make the requirements easier to find.[37]

Third, the Commission proposes modifying § 432.3(e) to clarify that amplifiers must meet the standard for impedance, power band, and THD+N at all levels from 250mW to the disclosed level. Retaining this requirement from the current rule [38] while standardizing test conditions should ensure the advertised power claim does not mask lower power levels at which the amplifier would not meet the FTC's standard.

Fourth, the Commission proposes updates to § 432.4's prohibition against using an ''asterisk'' to make disclosures required under the Rule. The new proposal updates this language to similarly prohibit the use of footnotes and other notations typically used to obscure disclosures in advertising.[39]

Finally, the Commission proposes formalizing its guidance regarding how channels in a multichannel amplifier must be driven when measuring power output under the FTC standard. The FTC standard requires all ''associated channels'' to be fully driven when measuring power output of the amplifier.[40] In 2010, the Commission found that ''associated channels'' for multichannel systems include, at a minimum, the front-left and front-right channels used for stereo programming, and issued guidance stating that power output measurements that do not meet this floor violate the Rule.[41] While ANPR commenters proposed a variety of alternative standards for driving multichannel amplifiers,[42] and the NPRM specifically solicited evidence regarding normal usage of multichannel amplifiers,[43] no commenters to either the ANPR or the NPRM provided evidence regarding real-life use of multichannel systems. Accordingly, considering the Commission's 2010 finding and in the absence of any evidence supporting an alternative, the Commission proposes to modify § 432.2 to formalize its long-standing guidance on ''associated channels'' for multichannel amplifiers—the front-left and front-right channels used for stereo programming must be driven simultaneously.[44]

## IV. Request for Comments

The Commission seeks comments on all aspects of the proposed requirements, including the likely effectiveness of the proposed Rule amendments in helping the Commission combat unfair or deceptive practices in the marketing of amplifiers utilized in home entertainment equipment. In particular, the Commission seeks comments on each of the modifications to its NPRM proposal. It also seeks comments on other approaches to addressing unfair and deceptive practices, such as the publication of additional consumer and business

levels of distortion); *cf. Blind Test Results Part II:* ''*Is High Harmonic Distortion in Music Audible?*'' *Respondent Results,* Archimago's Musings (June 6, 2020), *available at http://archimago.blogspot.com/2020/06/blind-test-results-part-ii-is-high.html* (informal online listening test showing 31% of listeners detected only a ''small difference'' in sound between a 0.0000002% THD sample and 3.0% THD sample, 21% detected ''very little to no difference,'' and 18% detected ''no noticeable difference'').

[34] 16 CFR 432.4. Both the current and proposed versions of this section mandate that Optional Disclosures be less conspicuous and prominent than the disclosure of the FTC power output rating and that they use testing methods that are generally recognized by the industry, among other requirements.

[35] *See infra* proposed 16 CFR 432.2(c) and 432.4(a), respectively.

[36] 16 CFR 432.4(a) (requiring ''such power output representation(s) complies with the provisions of § 432.2 of this part; except that if a peak or other instantaneous power rating, such as music power or peak power, is represented under this section, the maximum percentage of total harmonic distortion (see § 432.2(d) of this part) may be disclosed only at such rated output'').

[37] *See infra* proposed 16 CFR 432.3(g) & (h).

[38] 16 CFR 432.2(b).

[39] The prohibition against using an asterisk is currently contained in Note 2 of § 432.4. The Commission's proposed amendments eliminate Note 2, as well as Note 1 addressing the font style of certain disclosures, and move the substantive requirements of these two Notes into the main text of § 432.2(d) and § 432.4(a) and (b).

[40] This requirement is currently in § 432.2(a). The proposed amendments consolidate this requirement with the other standard test conditions in § 432.3. *See* paragraph accompanying fn. 37 *supra.*

[41] The Commission based its guidance on the finding that ''[t]he left and right front channels of home theater multichannel amplifiers are responsible for reproducing a substantial portion of the musical soundtracks of movies, as well as a substantial portion of the program content of music CDs and DVDs.'' 75 FR 3985, 3987 (Jan. 26, 2010).

[42] Commenters to the ANPR proposed fully driving 2 channels, fully driving 3 channels and partially driving the remaining channels, and driving 5 channels at 70%, among other proposals. *See, e.g.,* Leo Nolan (ANPR 67); Gene DellaSala (ANPR 6); Jason Jenkins (ANPR 70). In its response to the NPRM, CTA correctly observed that none of the commenters supported their respective proposals with any evidence of how channels are driven in typical use in the home. CTA (NPRM 8).

[43] 87 FR 45047, 45049—50 (July 27, 2022). As the Commission stated in the prior 2000 proceeding to amend the Rule, ''[t]he controlling consideration in determining the proper interpretation of 'associated channels' is whether audio/video receivers and amplifiers would, when operated by consumers in the home at high playback volume, be required to deliver full rated power output in all channels simultaneously, or whether such maximum stress conditions would more likely be restricted at any given moment of time to certain sub-groupings of available channels.'' 65 FR 80798, 80800 (Dec. 22, 2000).

[44] *See infra* proposed 16 CFR 432.3(h) (''Associated channels for multichannel amplifiers shall include, at a minimum, the left front and right front channels used for reproducing stereo programming.'').

education material. Commenters should provide any available evidence and data that supports their position, such as empirical data, consumer perception studies, and consumer complaints.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 20, 2023. Include ''Amplifier Rule Review; Project No. P974222'' on your comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we strongly encourage you to submit your comments online through the *https://www.regulations.gov* website. To ensure that the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write ''Amplifier Rule Review; Project No. P974222'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex A), Washington, DC 20580. If possible, please submit your paper comment to the Commission by overnight service.

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

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

Visit the FTC website to read this publication and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 20, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

## V. Rulemaking Procedures

The Commission finds that using expedited procedures in this rulemaking will serve the public interest. Expedited procedures will support the Commission's goals of clarifying and updating existing regulations without undue expenditure of resources, while ensuring that the public has an opportunity to submit data, views, and arguments on whether the Commission should amend the Rule. Pursuant to 16 CFR 1.20, the Commission will use the following procedures: (1) publishing this notice of proposed rulemaking; (2) soliciting written comments on the Commission's proposals to amend the Rule; (3) holding an informal hearing, if requested by interested parties; and (4) announcing final Commission action in a document published in the **Federal Register**.

The Commission, in its discretion, has not chosen to schedule an informal hearing and has not made any initial designations of disputed issues of material fact necessary to be resolved at an informal hearing. Interested persons who wish to make an oral submission at an informal hearing must file a comment in response to this publication and submit a statement identifying their interests in the proceeding and describing any proposals regarding the designation of disputed issues of material fact to be resolved at the informal hearing, on or before October 20, 2023. 16 CFR 1.11. Such requests, and any other motions or petitions in connection with this proceeding, must be filed with the Secretary of the Commission.

## VI. Preliminary Regulatory Analysis

Under Section 22 of the FTC Act, 15 U.S.C. 57b–3, the Commission must issue a preliminary regulatory analysis for a proceeding to amend a rule if the Commission: (1) estimates that the amendment will have an annual effect on the national economy of $100 million or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. The Commission has preliminarily determined that the proposed amendments to the Rule will not have such effects on the national economy, on the cost of sound amplification equipment, or on covered businesses or consumers. In developing these proposals, the Commission has sought to minimize prescriptive requirements and provide flexibility to sellers in meeting the Rule's objectives. The Commission, however, requests comment on the economic effects of the proposed amendments.

## VII. Regulatory Flexibility Act Requirements

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires that the Commission conduct an analysis of the anticipated economic impact of the proposed amendment on small entities. The purpose of a regulatory flexibility analysis is to ensure that an agency considers potential impacts on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. The RFA requires that the Commission provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule and a Final Regulatory Flexibility Analysis (''FRFA'') with a final rule, if any, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission believes that the proposed amendment would not have a

significant economic impact upon small entities, although it may affect a substantial number of small businesses. Specifically, the proposed change in the disclosure requirements should not significantly increase the costs of small entities that manufacturer or import power amplification equipment for use in the home. Therefore, based on available information, the Commission certifies that amending the Rule as proposed will not have a significant economic impact on a substantial number of small businesses. Although the Commission certifies under the RFA that the proposed amendment would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA to inquire into the impact of the proposed amendment on small entities. Therefore, the Commission has prepared the following analysis:

*A. Description of the Reasons That Action by the Agency Is Being Taken*

The Commission proposes amending the Rule to standardize testing parameters to assist consumers in understanding power output disclosures for amplifiers and to eliminate claims regarding power output that are likely to deceive consumers.

*B. Statement of the Objectives of, and Legal Basis for, the Proposed Amendment*

The Commission promulgated the Rule pursuant to Section 18 of the FTC Act, 15 U.S.C. 57a. The proposed amendment would standardize testing parameters for amplifiers to prevent deceptive claims regarding power output and assist consumers in understanding power output disclosures.

*C. Small Entities to Which the Proposed Amendments Will Apply*

The Rule covers manufacturers and importers of power amplification equipment for home use. Under the Small Business Size Standards issued by the Small Business Administration, audio and video equipment manufacturers qualify as small businesses if they have 750 or fewer employees.[45] The Commission's staff estimates that a substantial number of the entities covered by the Rule likely qualify as small businesses.

*D. Projected Reporting, Recordkeeping, and Other Compliance Requirements*

The Commission is proposing amendments designed to simplify the Rule and provide clearer amplifier power output measurements for consumers to use to compare products. While the amendments modify the Rule's testing requirements, FTC staff does not anticipate that these changes will result in higher costs for covered entities because manufacturers already test power output for their amplifiers; in many cases under the conditions specified by the proposed amendments.

*E. Duplicative, Overlapping, or Conflicting Federal Rules*

The Commission has not identified any other Federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed amendment.

*F. Significant Alternatives to the Proposed Amendment*

The Commission has not proposed any specific small entity exemption or other significant alternatives because the proposed amendment would not impose any new requirements or compliance costs.

**VIII. Paperwork Reduction Act**

The current Rule contains various provisions that constitute information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (''OMB'') regulations implementing the Paperwork Reduction Act (''PRA''). OMB has approved the Rule's existing information collection requirements through April 30, 2024 (OMB Control No. 3084–0105). As described above, the Commission is proposing amendments to simplify power output measurements by standardizing test parameters. The amendments do not change the frequency of the testing or disclosure requirements specified under the Rule. Accordingly, FTC staff does not anticipate this change will result in additional burden hours or higher costs for manufacturers who already test power output for their amplifiers, in many cases testing amplifiers under the conditions specified by the proposed amendments. Therefore, the amendments do not require further OMB clearance.

**IX. Communications by Outside Parties to the Commissioners or Their Advisors**

Pursuant to FTC Rule 1.18(c)(1), the Commission has determined that communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor shall be subject to the following treatment. Written communications and summaries or transcripts of oral communications shall be placed on the rulemaking record if the communication is received before the end of the comment period. They shall be placed on the public record if the communication is received later. Unless the outside party making an oral communication is a member of Congress, such communications are permitted only if advance notice is published in the Weekly Calendar and Notice of ''Sunshine'' Meetings.[46]

**List of Subjects in 16 CFR Part 432**

Amplifiers, Home entertainment products, Trade practices.

For the reasons stated above, the Commission proposes to amend part 432 of title 16 of the Code of Federal Regulations as follows:

## PART 432—POWER OUTPUT CLAIMS FOR AMPLIFIERS UTILIZED IN HOME ENTERTAINMENT PRODUCTS

■ 1. The authority citation for part 432 continues to read:

**Authority:** 38 Stat. 717, as amended; (15 U.S.C. 41–58).

■ 2. Revise § 432.2 to read as follows:

**§ 432.2 Required disclosures.**

Whenever any direct or indirect representation is made of the power output, power band or power frequency response, or distortion characteristics of sound power amplification equipment, the manufacturer's rated power output shall be disclosed subject to the following conditions:

(a) The rated power output is measured in compliance with the standard test conditions in § 432.3;

(b) The rated power output is disclosed clearly, conspicuously, and more prominently than any other representations or disclosures permitted under this part;

(c) The disclosure of the rated power output is clearly and conspicuously labeled ''FTC Power Output Rating''; and

(d) The disclosures or representations required under this section shall not be made by a footnote, asterisk, or similar notation.

■ 3. Revise § 432.3(e) and add paragraphs (g) and (h) to read as follows:

**§ 432.3 Standard test conditions.**

* * * * *

(e) Any power level from 250 mW to the rated power shall be obtainable at all

[45] U.S. Small Business Administration, Table of Size Standards (Eff. Aug. 19, 2019).

[46] *See* 15 U.S.C. 57a(i)(2)(A); 16 CFR 1.18(c).

frequencies within the rated power band of 20 Hz to 20 kHz without exceeding 1.0% of total harmonic distortion plus noise (THD+N) at an impedance of 8 ohms after input signals at said frequencies have been continuously applied at full rated power for not less than five (5) minutes at the amplifier's auxiliary input, or if not provided, at the phono input. *Provided,* however, that for amplifiers utilized as a component in a self-powered subwoofer in a self-powered subwoofer-satellite speaker system that employs two or more amplifiers dedicated to different portions of the audio frequency spectrum, any power level from 250 mW to the rated power shall be obtainable at all frequencies within the subwoofer amplifier's intended operating bandwidth without exceeding 1.0% of total harmonic distortion plus noise (THD+N) at an impedance of 8 ohms after input signals at said frequencies have been continuously applied at full rated power for not less than five (5) minutes at the amplifier's auxiliary input, or if not provided, at the phono input.

* * * * *

(g) Rated power shall be minimum sine wave continuous average power output, in watts, per channel (if the equipment is designed to amplify two or more channels simultaneously), measured with all associated channels fully driven to rated per channel power.

(h) Associated channels for multichannel amplifiers shall include, at a minimum, the left front and right front channels used for reproducing stereo programming. *Provided,* however, when measuring the maximum per channel output of self-powered combination speaker systems that employ two or more amplifiers dedicated to different portions of the audio frequency spectrum, such as those incorporated into combination subwoofer-satellite speaker systems, only those channels dedicated to the same audio frequency spectrum should be considered associated channels.

■ 4. Revise § 432.4 to read as follows:

**§ 432.4 Optional disclosures.**

Other operating characteristics and technical specifications not required in § 432.2 of this part may be disclosed. *Provided* that:

(a) Any other power output is rated by the manufacturer, expressed in minimum watts per channel, and clearly and conspicuously labeled ''This rating does not meet the FTC standard'' without the use of a footnote, asterisk, or similar notation to make the representation;

(b) All disclosures or representations made under this section are less conspicuously, and prominently made than any rated power output disclosure required in § 432.2. Any disclosure or representation bold faced or more than two-thirds the height of any rated power output disclosure required in § 432.2 is not less prominent; and

(c) The rating and testing methods or standards used in determining such representations are well known and generally recognized by the industry at the time the representations or disclosures are made, are neither intended nor likely to deceive or confuse consumers, and are not otherwise likely to frustrate the purpose of this part.

By direction of the Commission.

**April J. Tabor,**

*Secretary.*

[FR Doc. 2023–16792 Filed 8–18–23; 8:45 am]

**BILLING CODE 6750–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 62

**[EPA–R07–OAR–2023–0199; FRL–10830–01–R7]**

### Approval of State Plans for Designated Facilities and Pollutants; MO; Approval and Promulgation of Implementation Plans; Control of Emissions From Existing Municipal Solid Waste Landfills

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a Clean Air Act (CAA) plan and two state rules submitted by the Missouri Department of Natural Resources (MoDNR) on July 25, 2022. This plan was submitted to fulfill the state's obligations under the CAA to implement and enforce the requirements of the Emissions Guidelines and Compliance Times for municipal solid waste (MSW) landfills. This plan includes an inventory of affected sources and explains how the state rules fulfill the regulatory requirements needed for EPA to approve the plan. In addition, the EPA is proposing to approve a revision to the State Implementation Plan (SIP) submitted by MoDNR for the purpose of revising the Missouri rule entitled ''Municipal Solid Waste Landfills'' to incorporate by reference Emission Guidelines (EG) for MSW landfills. EPA is proposing to approve this SIP revision based on EPA's finding that the rule is as stringent as the rule it replaces and fulfills the requirements of the CAA for the protection of the ozone National Ambient Air Quality Standards (NAAQS) in St. Louis.

**DATES:** Comments must be received on or before September 20, 2023.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA–R07–OAR–2023–0199 to *www.regulations.gov.* Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Allyson Prue, Environmental Protection Agency, Region 7 Office, Air Permitting and Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7277; email address: *prue.allyson@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document ''we,'' ''us,'' and ''our'' refer to the EPA.

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II. What is being addressed in this document?
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## I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2023–0199, at *www.regulations.gov.* Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and

should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

## II. What is being addressed in this document?

EPA is proposing to approve Missouri's section 111(d) State Plan for Existing MSW Landfills (Missouri's section 111(d) State Plan) and two state rules accompanying the plan pursuant to 40 CFR part 60, subparts B and Cf. Missouri state rule 10 Code of State Regulations (CSR) 10–6.310 ''Restriction of Emissions from Municipal Solid Waste Landfills'' (which covers all areas of Missouri except St. Louis) and 10 CSR 10–5.490 ''Municipal Solid Waste Landfills'' (which covers the St. Louis area) provide the enforceable portion of Missouri's section 111(d) State Plan. The state rules incorporate by reference the federal plan located at 40 CFR part 62, subpart OOO as the underlying rule which implements and enforces the applicable provisions under the 2016 MSW landfill EG at 40 CFR part 60, subpart Cf.

As part of this action, EPA is also proposing to approve the revision to 10 CSR 10–5.490, which implements the 2016 MSW landfill EG at more stringent thresholds in the St. Louis ozone nonattainment area, into Missouri's SIP. EPA's proposed approval of 10 CSR 10–5.490 is in accordance with section 110 of the CAA and 40 CFR part 51.

EPA's detailed rationale and discussion concerning Missouri's section 111(d) State Plan, including the revisions to 10 CSR 10–6.310 and 10 CSR 10–5.490 can be found in the EPA Technical Support Document (TSD), located in the docket for this rulemaking.

## III. CAA 111(d) and Landfill Emission Guidelines Background

Section 111 of the CAA, ''Standards of Performance for New Stationary Sources,'' directs the EPA to establish emission standards for stationary sources of air pollution that could potentially endanger public health or welfare. These standards are referred to as New Source Performance Standards (NSPS). Section 111(b) directs EPA to publish and periodically revise a list of categories of stationary sources which cause or significantly contribute to air pollution, and to establish NSPS within these categories. Section 111(b)(1)(B) applies to new sources.

When NSPS are promulgated for new sources, section 111(d) and EPA regulations require that the EPA publish an Emission Guideline (EG) to regulate the same pollutants from existing facilities. Section 111(d) addresses the process by which the EPA and states regulate standards of performance for existing sources belonging to those categories established in section 111(b). While NSPS are directly applicable to new sources, EGs for existing sources (designated facilities) are intended for states to use to develop a state plan to submit to the EPA.

EPA established requirements for state plan submittals in 40 CFR part 60, subpart B. State submittals under CAA section 111(d) must be consistent with the relevant emission guidelines, in this instance 40 CFR part 60, subpart Cf, and the requirements of 40 CFR part 60, subpart B, and 40 CFR part 62, subpart A. If the state plan is complete and approvable with reference to these requirements, EPA notifies the public, promulgates the plan pursuant to 40 CFR part 62, and delegates implementation and enforcement of the standards and requirements of the emission guidelines to the state under the terms of the state plan as published in the CFR. Once approved by the EPA, the state plan becomes federally enforceable. If a State does not submit an approvable state plan to the EPA, the EPA is responsible for developing, implementing, and enforcing a Federal plan.

The MSW landfills NSPS for new landfills and EG for existing landfills were first promulgated by the EPA on March 12, 1996, in 40 CFR part 60, subparts WWW and Cc, respectively (61 FR 9905). We first approved Missouri's section 111(d) plan for MSW landfills on April 24, 1998 (63 FR 20320). On August 29, 2016, EPA finalized revised Standards of Performance for new MSW landfills and Emission Guidelines and Compliance Times for Existing MSW Landfills (2016 MSW Landfills EG) in 40 CFR part 60, subparts XXX and Cf, respectively (81 FR 59331 and 81 FR 59275). The 2016 MSW Landfills EG revision updates the control requirements and monitoring, reporting, and recordkeeping provisions for existing MSW landfill sources.

On May 21, 2021, EPA finalized a federal plan to implement the 2016 MSW Landfills EG where state plans were not in effect (86 FR 27756). On July 25, 2022, MoDNR submitted to EPA a formal section 111(d) plan and two state rules for existing MSW landfills. These rules are 10 CSR 10–6.310 ''Restriction of Emissions from Municipal Solid Waste Landfills'' (which covers all areas of Missouri except St. Louis) and 10 CSR 10–5.490 ''Municipal Solid Waste Landfills'' (which covers the St. Louis area). The state rules incorporate by reference the federal plan located at 40 CFR part 62, subpart OOO to use as the underlying rule which implements and enforces the applicable provisions under the 2016 MSW landfill EG at 40 CFR part 60, subpart Cf.

For the reasons discussed below, EPA proposes to find that Missouri's section 111(d) State Plan meets the relevant requirements of the CAA section 111(d) implementing regulations at 40 CFR part 60, subpart B and 40 CFR part 60, subpart Cf.

## IV. Background for Missouri's Municipal Solid Waste Landfill Rule for the St. Louis Ozone Nonattainment Area

The St. Louis area was designated nonattainment for the 1-hour ozone standard in 1978 (43 FR 8962). On November 6, 1991, the EPA promulgated a regulation which classified the St. Louis area as a moderate ozone nonattainment area (56 FR 56694). The nonattainment area consisted of Madison, Monroe, and St. Claire counties in Illinois; and Franklin, Jefferson, St. Charles, and St. Louis counties and St. Louis City in Missouri. The St. Louis area is currently designated nonattainment for the 8-hour (2015) ozone standard (83 FR 25776 [1]).

Section 182(b)(1)(A) of the Act requires that each state in which all or part of a moderate ozone nonattainment area is located submit a SIP revision providing for a 15 percent reduction in emissions of volatile organic compounds. These plans are commonly referred to as Rate of Progress Plans (ROPP).

EPA approved Missouri's 15 percent ROPP on May 18, 2000 (65 FR 31485). Missouri's 15 percent ROPP included state rule 10 CSR 10–5.490, ''Control of Emissions from Municipal Solid Waste Landfills,'' that required the use of gas collection systems to reduce VOC emissions by 98% at six municipal solid waste landfills in the St. Louis area. The rule has been subsequently revised to maintain consistency with federal requirements, with the most recent

[1] The 2015 8-hour ozone nonattainment designation included part of Franklin County (Boles Township), St. Charles County, St. Louis County, and the City of St. Louis in Missouri, and Madison and St. Clair counties in Illinois.

revision approved by EPA on April 15, 2014 (79 FR 21187).

Missouri revised 10 CSR 10–5.490 to implement the 2016 MSW landfill EG at more stringent thresholds in the St. Louis ozone nonattainment area and submitted the rule to EPA for approval as part of Missouri's section 111(d) State Plan and for approval as a revision to Missouri's SIP in accordance with section 110 of the CAA. For the reasons discussed below, EPA proposes to find that Missouri's submission meets the applicable requirements of section 110 of the CAA and 40 CFR part 51.

## V. Summary and Analysis of the 111(d) Plan Submittal

The EPA has reviewed Missouri's section 111(d) State Plan in the context of the plan completeness and approvability requirements of 40 CFR part 60, subparts B and Cf, and part 62, subpart A. EPA's detailed rationale and discussion concerning Missouri's section 111(d) State Plan can be found in the EPA TSD located in the docket for this rulemaking. As detailed in the TSD, the state followed all applicable administrative procedures in proposing and adopting these rule and plan actions in accordance with 40 CFR parts 60, subpart B, §§ 60.23 through 60.26.

Included within Missouri's section 111(d) State Plan are revisions to 10 CSR 10–5.490 ''Municipal Solid Waste Landfills''; and 10 CSR 10–6.310 ''Restriction of Emissions from Municipal Solid Waste Landfills''. These state rules incorporate by reference the new federal emissions thresholds and compliance schedules (40 CFR part 62, subpart OOO) for MSW landfills that accepted waste after November 8, 1987, and commenced construction, reconstruction, or modification before July 17, 2014.

Missouri's section 111(d) State Plan further describes how each requirement of the federal regulations is met by the state plan and rules. One element of this plan is the required inventory of affected landfills in the state. This inventory is contained in Table 1 of the state's submission which is included in the docket for this action. The state also met the public notice requirements for the plan and rules as demonstrated in Chapter 11 of the state's submittal. Table 2 of the state plan includes the compliance schedule for existing MSW landfills which is identical to the federal plan.

As required by 40 CFR 60.24, Missouri identified 10 CSR 10–5.490 and 10 CSR 10–6.310 as the enforceable state mechanisms that implement the MSW EGs. The state rules apply to each MSW landfill that has accepted waste at any time since November 8, 1987 or has additional design capacity available for future waste deposition, and that commenced construction, reconstruction, or modification on or before July 17, 2014. The state rules reference the appropriate section of 40 CFR part 62, subpart OOO for each relevant requirement such as compliance times, test methods, monitoring, recordkeeping and reporting. The provisions of 40 CFR part 62, subpart OOO are consistent with the requirements of 40 CFR part 60, subpart Cf. EPA finds this method of directly referencing federal regulations for each requirement sufficient to ensure the accurate version of requirements is referenced for affected facilities.

EPA continues to retain the following authorities that are not delegable to state agencies as described in 40 CFR 62.16710(b): Approval of alternative methods to determine the site-specific nonmethane organic compounds (NMOC) concentration or a site-specific methane generation rate constant (k); Alternative emission standards; Major alternatives to test methods (Major alternatives to test methods or to monitoring are modifications made to a federally enforceable test method or to a Federal monitoring requirement that may involve the use of unproven technology or modified procedures or an entirely new method); and waivers of recordkeeping. If a design plan includes alternative requests under 40 CFR 62.16710(b), MoDNR must forward the design plan to EPA for review and approval prior to its action on the design plan.

State rule 10 CSR 10–5.490 applies to the St. Louis area, consisting of St. Louis City and Franklin, Jefferson, St. Charles, and St. Louis Counties. The requirements contained in state rule 10 CSR 10–5.490 are identical to 40 CFR part 62, subpart OOO except that the state rule implements a smaller landfill size limit and a lower emission cutoff limit that triggers requirements for a landfill gas collection and control system (GCCS). State rule 10 CSR 10–6.310 applies statewide to affected facilities. Landfills in the St. Louis area covered by 10 CSR 10–5.490 are exempt from this statewide rule. The requirements in the state rule are identical to 40 CFR part 62, subpart OOO.

The Missouri submittal package includes all materials necessary to be deemed administratively and technically complete according to the criteria of 40 CFR 60.27. Missouri notified the public on December 27, 2021 concerning the proposed 111(d) plan and held a public hearing on January 27, 2022. The state's public comment period opened on December 27, 2021 and closed on February 3, 2022.

## VI. Summary and Analysis of Missouri's SIP Revision

Missouri revised 10 CSR 10–5.490 to implement the 2016 MSW landfill EG at more stringent thresholds in the St. Louis ozone nonattainment area. The emission standards and compliance schedules from 40 CFR part 62, subpart OOO are incorporated by reference into 10 CSR 10–5.490. The requirements that apply to existing MSW landfills with design capacities equal to or greater than 2.5 million Mg and 2.5 million $m^3$ in subpart OOO apply to MSW landfills in the St. Louis area if their design capacities are 1.0 million Mg and 1.0 million $m^3$. The emission threshold at which landfills must install and operate GCCS in the St. Louis area rule is 25 Mg per year, as opposed to 34 Mg per year (50 Mg per year for closed landfills) in subpart OOO. The lower thresholds in 10 CSR 10–5.490 also apply to closed landfills that seek to discontinue their GCCS.

The lower design capacity thresholds and emission thresholds in the revision to 10 CSR 10–5.490 are identical to the design capacity thresholds and emission thresholds previously approved into the SIP by EPA and as part of Missouri's 15 Percent Rate of Progress Plan. Missouri's incorporation by reference of 40 CFR part 62, subpart OOO imposes more stringent requirements on existing landfills in the St. Louis area than those imposed on landfills under the previously SIP-approved version of 10 CSR 10–5.490. As such, EPA proposes to find that the revisions to 10 CSR 10–5.490 do not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA and are therefore consistent with the requirements of section 110(l) of the CAA.

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from December 27, 2021 to February 3, 2022 and held a public hearing on January 27, 2022. The State received one comment on 10 CSR 10–5.490 concerning incorporation by reference of federal requirements and modified the rule in response.

As explained above and in more detail in the TSD, which is part of this

docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations. In accordance with section 110 of the CAA and 40 CFR part 51, EPA is proposing to approve 10 CSR 10–5.490 into Missouri's SIP.

## VII. Proposed Action

The EPA is proposing to determine that Missouri's section 111(d) State Plan and associated state rules satisfy the requirements of 40 CFR part 60, subparts B and Cf.

The EPA is proposing to approve the Missouri section 111(d) plan and the two state rules for MSW landfills pursuant to 40 CFR part 60, subparts B and Cf. Therefore, EPA is proposing to amend 40 CFR part 62, subpart AA, to reflect this action. The EPA's final approval of Missouri's section 111(d) plan will result in the replacement of the federal plan currently in place in the State of Missouri with the state plan being proposed for approval. The state plan does not extend any reporting or compliance deadlines stipulated in the current federal plan.

The EPA is also proposing to approve the July 30, 2022 state effective version of 10 CSR 10–5.490, which incorporates requirements established in EPA's updated Emission Guidelines, into the Missouri SIP replacing the prior SIP-approved version of the state rule. EPA is proposing to amend 40 CFR part 52, subpart AA, to reflect this action.

We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

## VIII. Incorporation by Reference

In this document, EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Missouri state rules 10 CSR 10–5.490 and 10 CSR 10–6.310, effective July 30, 2022, which regulate municipal solid waste landfills, as discussed in detail in Section V. of this preamble, into 40 CFR part 62. EPA is also proposing to incorporate by reference Missouri state rule 10 CSR 10–5.490, state effective July 30, 2022, which regulates municipal solid waste landfills in the St. Louis area, as discussed in detail in Section VI. of this preamble, into 40 CFR part 52. EPA has made, and will continue to make, these materials generally available through the docket for this action, EPA–R07–OAR–2023–0199, at *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## IX. Statutory and Executive Order Review

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). Under the CAA, the Administrator is required to approve a CAA section 111(d) submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7411(d); 42 U.S.C. 7429; 40 CFR part 60, subparts B and Cf; and 40 CFR part 62, subparts A and OOO. Thus, in reviewing CAA section 111(d) state plan submissions and SIP submissions, the EPA's role is to approve state choices provided that they meet the minimum criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 Clean Air Act;

In addition, the SIP and the CAA section 111(d) submission is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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. 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.'' 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.''

MoDNR did not evaluate environmental justice considerations as part of its 111(d) plan and SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this 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. Consideration of EJ is not required as part of this action, and there is no information in the record 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

*40 CFR Part 52*

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

*40 CFR Part 62*

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 11, 2023.

**Meghan A. McCollister,**

*Regional Administrator, Region 7.*

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR parts 52 and 62 as set forth below:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart AA–Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entry ''10–5.490'' to read as follows:

**§ 52.1320 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

| Missouri citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| **Missouri Department of Natural Resources** | | | | |
| * | * | * | * | * |
| **Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area** | | | | |
| * | * | * | * | * |
| 10–5.490 ..... | Municipal Solid Waste Landfills. | July 30, 2022 ..... | [Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule]. | |
| * | * | * | * | * |

* * * * *

## PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 3. The authority citation for part 62 continues to read as follows:

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

### Subpart AA—Missouri Air Emissions From Existing Municipal Solid Waste Landfills

■ 4. Revise § 62.6357 to read as follows:

**§ 62.6357 Missouri Department of Natural Resources.**

(a) Identification of plan. Missouri plan for control of landfill gas emissions from existing municipal solid waste landfills and associated state regulations submitted on January 26, 1998, with amendments on September 8, 2000, February 9, 2012, and July 25, 2022. The plan includes the regulatory provisions cited in paragraph (d) of this section, which EPA incorporates by reference.

(b) Identification of sources. The plan applies to all existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, and have design capacities greater than 2.5 million megagrams and nonmethane organic emissions greater than 50 megagrams per year, as described in 40 CFR part 60, subpart Cc.

(c) Effective date. The effective date of the plan for municipal solid waste landfills is June 23, 1998. The amendments are effective January 16, 2001, May 30, 2012, and [date 30 days after date of publication of the final rule in the **Federal Register**], respectively.

(d) Incorporation by reference. (1) The material incorporated by reference in this section was approved by the Director of the Federal Register Office in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the material may be inspected or obtained from the EPA Region 7 office, 11201 Renner Boulevard, Lenexa, Kansas 66219, 913–551–7003, or from the source in paragraph (d)(2) of this section. Copies may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.*

(2) State of Missouri, 600 West Main Street, Jefferson City, Missouri 65101, 573–751–4015.

(i) 10 CSR 10–5.490, Municipal Solid Waste Landfills, effective July 30, 2022.

(ii) 10 CSR 10–6.310, Restriction of Emissions from Municipal Solid Waste Landfills, effective July 30, 2022.

[FR Doc. 2023–17690 Filed 8–18–23; 8:45 am]

BILLING CODE 6560–50–P

# Notices

Federal Register
Vol. 88, No. 160
Monday, August 21, 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

### Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are required regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 20, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Farm Service Agency**

*Title:* Emergency Grain Storage Facility Assistance Program (EGSFP).

*OMB Control Number:* 0560–0315.

*Summary of Collection:* FSA is providing assistance to producers or groups of producers in their efforts to build and acquire new or used, permanent or portable on-farm grain storage capacity, drying and handling equipment. FSA is administering the EGSFP and addressing the emergency on-farm grain storage, drying and handling needs, while mitigating supply chain disruption. The financial assistance for the producers is covered in the sections 5(b), (d), and (e) of the Commodity Credit Cooperation (CCC) Charter Act (15 U.S.C. 714c(b), (d), and (e)), in the amount of 80 million to be used to partially compensate producers for on-going market disruptions and assist with the transition to a more orderly marketing system.

*Need and Use of the Information:* The information submitted by producers is used by FSA to determine eligibility and distribute payments to eligible producers under EGSFP program.

*Description of Respondents:* Farms.

*Number of Respondents:* 9,350.

*Frequency of Responses:* Reporting: Other (once).

*Total Burden Hours:* 4,244.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2023–17893 Filed 8–18–23; 8:45 am]

**BILLING CODE 3410–05–P**

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

**[Docket ID: FSA–2023–0016]**

### Information Collection Request; Emergency Conservation Program (ECP) and Biomass Crop Assistance Program (BCAP)

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Notice; request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act, the Farm Service Agency (FSA) is requesting comments from all interested individuals and organizations on a revision of currently approved information collection associated with the Emergency Conservation Program (ECP) and Biomass Crop Assistance Program (BCAP). The revision will include new forms related to ECP that will accompany new software to be implemented fiscal year 2024. The existing forms for prior ECP contracts will remain in use until contracts executed prior to fiscal year 2024 are closed.

**DATES:** We will consider comments that we receive by October 20, 2023.

**ADDRESSES:** We invite you to submit comments on this Notice. You may submit comments, identified by Docket ID: FSA–2023–0016, by any of the following methods:

- *Federal eRulemaking Portal:* Go to: *www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail, Hand Delivery, or Courier:* Shanita Landon, ECP Program Manager, Conservation Division, Farm Service Agency, United States Department of Agriculture, STOP 0513, 1400 Independence Avenue SW, Washington, DC 20250–0513.

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

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, Shanita London, (202) 578–9928 (work mobile); email: *shanita.landon@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

**SUPPLEMENTARY INFORMATION:**

**Description of Information Collection**

*Title:* Emergency Conservation Program and Biomass Crop Assistance Program.

*OMB Control Number:* 0560–0082.

*Expiration Date:* July 31, 2024.

*Type of Request:* Revision.

*Abstract:* The collection of this information is necessary to allow FSA to:

(1) Effectively administer the regulations under ECP, which are set forth at 7 CFR part 701, so as to provide funding and technical assistance for farmers and ranchers to restore farmland

damaged by natural disasters, and for emergency water conservation measures in severe droughts; and

(2) Effectively administer the regulations for BCAP, which are set forth at 7 CFR part 1450, so as to provide financial assistance to owners and operators of agricultural and non-industrial private forest land who wish to establish, produce, and deliver biomass feedstocks.

This information is collected in support of, respectively, sections 401–407 of the Agricultural Credit Act of 1978 (Pub. L. 95–334), as amended, and section 9011 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), as amended.

Activity related to BCAP did not change since the last Office of Management and Budget (OMB) submission due to the lack of BCAP funding. Activity related to ECP requests, approvals, and payments has increased due to major storm systems that caused catastrophic damage across the nation, from 2022–2023. Hurricane Fiona and Ian occurred in 2022. Multiple wildfires in 2022 and flood events in 2023 all contributed to the increase in activity. The new Cost-Share Request form for ECP is included in this request. The number of responses increased to 560,000 while the burden hours increased by 18,497 to cover the new Cost-Share Request form. The number of respondents remains 140,000 in the request.

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

*Estimate of Average Time to Respond:* Public reporting burden for collecting information under this notice is estimated to average 0.0688 hours per responses, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information for all respondents.

*Type of Respondents:* Owners, operators and other eligible agricultural producers on eligible farmland.

*Estimated Number of Respondents:* 140,000.

*Estimated Number of Responses per Respondent:* 3.04.

*Estimated Total Annual Reponses:* 945,445.

*Estimated Total Annual Burden on Respondents:* 67,852 hours.

We are requesting comments on all aspects of this information collection to help us to:

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

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

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

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

All responses to this notice, including names and addresses when provided, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

**USDA Non-Discrimination Policy**

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

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 or (844) 433–2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English.

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

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

**Zach Ducheneaux,**

*Administrator, Farm Service Agency.*

[FR Doc. 2023–17952 Filed 8–18–23; 8:45 am]

**BILLING CODE 3410–05–P**

## DEPARTMENT OF COMMERCE

### Office of the Secretary

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) Review and Approval; Comment Request; Challenge and Prize Competition Solicitations Generic Clearance

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on April 20, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* Office of the Secretary, Commerce.

*Title:* Challenge and Prize Competition Solicitations Generic Clearance.

*OMB Control Number:* 0690–0031.

*Form Number(s):* None.

*Type of Request:* Regular submission [Extension of a current information collection].

*Number of Respondents:* 2100.

*Average Hours per Response:* 10–30 minutes.

*Burden Hours:* 1050.

*Needs and Uses:* The information collected will be for the following purposes: verify data sources, understand whether the solution provider has met the technical requirements for the challenge, has

completed the challenge to the specifications of the challenge parameters, to assist in technical review and judging of the solutions that are provided. In addition, the information can be used to determine if valid methodology, appropriate approvals for use of data sources, and other resources used in the solution development are valid.

*Affected Public:* Individuals or Households, Businesses or for-profit organizations, State, Local or Tribal Government, etc.

*Frequency:* One-time.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* 15 U.S.C. 3701 *et seq.*

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0690–0031.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2023–17953 Filed 8–18–23; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–49–2023]**

### Foreign-Trade Zone (FTZ) 81, Notification of Proposed Production Activity; Millipore Corporation; (Beverage Filtration and Purification Devices); Jaffrey, New Hampshire

Millipore Corporation submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Jaffrey, New Hampshire within Subzone 81D. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on August 15, 2023.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material/component and specific finished products described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.* The proposed finished products and material/component would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed finished products are beverage filters and purifiers (duty rate is duty-free).

The proposed foreign-status material/component is plastic filtration membranes (duty rate is 6.5%). The request indicates that the material/component is subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is October 2, 2023.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Juanita Chen at *juanita.chen@trade.gov.*

Dated: August 16, 2023.

**Elizabeth Whiteman,**

*Executive Secretary.*

[FR Doc. 2023–17946 Filed 8–18–23; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–122–857]**

### Certain Softwood Lumber Products From Canada: Final Results of Antidumping Duty Changed Circumstances Review

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

**SUMMARY:** For these final results, the U.S. Department of Commerce (Commerce) continues to find that GreenFirst Forest Products (QC) Inc. (GreenFirst QC) is the successor in interest to Rayonier A.M. Canada G.P. (RYAM).

**DATES:** Applicable August 21, 2023.

**FOR FURTHER INFORMATION CONTACT:** 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) 482–2638.

**SUPPLEMENTARY INFORMATION:**

#### Background

On May 22, 2023, Commerce published the preliminary results [1] of this changed circumstances review (CCR), in which Commerce preliminarily found that GreenFirst QC is the successor in interest to RYAM in the context of the antidumping duty order on certain softwood lumber products from Canada.[2] We provided interested parties with the opportunity to comment and request a public hearing regarding the *Preliminary Results.*[3] On June 21, 2023, the Committee Overseeing Action for Lumber International Trade Investigations or Negotiations (the petitioner) submitted a case brief,[4] and GreenFirst Forest Products Inc. (GreenFirst Forest Products) and GreenFirst QC (collectively, GreenFirst) submitted a letter in lieu of a case brief.[5] On June 28, 2023, the petitioner and GreenFirst submitted letters in lieu of rebuttal briefs.[6] On June 21, 2023, the petitioner requested a public hearing.[7] On July 26, 2023, Commerce held a public hearing.[8]

#### Scope of the Order

The merchandise covered by the *Order* is softwood lumber, siding, flooring and certain other coniferous wood (softwood lumber products). Softwood lumber products that are subject to this *Order* are currently classifiable under the following ten-digit HTSUS subheadings in Chapter 44: 4406.91.0000; 4407.10.01.01; 4407.10.01.02; 4407.10.01.15;

[1] *See Preliminary Results of Changed Circumstances Review: Antidumping Duty Order on Certain Softwood Lumber Products from Canada,* 88 FR 32733 (May 22, 2023) (*Preliminary Results*).

[2] *See Certain Softwood Lumber Products from Canada: Antidumping Duty Order and Partial Amended Final Determination,* 83 FR 350 (January 3, 2018) (*Order*).

[3] *See Preliminary Results.*

[4] *See* Petitioner's Letter, ''Case Brief,'' dated June 21, 2023 (Petitioner's Case Brief).

[5] *See* GreenFirst's Letter, ''Letter in Lieu of Case Brief,'' dated June 21, 2023 (GreenFirst's Letter-In-Lieu-Of Case Brief).

[6] *See* Petitioner's Letter, ''Letter in Lieu of Rebuttal Brief,'' dated June 28, 2023 (Petitioner's Letter-In-Lieu-Of Rebuttal Brief); *see also* GreenFirst's Letter, ''Letter in Lieu of Rebuttal Brief,'' dated June 28, 2023 (GreenFirst's Letter-In-Lieu-Of Rebuttal Brief).

[7] *See* Petitioner's Letter, ''Hearing Request,'' dated June 21, 2023.

[8] *See* Hearing Transcript, ''Changed Circumstances Review of the Antidumping Order on Certain Softwood Lumber Products from Canada,'' dated August 8, 2023.

4407.10.01.16; 4407.10.01.17; 4407.10.01.18; 4407.10.01.19; 4407.10.01.20; 4407.10.01.42; 4407.10.01.43; 4407.10.01.44; 4407.10.01.45; 4407.10.01.46; 4407.10.01.47; 4407.10.01.48; 4407.10.01.49; 4407.10.01.52; 4407.10.01.53; 4407.10.01.54; 4407.10.01.55; 4407.10.01.56; 4407.10.01.57; 4407.10.01.58; 4407.10.01.59; 4407.10.01.64; 4407.10.01.65; 4407.10.01.66; 4407.10.01.67; 4407.10.01.68; 4407.10.01.69; 4407.10.01.74; 4407.10.01.75; 4407.10.01.76; 4407.10.01.77; 4407.10.01.82; 4407.10.01.83; 4407.10.01.92; 4407.10.01.93; 4407.11.00.01; 4407.11.00.02; 4407.11.00.42; 4407.11.00.43; 4407.11.00.44; 4407.11.00.45; 4407.11.00.46; 4407.11.00.47; 4407.11.00.48; 4407.11.00.49; 4407.11.00.52; 4407.11.00.53; 4407.12.00.01; 4407.12.00.02; 4407.12.00.17; 4407.12.00.18; 4407.12.00.19; 4407.12.00.20; 4407.12.00.58; 4407.12.00.59; 4407.13.0000; 4407.14.0000; 4407.19.0001; 4407.19.0002; 4407.19.0054; 4407.19.0055; 4407.19.0056; 4407.19.0057; 4407.19.0064; 4407.19.0065; 4407.19.0066; 4407.19.0067; 4407.19.0068; 4407.19.0069; 4407.19.0074; 4407.19.0075; 4407.19.0076; 4407.19.0077; 4407.19.0082; 4407.19.0083; 4407.19.0092; 4407.19.0093; 4409.10.05.00; 4409.10.10.20; 4409.10.10.40; 4409.10.10.60; 4409.10.10.80; 4409.10.20.00; 4409.10.90.20; 4409.10.90.40; 4418.30.0100; 4418.50.0010; 4418.50.0030; 4418.50.0050; and 4418.99.10.00.

Subject merchandise might be entered under the following ten-digit HTSUS subheadings in Chapter 44: 4415.20.40.00; 4415.20.80.00; 4418.99.9105; 4418.99.9120; 4418.99.9140; 4418.99.9195; 4421.99.70.40; and 4421.99.9880.

Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive. For a full description of the scope of the *Order, see* the Issues and Decision Memorandum.[9]

### Analysis of Comments Received

All issues raised by the parties in the case brief and letters in lieu of case and rebuttal briefs are addressed in the Issues and Decision Memorandum and are listed in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

### Final Results of Changed Circumstances Review

Upon review of the comments received,[10] Commerce continues to determine that GreenFirst QC is the successor-in-interest to RYAM.

As a result of this determination, Commerce finds that entries of subject merchandise produced and/or exported by GreenFirst QC should enter the United States at the cash deposit rate assigned to RYAM in the most recently completed administrative review of the *Order,* which is 6.20 percent *ad valorem.*[11] Consequently, Commerce will instruct U.S. Customs and Border Protection to collect estimated antidumping duties for all shipments of subject merchandise produced and/or exported by GreenFirst QC and entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register** at the cash deposit rate currently in effect for RYAM. This cash deposit requirement shall remain in effect until further notice.

### Administrative Protective Order

This notice serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

### Notification to Interested Parties

This notice is published in accordance with sections 751(b)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.216(b), 351.221(b), and 351.221(c)(3).

Dated: August 14, 2023.

**Abdelali Elouaradia,**

*Deputy Assistant Secretary for Enforcement and Compliance.*

### Appendix

**List of Topics Discussed in the Issues and Decision Memorandum**

I. Summary
II. Background
III. Scope of the *Order*
IV. Discussion of the Issues
Comment 1: Whether Changes in Management and Ownership of GreenFirst QC's Lumber Assets Post-Acquisition Preclude Commerce From Making an Affirmative Successor-in-Interest Finding
Comment 2: Whether There Were Significant Changes to the Production Facilities of GreenFirst QC's Lumber Assets Post-Acquisition
Comment 3: Whether Commerce's Determination That Supplier Relationships Were Materially Dissimilar Pre- and Post-Acquisition Is Substantiated by Record Evidence
Comment 4: Whether the Successor-in-Interest Determination Is Moot With Regards to the Final Results in the Fourth Administrative Review of the *Order*
V. Recommendation

[FR Doc. 2023–17853 Filed 8–18–23; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–982]**

### Utility Scale Wind Towers From the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2022

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

**SUMMARY:** The U.S. Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty (CVD) order on utility scale wind towers from the People's Republic of China (China) for the period of review (POR) January 1, 2022, through December 31, 2022.

**DATES:** Applicable August 21, 2023.

**FOR FURTHER INFORMATION CONTACT:** Charles Doss, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401

[9] *See* Memorandum, ''Decision Memorandum for the Final Results of Changed Circumstances Review: Certain Softwood Lumber Products from Canada,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[10] *See* Petitioner's Case Brief; *see also* GreenFirst's Letter-In-Lieu-Of Case Brief; Petitioner's Letter-In-Lieu-Of Rebuttal Brief; and GreenFirst's Letter-In-Lieu-Of Rebuttal Brief.

[11] *See Certain Softwood Lumber Products from Canada: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2021,* 88 FR 50106 (August 1, 2023).

Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4474.

**SUPPLEMENTARY INFORMATION:**

## Background

On February 2, 2023, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the CVD order on utility scale wind towers from China.[1] On February 28, 2023, the Wind Tower Trade Coalition (the petitioner) submitted a timely request that Commerce conduct an administrative review.[2]

On April 11, 2023, Commerce published in the **Federal Register** a notice of initiation of administrative review with respect to imports of utility scale wind towers exported and/or produced by the companies in the appendix to this notice, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.221(c)(1)(i).[3] On May 11, 2023, we placed on the record U.S. Customs and Border Protection (CBP) data for entries of utility scale wind towers from China during the POR, showing no reviewable POR entries.[4]

On May 18, 2023, the petitioner filed comments that available information indicated that there may have, in fact, been entries of subject merchandise that were not correctly classified upon entry.[5] Upon review, on July 20, 2023, Commerce referred the matter to CBP for further consideration.[6] Additionally, on July 20, 2023, Commerce notified all interested parties of its intent to rescind the instant review in whole because there were no reviewable, suspended entries of subject merchandise by any of the companies subject to this review during the POR and invited interested parties to comment.[7] No interested party submitted comments to Commerce.

## Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), it is Commerce's practice to rescind an administrative review of a CVD order when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.[8] Normally, upon completion of an administrative review, the suspended entries are liquidated at the CVD assessment rate calculated for the review period.[9] Therefore, for an administrative review to be conducted, there must be at least one reviewable, suspended entry that Commerce can instruct CBP to liquidate at the CVD assessment rate calculated for the review period.[10] As noted above, there were no entries of subject merchandise for any of the companies subject to this review during the POR.[11] Accordingly, in the absence of suspended entries of subject merchandise during the POR, we are hereby rescinding this administrative review in accordance with 19 CFR 351.213(d)(3) for the companies listed in the appendix to this notice.

## Assessment

Commerce will instruct CBP to assess countervailing duties on all appropriate entries. Countervailing duties shall be assessed at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this rescission notice in the **Federal Register**.

## Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

## Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: August 15, 2023.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

## Appendix

AUSKY (Shandong) Machinery Manufacturing Co., Ltd.
AVIC International Renewable Energy Co., Ltd.
Baotou Titan Wind Power Equipment Co., Ltd. (aka Baotou Titan Wind Energy Equipment Co. Ltd.)
Baicheng Tianqi Equipment Manufacturing Engineering Co. Ltd.
Chengxi Shipyard Co., Ltd.
China WindPower Group
CleanTech Innovations Inc.
CRRC Wind Power (Shandong) Co., Ltd.
CS Wind China Co., Ltd.
Dajin Heavy Industry Corporation
Guangdong No. 2 Hydropower Engineering Co., Ltd.
Guodian United Power Technology Baoding Co., Ltd.
Harbin Hongguang Boiler Group Co., Ltd.
Hebei Ningqiang Group
Hebei Qiangsheng Wind Equipment Co., Ltd.
Jiangsu Baolong Electromechanical Mfg. Co., Ltd.
Jiangsu Baolong Tower Tube Manufacture Co., Ltd.
Jiangyin Hengrun Ring Forging Co., Ltd.
Jilin Miracle Equipment Manufacturing Engineering Co., Ltd.
Jilin Tianhe Wind Power Equipment Co., Ltd.
Nanjing Jiangbiao Group Co., Ltd.
Nantong Dongtai New Energy Equipment Co., Ltd.
Nantong Hongbo Windpower Equipment Co., Ltd.
Ningxia Electric Power Group
Ningxia Yinyi Wind Power Generation Co., Ltd.
Nordex Dongying Wind Power Equipment Manufacturing Co. Ltd.
Renewable Energy Asia Group Ltd.
Shandong Zhongkai Wind Power Equipment Manufacturers, Ltd.
Shandong Endless Wind Turbine Technical Equipment Co., Ltd.
Shandong Iraeta Heavy Industry
Shanghai Aerotech Trading International
Shanghai GE Guangdian Co., Ltd.
Shanghai Taisheng Wind Power Equipment Co., Ltd.
Shenyang Titan Metal Co., Ltd.
Siemens Gamesa Renewable Energy, S.A.
Sinovel Wind Group Co., Ltd.
Suihua Wuxiao Electric Power Equipment Co., Ltd.
Titan Wind Energy (Suzhou) Co., Ltd. (aka Titan Wind (Suzhou) Co. Ltd.)
Titan (Lianyungang) Metal Product Co., Ltd. (aka Titan Lianyungang Metal Products Co., Ltd.)
Qingdao GeLinTe Environmental Protection Equipment Co., Ltd.
Qingdao Ocean Group
Qingdao Tianneng Electric Power Engineering Machinery Co., Ltd.
Qingdao Wuxiao Group Co., Ltd.
Vestas Wind Technology (China) Co., Ltd.
Wuxiao Steel Tower Co., Ltd.
Xinjiang Huitong (Group) Co., Ltd.

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List,* 88 FR 7071 (February 2, 2023).

[2] *See* Petitioner's Letter, ''Request for Administrative Review,'' dated February 28; 2023.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 21609 (April 11, 2023).

[4] *See* Memorandum, ''Release of Customs and Border Protection Data,'' dated May 11, 2023 (Release of CBP Data).

[5] *See* Petitioner's Letter, ''Comments on CBP Data Query,'' dated May 18, 2023.

[6] *See* Commerce's Letter, ''Utility Scale Wind Towers from the People's Republic of China,'' dated July 20, 2023.

[7] *See* Commerce's Letter, ''Notice of Intent to Rescind Review,'' dated July 20, 2023.

[8] *See, e.g., Certain Softwood Lumber Products from Canada: Final Results and Final Rescission, in Part, of the Countervailing Duty Administrative Review, 2020,* 87 FR 48455 (August 9, 2022).

[9] *See* 19 CFR 351.212(b)(2).

[10] *See* 19 CFR 351.213(d)(3).

[11] *See* Release of CBP Data.

Xinjiang Goldwind Science & Technology Co., Ltd.
Zhejiang Guoxing Steel Structure Co., Ltd

[FR Doc. 2023–17854 Filed 8–18–23; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Ask CHIPS Information Collection

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on Wednesday, April 12, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* National Institute of Standards and Technology (NIST), Commerce.

*Title:* Ask CHIPS Information Collection.

*OMB Control Number:* 0693–0092.

*Form Number(s):* None.

*Type of Request:* Regular.

*Number of Respondents:* 250.

*Average Hours per Response:* .083 hours (5 minutes).

*Burden Hours:* 20.75 hours.

*Needs and Uses:* The Ask CHIPS web form is available as a streamlined method for customers to submit requests to meet with the CHIPS team or request a speaker engagement. The information is used by the CHIPS Program Office to schedule and coordinate engagements with CHIPS stakeholders.

Information to be collected includes:

Basic customer contact information, details on who they would like to meet with and when/where, as well as CHIPS-related topics they would like to discuss. The data requested is limited to the information necessary to efficiently schedule these engagements and provide the customer with the desired information during these engagements.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* Once.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* CHIPS Act of 2022 (Division A of Pub. L. 117–167) (the Act).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0693–0092.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2023–17951 Filed 8–18–23; 8:45 am]

BILLING CODE 3510–13–P

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; CHIPS Statement of Interest Information Collection

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on Wednesday, April 12, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* National Institute of Standards and Technology (NIST), Commerce.

*Title:* CHIPS Statement of Interest Information Collection.

*OMB Control Number:* 0693–0091.

*Form Number(s):* None.

*Type of Request:* Regular.

*Number of Respondents:* 500.

*Average Hours per Response:* .5 hrs. (30 mins.)

*Burden Hours:* 250 hrs.

*Needs and Uses:* Applicants must submit a statement of interest (SOI) via a form available at *https://applications.chips.gov/* at least 21 days before submission of a pre-application. The statement of interest enables the Department to gauge interest in the program and plan for pre-application or application review.

Information to be collected includes:

- Name of applicant organization and contact information.
- Estimated date of submission of a pre-application.
- Basic project information, which will be elicited through multiple-choice questions and specific fields in the statement of interest form, including nature of project and potential scope.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* Once.

*Respondent's Obligation:* Mandatory to obtain or retain benefits.

*Legal Authority:* CHIPS Act of 2022 (Division A of Pub. L. 117–167) (the Act).

This information collection request may be viewed at *www.reginfo.gov*. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0693–0091.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2023–17954 Filed 8–18–23; 8:45 am]

BILLING CODE 3510–13–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XD257]**

### Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Pacific Fishery Management Council's (Pacific Council) Ecosystem Advisory Subpanel (EAS) will hold an online meeting, which is open to the public.

**DATES:** The online meeting will be held Wednesday, September 6, 2023, from 9 a.m. to 12 p.m., Pacific time.

**ADDRESSES:** This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

**FOR FURTHER INFORMATION CONTACT:** Kit Dahl, Staff Officer, Pacific Council; telephone: (503) 820–2422.

**SUPPLEMENTARY INFORMATION:** At its online meeting the EAS will discuss the outcomes of the September 5 Ad Hoc Ecosystem Workgroup online meeting (visit the Pacific Council website for details), receive an update on Marine Planning Committee recommendations, and prepare for their scheduled September 9 in-person meeting in Spokane, WA.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

#### Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: August 16, 2023.

**Rey Israel Marquez,**

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

[FR Doc. 2023–17892 Filed 8–18–23; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XD214]**

### Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public online meeting.

**SUMMARY:** The Pacific Fishery Management Council (Pacific Council) will convene a webinar meeting of the Salmon Technical Team (STT) to discuss items on the Pacific Council's September meeting agenda as detailed in the Supplementary Information section below. This meeting is open to the public.

**DATES:** The online meeting will be held Wednesday, September 6, 2023, from 8:30 a.m. to 4:30 p.m., Pacific Daylight Time, or until business for the day concludes.

**ADDRESSES:** This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements, will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2280, extension 412 for technical assistance.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

**FOR FURTHER INFORMATION CONTACT:** Robin Ehlke, Staff Officer, Pacific Council; telephone: (503) 820–2410.

**SUPPLEMENTARY INFORMATION:** The primary purpose of the webinar meeting is to prepare for the Pacific Council's September 2023 meeting agenda items, including, but not limited to, such topics as the annual salmon methodology review, amendments to the Pacific Salmon Fishery Management Plan, and other items of interest on the Pacific Council agenda. The STT may also discuss future STT meetings and other salmon-related topics of pertinence.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

#### Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: August 16, 2023.

**Rey Israel Marquez,**

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

[FR Doc. 2023–17894 Filed 8–18–23; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XD256]**

### South Atlantic Fishery Management Council; Public Meetings

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold a meeting of the Scientific and Statistical Committee (SSC) on September 7, 2023. See **SUPPLEMENTARY INFORMATION**.

**DATES:** The SSC meeting will be held via webinar from 1 p.m. until 5 p.m. EDT on September 7, 2023.

**ADDRESSES:** The meeting will be held via webinar.

*Council address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer,

4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public via webinar as it occurs. Webinar registration is required. Information regarding webinar registration will be posted to the Council's website at: *https://safmc.net/events/sept-2023-ssc-meeting/* as it becomes available. The meeting agenda, briefing book materials, and online comment form will be posted to the Council's website two weeks prior to the meeting. Written comment on SSC agenda topics is to be distributed to the Committee through the Council office, similar to all other briefing materials. For this meeting, the deadline for submission of written comment is 12 p.m. EDT, September 7, 2023.

The SSC meeting agenda includes a review of the Red Grouper operational assessment model and configurations, the draft Climate Governance Policy developed by NMFS, and discussing other business as needed. The SSC will provide guidance to staff and make recommendations for Council consideration.

### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

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

Dated: August 16, 2023.

**Rey Israel Marquez,**

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

[FR Doc. 2023–17897 Filed 8–18–23; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XD262]**

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Ecosystem-Based Fishery Management Committee (EBFM) and Plan Development Team (PDT) to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Tuesday, September 5, 2023, at 10 a.m.

**ADDRESSES:**

*Meeting address:* The meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Cate O'Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:**

### Agenda

The EBFM Committee and PDT will meet to receive a summary presentation on the final Prototype Management Strategy Evaluation (pMSE) report with example scenarios. They will also discuss how the pMSE results and examples can be used to engage stakeholders during deep-dive workshops (to be scheduled in early 2024). The Committee and PDT will develop 2024 management priority recommendations, possibly including initial development of a full management strategy evaluation with public engagement. Other business will be discussed as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: August 16, 2023.

**Rey Israel Marquez,**

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

[FR Doc. 2023–17895 Filed 8–18–23; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Science Advisory Board

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda for a meeting of the Science Advisory Board (SAB). The members will discuss issues outlined in the section on Matters to be considered.

**DATES:** The meeting is scheduled for September 11, 2023 from 10:30 a.m. to 11:30 a.m. Eastern Daylight Time (EDT). This time and the agenda topics described below are subject to change. For the latest agenda please refer to the SAB website: *https://sab.noaa.gov/meeting-agenda/.*

**ADDRESSES:** This is a virtual meeting. The webinar registration links for the meeting may be found on the website at *https://sab.noaa.gov/meeting-agenda/.*

**FOR FURTHER INFORMATION CONTACT:** Casey Stewart, Executive Director, SSMC3, Room 11360, 1315 East-West Hwy., Silver Spring, MD 20910; Phone Number: 240–381–0833; Email: *noaa.scienceadvisoryboard@noaa.gov;* or visit the SAB website at *https://sab.noaa.gov/current-meetings/.*

**SUPPLEMENTARY INFORMATION:** The NOAA Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

*Status:* The September 11, 2023 meeting will be open to public

participation with a 5-minute public comment period at 11:25 a.m. EDT. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three minutes. Written comments for the September 11, 2023 meeting should be received by the SAB Executive Director's Office (*noaa.scienceadvisoryboard@noaa.gov*) by September 01, 2023 to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after these dates will be distributed to the SAB, but may not be reviewed prior to the meeting date.

*Special Accommodations:* This meeting is physically accessible to people with disabilities. Requests for special accommodations may be directed to the Executive Director no later than 12 p.m. on September 01, 2023.

*Matters to be Considered:* The meeting on September 11, 2023 will consider Revisions the Report on the Review of the Cooperative Institute for Ocean Exploration (OECI). Meeting materials, including work products, will also be available on the SAB website: *https://sab.noaa.gov/current-meetings/current-meeting-documents/.*

Dated: August 11, 2023.

**David Holst,**

*Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.*

[FR Doc. 2023–17873 Filed 8–18–23; 8:45 am]

**BILLING CODE 3510–KD–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XD258]**

### Endangered and Threatened Species; Take of Anadromous Fish

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

**ACTION:** Notice of receipt of application for ten permit renewals, one permit modification, and eight new permits.

**SUMMARY:** Notice is hereby given that NMFS has received 18 scientific research permit application requests relating to Pacific salmon, steelhead, green sturgeon, rockfish, and eulachon. NMFS has also received one permit application to enhance the propagation and survival of one listed salmonid species (Snake River steelhead). The proposed activities in all permits are intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts.

**DATES:** Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on September 20, 2023.

**ADDRESSES:** Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to 503–230–5441 or by email to *nmfs.wcr-apps@noaa.gov* (include the permit number in the subject line of the letter, fax, or email). The applications may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm.* Permit application instructions are available from the address above, or online at *https://apps.nmfs.noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Rob Clapp, Portland, OR, 541–231–2314, *Robert.Clapp@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Species Covered in This Notice

The following ESA-listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened Lower Columbia River (LCR); threatened Puget Sound (PS); threatened Snake River (SnkR) spring/summer-run; threatened SnkR fall-run; endangered Upper Columbia River (UCR) spring-run; threatened Upper Willamette River (UWR); threatened Central Valley spring-run (CVS); endangered Sacramento River (SacR) winter-run; and threatened California Coastal (CC).

Steelhead (*O. mykiss*): threatened LCR; threatened Middle Columbia River (MCR); threatened PS; threatened SnkR; threatened UCR; threatened UWR; threatened Northern California (NC); threatened Central California Coast (CCC); threatened California Central Valley (CCV); and endangered Southern California (SC).

Chum salmon (*O. keta*): threatened Hood Canal Summer-run (HCS); and threatened Columbia River (CR).

Coho salmon (*O. kisutch*): threatened LCR; threatened Oregon Coast (OC) coho; threatened Southern Oregon/Northern California Coast (SONCC); and endangered CCC.

Sockeye salmon (*O. nerka*): endangered SnkR; and threatened Ozette Lake (OL).

Eulachon (*Thaleichthys pacificus*): threatened southern Distinct Population Segment (SDPS).

Green sturgeon (*Acipenser medirostris*): threatened SDPS.

Rockfish (*Sebastes spp.*): endangered Puget Sound/Georgia Basin (PS/GB) bocaccio (*Sebastes paucispinis*); and threatened PS/GB yelloweye rockfish (*S. ruberrimus*).

#### Authority

Scientific research permits and permits to enhance propagation or survival are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits based on findings that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

#### Applications Received

*Permit 15169–3R*

The National Park Service (NPS) is seeking to renew a permit that would authorize them to take juvenile and adult CC Chinook salmon, CCC coho salmon, and CCC steelhead as part of a long-term monitoring program within the NPS's San Francisco Bay area network. The research includes seven studies within, or proximate to, NPS lands in: Lagunitas Creek, Olema Creek, Pine Gulch, Redwood Creek, and Rodeo Creek, and Easkoot Creek in Marin County; West Union and San Vicente Creeks in San Mateo County; Alhambra and Franklin Creeks in Contra Costa County; and Tomales Bay, CA. Study 1 monitors salmonid smolt outmigration. Study 2 is a juvenile salmonid diet composition study. Study 3 is a spawner survey study. Study 4 focuses on summer/fall juvenile salmonid distribution, population abundance, and habitat monitoring. Study 5 is a juvenile salmonid winter habitat utilization study. Study 6 uses a floating resistance-board weir-trap to monitor adult

salmonid spawning. Study 7 is a biotelemetry study in the Tomales Bay watershed. The research would continue a long-term monitoring program and would benefit affected species by identifying species trends that are used to guide management practices, develop and implement restoration actions, and evaluate conservation action success—all of which would serve to benefit listed salmonids and their habitats along the central California coast.

The researchers propose to capture juvenile fish via backpack electrofishing, beach seining, screw trapping, and fyke- and hoop-netting. Juvenile fish would be captured, handled, and released. They would also be observed during snorkel surveys. A subsample of captured juveniles would be anesthetized, tissue-sampled and receive passive integrated transponder (PIT) tags. Adult fish would primarily be collected via weir, but a few individuals would be captured via screw trap and fyke net. Adults would also be observed during spawning and snorkel surveys. Adults captured at the weir would be captured, handled (anesthetized, weighed, measured, and checked for marks or tags), and released. A subsample of captured adults would be anesthetized, tissue-sampled and PIT-tagged. Some tissues may be collected from carcasses encountered during the spawning surveys. The researchers do not intend to kill any listed fish, but a small number may die as an inadvertent result of the proposed activities.

*Permit 16329–4R*

The Oregon Department of Environmental Quality (DEQ) is seeking to renew a permit that currently authorizes them take juvenile and adult CR chum salmon; LCR, UWR, UCR spring-run, SnkR fall-run, and SnkR spring/summer-run Chinook salmon; LCR, OC, and SONCC coho salmon; and LCR, UWR, MCR, UCR, and SnkR basin steelhead in all Oregon State waters. The purpose of the research is to assess environmental impairment from pollutants and evaluate the effectiveness of management activities in protecting and restoring aquatic ecosystems. The scientific research permit would authorize listed species to be taken under four DEQ programs: (1) Biomonitoring Program, (2) Oregon Toxics Monitoring Program, (3) Mixing Zone Surveys, and (4) Spill Impact and Cleanup Effectiveness Evaluations. Together, these programs are used to assess watershed and aquatic community health, determine the presence and effects of contaminants, and gauge the effectiveness of waste treatment and spill cleanup procedures. The information gathered would help the DEQ fulfill its mission to assess, restore, enhance, and maintain the quality of Oregon's waters, as directed by state and Federal laws. The research would benefit listed species by providing information on watershed health and contaminants—information that would be used to inform efforts to protect and restore salmonid habitat.

The DEQ proposes to capture fish from spring through fall using backpack and boat electrofishing, seining, and angling. After capturing the fish, the researchers would quickly transfer them to buckets of aerated water, weigh and measure some of them, and release them near the site of their capture within 20 minutes. No drugs or anesthesia would be used. The researchers propose to intentionally kill small numbers of non-listed, resident fish. The researchers would not intentionally kill any ESA-listed fish, but a small number may die as an unintended result of the research activities.

*Permit 16506–4R*

Mike Podlech, an independent researcher, is seeking to renew a research permit that would authorize him to take juvenile and adult CCC coho salmon and CCC steelhead while monitoring population trends in Squaw Creek, Pescadero Creek, and Mill Creek, CA. The research would benefit affected species by providing population data to inform ongoing watershed restoration and salmonid recovery efforts. The research includes three studies. The objective of Study 1 (Squaw Creek) is to continue a 39-year monitoring program of the juvenile CCC steelhead population in a largely undisturbed watershed. Study 2 (Pescadero Creek) aims to expand upon limited baseline CCC steelhead and CCC coho salmon population data and initiate long-term smolt outmigration monitoring in a degraded watershed. Mill Creek (Study 3) would take place in a tributary to San Vicente Creek, the southernmost watershed with a remnant natural CCC coho salmon population. Salmonid populations in the San Vicente Creek watershed have been studied extensively over the past two decades, but the Mill Creek tributary has received relatively little attention. However, a legacy dam was removed from Mill Creek in 2021 and juvenile CCC coho salmon were detected in the stream for the first time in 2022. Study 3 is intended to monitor the trajectory of the population and measure the upstream range of CCC coho salmon in this tributary and thereby help inform future management decisions for the benefit of the listed coho.

Under the three studies, juveniles would be collected via backpack electrofishing and fyke nets. Juvenile fish would be captured, handled, and released. A subsample of captured juveniles would be anesthetized, tissue-sampled and PIT-tagged. Though adult fish would not be targeted, a few individuals might be collected via fyke net. All captured adults would simply be handled and released. The researchers do not intend to kill any ESA-listed fish, but a small number may die as an inadvertent result of the proposed activities.

*Permit 16544–2R*

The California Department of Fish and Wildlife's (CDFW's), South Coast Region is seeking to renew a permit that would authorize them to take juvenile and adult SC steelhead in order to monitor the species' population status, trends, spatial structure, and life history diversity in an area stretching from Topanga Canyon to Santa Maria, CA. This long-term monitoring study would benefit SC steelhead by providing data to inform management decisions and recovery efforts.

Juvenile fish would be collected via backpack electrofishing, dip net, fyke net, minnow trap, weir, hook-and-line angling, and beach seine. They would also be observed during snorkel surveys. Most juvenile fish would simply be captured, handled, and released, but a subsample would be anesthetized, tissue-sampled and PIT-tagged. Adult fish would be collected via dip net, hook-and-line angling, beach seine, trap, and weir, and they would also be observed during snorkel surveys. Spawned adults or post-spawn carcasses would be enumerated during spawning surveys. A subsample of captured adults would be anesthetized, tissue-sampled and PIT-tagged. The researchers do not intend to kill any ESA-listed fish, but a small number may die as an inadvertent result of the proposed activities.

*Permit 17551–4R*

The CDFW is seeking to renew a permit that would authorize them to take juvenile and adult SacR winter-run Chinook salmon, CVS Chinook salmon, and CCV steelhead, and juvenile SDPS green sturgeon. The purpose of this study is to monitor SDPS green sturgeon recruitment to the juvenile life stage and to learn more about green sturgeon movement patterns (including ocean entry) and habitat use in the lower Sacramento River, the Sacramento-San Joaquin Delta, and greater San Francisco. Though green sturgeon are

the target species, Chinook salmon and steelhead may be encountered, but they would immediately be released if that happens. This study would benefit green sturgeon by providing information on their temporal and spatial movement patterns, rearing habitat preferences, and survival. This information, in turn, would be used to improve species and water management in the region.

Juvenile green sturgeon would be collected by gill netting them. A subsample of the juveniles would be anesthetized, tissue-sampled and PIT-tagged. The researchers do not intend to kill any ESA-listed fish, but a small number may die as an inadvertent result of the proposed activities.

*Permit 19400–4R*

ICF International (a consulting firm) is seeking to renew a permit that would authorize them to take juvenile SacR winter-run Chinook salmon, CVS Chinook salmon, CCV steelhead, and SDPS green sturgeon in order to determine how juvenile salmonids use the San Francisco estuary for rearing. This study would benefit affected species by providing a better understanding of fine-scale distribution patterns of fishes in navigation channels and near dredge operations in the San Francisco Estuary. This, in turn, would inform ongoing and proposed restoration projects. The research includes two studies: (1) investigating the use of alternative monitoring techniques including SONAR and environmental DNA (eDNA) to monitor fish species near restoration projects and dredge operations, and (2) evaluating non-invasive sampling methods to supplement physical fish collection by pairing trawls with acoustic methods and eDNA data to provide an estimate of rare species biomass and habitat use.

Juvenile fish would be collected via plankton nets, bottom trawl, and midwater trawl. Juvenile fish would be captured, handled, and released. The researchers do not intend to kill any ESA-listed fish, but a small number may die as an inadvertent result of the proposed activities.

*Permit 20047–3R*

The University of Washington (UW) is seeking to renew a permit that would authorize them to continue to take annually juvenile PS Chinook salmon, PS steelhead, PS/GB DPS bocaccio, PS/GB DPS yelloweye rockfish, HCS chum salmon, and adult SDPS eulachon in order to study the fish communities associated with tideflats with and without seagrass in Puget Sound and coastal Washington. This study would fill current information gaps on how habitat structure impacts higher trophic levels in nearshore habitats in the Pacific Northwest, and benefit ESA-listed salmon and steelhead recovery by reducing the uncertainty around current ecosystem linkages that are used to select habitat sites to preserve and restore.

Juvenile salmon, steelhead, and rockfish and adult eulachon would be collected via beach seine, handled (weighed, measured, and checked for marks or tags), and released. The researchers are not proposing to kill any of the ESA-listed fish being captured, but a small number of fish may be killed as an inadvertent result of these activities.

*Permit 22303–2R*

The NMFS West Coast Region is seeking to renew a permit that would authorize them to take adult LCR Chinook salmon, CC Chinook salmon, SacR winter-run Chinook salmon, CVS Chinook salmon, and SDPS green sturgeon in order to characterize the physical interaction between green sturgeon and bottom trawl nets used in the CA halibut fishery that operates out of Half Moon Bay and San Francisco, CA. This study would benefit green sturgeon by providing information to evaluate and develop methods to minimize gear interactions and bycatch of green sturgeon.

Adult green sturgeon would be collected bottom trawl. Green sturgeon adults would be captured, handled (anesthetized, weighed, measured, and checked for marks or tags), and released. Though green sturgeon are the target species, LCR, CC, SacR and CVS Chinook salmon might also be encountered. The researchers do not intend to kill any ESA-listed fish, but a small number may die as an inadvertent result of the proposed activities.

*Permit 22700–2R*

The Monterey Bay Salmon and Trout Project is seeking to renew a permit that would authorize them to take adult CCC coho salmon and CCC steelhead in order to gather data on their genetics and life histories in the San Lorenzo River watershed, CA. This study would benefits affected species by proving abundance assessments and life history data and thereby help facilitate recovery actions.

Adult fish would be collected from a fish ladder at the Felton Diversion Facility weir on the San Lorenzo River. Adult fish would be captured, handled (weighed, measured, and checked for marks or tags), and released; a subsample of them would be anesthetized, tissue-sampled, and PIT-tagged. The researchers do not intend to kill any ESA-listed fish, but a small number may die as an inadvertent result of the proposed activities.

*Permit 22939–2R*

TRPA Fish Biologists (a consulting firm) is seeking to renew a permit that would authorize them to take juvenile SacR winter-run Chinook salmon, CVS Chinook salmon, CCV steelhead, and SDPS green sturgeon while conducting seasonal presence/absence and relative abundance surveys for native fish species in a delta wetland area known as The Big Ditch on the Peterson Ranch in eastern Solano County, California. Before this study, no information was available on ESA-listed species presence or seasonal use of the Big Ditch Project area. The study would benefit the affected species by continuing to provide baseline information on seasonal fish use and thereby inform habitat restoration actions.

Juvenile fish would be collected via beach seine and minnow trap. Juvenile fish would be captured, handled, and released, and a subsample of them would be anesthetized, tissue-sampled and PIT-tagged prior. The researchers do not intend to kill any ESA-listed fish, but a small number may die as an inadvertent result of the proposed activities.

*Permit 25466–2M*

TRPA Fish Biologists are seeking to modify a permit that currently authorizes them to take juvenile and adult CCV steelhead with the purpose of providing information on fish distribution, relative abundance, and diversity in Ulatis Flood Control Project (Ulatis Project) stream channels. The Ulatis Project is located in the Vacaville-Elmira urban corridor in CA and is made up of approximately 43.5 miles (~70km) of realigned and engineered stream channels that were created to alleviate recurring floods in the lower Ulatis watershed. The modification would entail adding sampling locations (middle and upper Ulatis and Alamo Creek channels); it would also require adding small amounts of take for juvenile CCV steelhead. The study would benefit CCV steelhead by providing biological data (lengths, weights, and counts) on the fish populations in the lower basin. This information would be used to monitor CCV steelhead distribution and diversity and to assess population responses to managed flows.

Juvenile fish would be collected via backpack electrofishing. A subsample of captured juveniles would be

anesthetized, tissue-sampled and PIT-tagged prior to release. The researchers do not intend to kill any ESA-listed fish, but a small number may die as an inadvertent result of the proposed activities.

*Permit 25795*

Washington State University (WSU) is seeking a new permit that would authorize them to annually take adult PS Chinook salmon, PS steelhead, HCS chum salmon, and SDPS green sturgeon in order to study the reproductive physiology of pink salmon and genetics and population structure of Pacific spiny dogfish in Puget Sound. The study of pink salmon reproductive biology is likely to benefit ESA-listed salmon and steelhead by providing a better understanding of the molecular processes governing the regulation of age at maturity and tissue remodeling in Pacific salmonids using an unlisted model organism. The age at maturity of Pacific salmon and steelhead has important implications for their migratory behavior and reproductive timing and success.

Fish would be collected via hook-and-line angling over approximately 4 days of sampling between July and September in multiple locations in the Strait of Juan de Fuca and Puget Sound. ESA-listed species are not being targeted by this sampling, but up to one adult from each hatchery or natural-origin component of the above species may be unintentionally captured. Any ESA-listed species captured would be handled (checked for marks or tags and potentially measured) and quickly released. The researchers are not proposing to kill any of the listed fish being captured, but a small number of fish may be killed as an inadvertent result of these activities.

*Permit 25808*

The U.S. Marine Corps is seeking a new permit that would authorize them to take juvenile and adult SC steelhead during the course of documenting their biodiversity and freshwater habitat in the three largest watersheds located on U.S. Marine Corps Base Camp Pendleton: Santa Mateo Creek, San Onofre Creek, and the Santa Margarita River, CA. The study would benefit SC steelhead by providing species presence and habitat suitability data to inform future management and recovery strategies (*e.g.,* helping locate and preserve drought refugia).

Juveniles would be collected via backpack electrofishing and observed at weirs, fish ladders, and dams, and during snorkel surveys. Juvenile fish would be captured, handled, and released. A subsample of captured juveniles would be anesthetized, tissue-sampled and PIT-tagged. Adults would be observed at weirs, fish ladders, and dams and during snorkel surveys. The researchers do not intend to kill any listed fish, but a small number may die as an inadvertent result of the proposed activities.

*Permit 27030*

The Idaho Department of Fish and Game (IDFG) is seeking a 5-year permit to enhance the propagation and survival of SnkR steelhead in Big Bear Creek in northern Idaho. Under this permit, the IDFG would trap adult natural steelhead in the Big Bear Creek watershed and transport them to a point upstream of Big Bear Falls (a semi-impassable barrier) and release them back into Big Bear Creek. The adults would be anesthetized, tissue-sampled, radio-tagged, and transported in 50-gallon (~189.27 L) aerated tanks approximately 2 miles (~3.22 km) upstream. In addition, the IDFG would use backpack electrofishing to sample juvenile steelhead upstream from the falls, and a screw trap to sample them at the mouth of Big Bear Creek. All captured juveniles would be anesthetized, weighed, measured, tissue-sampled, and PIT-tagged.

The purpose of this project is to improve steelhead access to spawning and juvenile rearing habitat above Big Bear Falls. Rearing capacity in the Big Bear Creek watershed is limited, and life cycle modelling indicates enhanced adult steelhead passage at the falls could increase smolt production by an additional 5,000 smolts per year. Transporting adult steelhead around Big Bear Falls would benefit listed fish by increasing available habitat capacity in the drainage and thereby potentially alleviate density-dependent effects and increase population productivity. The IDFG does not intend to kill any of the fish being captured, but a small number may die as an inadvertent result of the activities.

*Permit 27068*

The Makah Tribe is seeking a new permit that would authorize them to take juvenile and adult fish from every species listed in the first part of this notice except for SDPS eulachon and green sturgeon. This proposed work would expand salmon research under four specific areas of investigation: (1) improving knowledge of Chinook salmon ecology in marine waters of northwestern Washington (with a focus on winter and early spring); (2) better understanding how offshore troll fishery gear affects Chinook and Coho salmon injury and mortality rates (specifically with regard to hook size); (3) improving understanding of the factors limiting Lake Ozette sockeye salmon recovery; and (4) monitoring the recent increase in abundance of invasive European green crabs (EGC) in Makah Bay, its tributaries, and the Strait of Juan de Fuca. Each of these studies would provide information addressing data gaps or current threats that would help the Makah Tribe manage their fisheries resources, and inform recovery actions for ESA-listed salmonid species.

As part of the first effort, adult or subadult salmon or steelhead may collected by hook-and-line angling. This study targets Chinook and coho salmon, so any other salmon or steelhead would be handled (weighed, measured, and checked for marks and tags) and released. Captured Chinook and coho salmon would be handled and have scale and fin clip samples collected, and those in suitable condition would be anesthetized and tagged with popup satellite archival tags or acoustic tags as appropriate based on their size. During investigations of hooking injury and mortality rates, adult or subadult fish would be collected by hook-and-line angling using barbless J hooks of variable size (1/0 and 6/0), handled (weighed, measured, and checked for marks and tags), checked for hooking location and any injuries, and then have the hook removed and be released following catch-and-release best practices. No ESA-listed species are specifically targeted in either of these studies, but some may be unintentionally captured as a part of this effort and ESA-listed Chinook and coho salmon species are components of the target species of salmon being studied in these areas.

For the Lake Ozette sockeye salmon study, both juvenile and adult salmon would be collected. Juveniles would be collected via minnow or screw traps (or smolt wheel), and adults would be collected via weir or gill/tangle netting. Juvenile fish would be captured, handled (measured, weighted, and checked for marks or tags), anesthetized, and tagged with surgically implanted acoustic tags prior to release. Captured adults would be handled (measured, weighted, and checked for marks or tags), anesthetized, tissue-sampled, and tagged with surgically implanted acoustic tags prior to release. Lastly, the effort to monitor the presence and abundance of invasive EGC involves setting small minnow traps, shrimp pots, or modified fukui traps that may unintentionally capture juvenile ESA-listed fish. Any fish unintentionally captured would be released from traps

and returned to the water at the site of capture with as little handling as possible. The researchers are not proposing to kill any of the listed fish being captured, but a small number of fish may be killed as an inadvertent result of these activities.

*Permit 27150*

The IDFG is seeking a 5-year permit to conduct three studies in the Clearwater River basin in Idaho. They are (1) Standard Resident Fish Stream Surveys, (2) Juvenile *O. mykiss* Composition in the Lower Clearwater River Drainage, and (3) Seasonal Resident Fish Movement and Angler Encounter Rates. Studies 1 and 3 would be conducted concurrently, and all three would involve capturing juvenile SnkR steelhead via boat electrofishing. Approximately half of the captured fish would simply be handled, measured, identified, and released. The rest of the captured fish would also be tissue-sampled, and some would be marked for the purpose of determining recapture rates. Some of the captured fish may also be anesthetized to reduce handling and sampling stress.

The purposes of the work are (1) to gather information on fish distribution, abundance, and composition—with an emphasis on evaluating the distribution and impacts of non-native predator fish; (2) assess the genetic and behavioral influences that hatchery-produced steelhead in the Clearwater River watershed have on ESA-listed, natural *O. mykiss* in the area; and (3) monitor westslope cutthroat trout distribution and movement. The three projects, collectively, would benefit ESA-listed steelhead by helping managers monitor the species' abundance, composition, density, distribution, age structure, growth, and sources of mortality. Additionally, the work would help managers better understand interactions between the listed fish, their non-native predators, other conspecific (but not listed) fish, and the angling community. All the information to be gained would be used to inform management decisions regarding fishing regulations and seasons, predator control measures, and various recovery actions for the listed SnkR steelhead. The researchers do not intend to kill any of the fish being captured, but a small number may die as an inadvertent result of the activities.

*Permits 27299 and 27469*

Cramer Fish Sciences is seeking two new permits that would authorize them to take juvenile and adult SacR winter-run Chinook salmon during the course of conducting two Chinook egg-to-fry survival studies in the Sacramento River, CA, between Keswick Dam and the confluence of the river and Clear Creek. The purpose of both these studies is to estimate Chinook salmon egg mortality and temperature exposure as well as intergravel water velocity and dissolved oxygen concentration in artificial redds placed in Chinook fall- and winter-run spawning habitat. Additionally, egg survival would be evaluated in natural fall- and winter-run redds that are predicted to be exposed to temperatures above mortality thresholds. Though SacR winter-run Chinook are not the target species, a few individual fish might be encountered or observed during stream or snorkel surveys. The research is not expected to kill any ESA-listed fish.

*Permit 27513*

Stillwater Sciences is seeking a new permit that would authorize them to take juvenile NC steelhead, CC Chinook salmon, and CCC coho salmon while assessing aquatic habitat conditions and fish use in the lower Navarro River and its estuary in California—including some of the river's lower tributary reaches (Marsh, Flume, Murray, Barton, Ray, and Mustard gulches). The research would benefit ESA-listed species by providing information on opportunities and constraints for salmonid habitat restoration in the estuary and lower mainstem Navarro River corridor. Documenting seasonal salmonid distribution, habitat use, and relative abundance of fish species would help managers develop and prioritize restoration actions for the lower Navarro River and estuary and contribute to those actions' effectiveness.

Juvenile fish would be collected via dip net, beach seine, and minnow trap and observed during snorkel surveys. Juvenile fish would be captured, handled, and released; a subsample would be anesthetized, tissue-sampled and PIT-tagged. The researchers do not intend to kill any ESA-listed fish, but a small number may die as an inadvertent result of the proposed activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: August 15, 2023.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2023–17885 Filed 8–18–23; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XD247]**

### Endangered Species; File No. 27551

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

**ACTION:** Notice; receipt of application and conservation plan for renewal of an incidental take permit.

**SUMMARY:** Notice is hereby given that the Georgia Department of Natural Resources (GA DNR) has applied in due form for a permit pursuant to the Endangered Species Act of 1973, as amended (ESA). The permit application is for the incidental take of ESA-listed shortnose (*Acipenser brevirostrum*) and Atlantic sturgeon (*A. oxyrinchus*) associated with the otherwise lawful commercial shad fishery in Georgia. The duration of the proposed permit is 10 years. NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on the application materials. All comments received will become part of the public record and will be available for review.

**DATES:** Written comments must be received at the appropriate address (see **ADDRESSES**) on or before September 20, 2023.

**ADDRESSES:** The application is available for download and review at *https://www.fisheries.noaa.gov/national/endangered-species-conservation/incidental-take-permits* and at *http://www.regulations.gov.* The application is also available upon request (see **FOR FURTHER INFORMATION CONTACT**). You may submit comments on this document, identified by NOAA–NMFS–2023–0100, by any of the following methods:

*Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and NOAA–NMFS–2023–0100 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All Personal Identifying Information (*e.g.,* name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. We will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Celeste Stout, NMFS, Office of Protected Resources at *celeste.stout@noaa.gov* or (301) 427–8436; Alison Verkade, NMFS, Office of Protected Resources at *alison.verkade@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** Section 9 of the ESA and Federal regulations prohibit the 'taking' of a species listed as endangered or threatened. The ESA defines ''take'' to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

## Species Covered in This Notice

The following species are included in the conservation plan and permit application: Atlantic (*Acipenser oxyrinchus)* and shortnose (*A. brevirostrum*) sturgeon.

## Background

NMFS received a draft permit application from GA DNR on January 4, 2023. Based on a review of the application, NMFS requested further information. The applicant submitted a complete application on June 15, 2023 for take of ESA-listed shortnose and Atlantic sturgeon that may be caught incidental to the Georgia shad fishery. The State of Georgia has amended their commercial fishing regulations for the Georgia shad fishery to minimize the incidental capture of ESA-listed shortnose and Atlantic sturgeon. Regulations include the closure of upstream waters in the Altamaha and Savannah rivers, as well as the closure of Ogeechee River to commercial shad harvest. Additional regulations include closing portions of each river for 2 days each week and restricting the length of nets used which prevents nets from extending more than ½ way across a river.

The Georgia shad fishery is open from January 1 to as late as April 30 each year, but typically ends March 31. Georgia regulations require that sturgeon captured in shad nets be released unharmed into the waters from which they were taken. GA DNR requests 3-year running averages for takes to account for the potential for a high-take year before or after low-take years. GA DNR estimates that incidental bycatch would not exceed 60 shortnose sturgeon per year (no more than 180 in a 3-year period) and 40 Atlantic sturgeon per year (no more than 120 in a 3-year period) in the Altamaha River, 5 shortnose sturgeon per year (no more than 15 in a 3-year period) and 25 Atlantic sturgeon per year (no more than 75 in a 3-year period) in the Savannah River. A mortality rate of approximately 2.3 percent is anticipated based on the best available data.

GA DNR would use a combination of a trip ticket system (self-reporting by fishermen) and direct observations to monitor the number of sturgeon incidentally captured each month in the commercial shad fishery. Since 2013, the GA DNR has conducted fishery-dependent efforts to observe a minimum of 10 percent of the commercial shad trips occurring annually in both the Altamaha and Savannah rivers.

## Conservation Plan

GA DNR's conservation plan describes measures designed to minimize, monitor, and mitigate the incidental take of ESA-listed sturgeon. The conservation plan includes Georgia's amended commercial fishing regulations for the Georgia shad fishery, which are expected to minimize the bycatch of sturgeon by closing to shad fishing sections of the rivers that previously had the highest bycatch rates. These closures would also protect known and suspected sturgeon spawning sites. Georgia regulations require that sturgeon captured in shad nets be released unharmed into the waters from which they were taken. GA DNR would use a combination of a trip ticket system (self-reporting by fishermen) and direct observations to observe a minimum of 10 percent of the commercial shad trips occurring annually in both the Altamaha and Savannah rivers for the incidental take of sturgeon in the commercial shad fishery. In these efforts, GA DNR staff observe active fishing efforts and record information on captured sturgeon. Information collected on captured sturgeon include species identification; lengths (total and fork); and condition of the fish. Additional monitoring and mitigation actions include having GA DNR staff scan the fish for the presence of a Passive Integrated Transponders (PIT) tag, and if one is not found, GA DNR staff would insert a PIT tag into the fish. They will also collect a fin-clip from captured sturgeon to provide to the U.S. Geological Survey (USGS) for genetic study. Under current collaborative efforts, GA DNR provides fin-clips and outside funding sources are used to process said fin-clips. Should outside funds not be available for processing GA DNR would provide fin-clips and fund the processing of up to 15 samples/year. These fin-clips aid in better studying and understanding the genetic diversity and conservation of sturgeon found within Georgia and other states. Additional mitigation efforts include the education and outreach efforts conducted annually by GA DNR through materials presented to commercial shad fishermen. These materials, including detailed identification aids and specific instructions on properly handling captured sturgeon, provide needed information critical for helping fishermen better understand how they can help protect and sustain these endangered species. Additionally, GA DNR Law Enforcement continues to routinely and randomly patrol both the open and closed sections of both rivers.

GA DNR considered and rejected two other alternatives: (1) No change to commercial shad regulations, and (2) establish new upper boundaries for commercial shad fishing on the Altamaha, Ogeechee, and Savannah rivers and close the Satilla and St. Mary's rivers to commercial shad fishing.

### *Funding*

Monitoring would be funded by GA DNR's Annual Operating Budget.

### *National Environmental Policy Act*

Issuing a permit would constitute a Federal action requiring NMFS to comply with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) as implemented by 40 CFR parts 1500–1508 and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Environmental Policy Act (1999), an

initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement, however, the final NEPA and permit determinations will not be made until after the end of the comment period.

*Next Steps*

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments received during the comment period to determine whether the application meets the requirements of section 10(a) of the ESA. If NMFS determines that the requirements are met, a permit will be issued for incidental takes of ESA-listed sturgeon. NMFS will publish a record of its final action in the **Federal Register**.

Dated: August 15, 2023.

**Angela Somma,**

*Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2023–17899 Filed 8–18–23; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2023–08083]**

### Submission for OMB Review; Comment Request

**AGENCY:** Defense Counterintelligence and Security Agency (DCSA), Department of Defense (DoD).

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by September 20, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Freedom of Information/Privacy Act Records Request for Background Investigations; OMB Control Number 0705–0001.

*Type of Request:* Revision.

*Number of Respondents:* 10,097.

*Responses per Respondent:* 1.

*Annual Responses:* 10,097.

*Average Burden per Response:* 5 minutes.

*Annual Burden Hours:* 841.

*Needs and Uses:* The purpose of the collection is to enable the DCSA, Freedom of Information and Privacy (FOI/P) Office for Investigations, to locate applicable records and provide the requester responsive records pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. 552), and/or the Privacy Act of 1974 (5 U.S.C. 552a). It may also be used for the submission of a Privacy Act Amendment request, and in any FOIA or Privacy Act appeals or related litigation. The Freedom of Information/Privacy Act Records Request for Background Investigations form will also be used to refer records under the release authority of another Federal Agency.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

*DOD Clearance Officer:* Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 15, 2023.

**Natalie M. Ragland,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2023–17855 Filed 8–18–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2023–OS–0072]**

### Proposed Collection; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

**ACTION:** 60-Day information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by October 20, 2023.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

*Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to: Office of the Assistant Secretary of Defense for Manpower & Reserve Affairs, Attn: Director, Civil-Military Programs, 1500 Defense Pentagon, Room 2E565, Washington, DC 20301–1500 or contact Capt. Rick Howell, *richard.a.howell6.mil@mail.mil,* (703) 693–7493.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Junior Reserve Officers' Training Corps (JROTC) Program Forms;

DD Form X854, DD Form X859, and DD Form X858; OMB Control Number 0704–JRPF.

*Needs and Uses:* This information is needed to assist school districts in development of JROTC programs and confirm that school district employees assigned to JROTC duty understand DoD's expectations for the performance of their duties and their conduct in the execution thereof.

The DD Form X854, ''JROTC Instructor Prohibited Activities Acknowledgement,'' certifies the understanding and acknowledgement of activities that the instructor will not participate in with a cadet, trainee, or student. This collection will be used by each education facility where a JROTC program is conducted.

The DD Form X859, ''JROTC Student/Parent/Guardian Acknowledgement of Expected Standards of Conduct and Participation,'' documents student and parent or guardian's understanding of the expectations, responsibilities, and prohibitions related to participation in the JROTC program, and is used by the Military Service and hosting School District to establish standard operating procedures and code of conduct amongst the instructor and trainee. It also informs the student and parent or guardian of the resources available should an incident take place that requires assistance and or reporting.

The DD Form X858, ''JROTC Memorandum of Agreement (MOA)'' establishes the contractual acknowledgement and understanding of the responsibilities that the school/instructor/student must maintain in the program.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 276,696.

*Number of Respondents:* 1,660,176.

*Responses per Respondent:* 1.

*Annual Responses:* 1,660,176.

*Average Burden per Response:* 10 minutes.

*Frequency:* As needed.

Dated: August 16, 2023.

**Natalie M. Ragland,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2023–17879 Filed 8–18–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2023–OS–0027]**

### Submission for OMB Review; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Policy, Department of Defense (DoD).

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by September 20, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Policy Pulse Survey, OMB Control Number: 0704–0570.

*Type of Request:* Revision.

*Number of Respondents:* 198.

*Responses per Respondent:* 2.

*Annual Responses:* 396.

*Average Burden per Response:* 15 minutes.

*Annual Burden Hours:* 99.

*Needs and Uses:* The information collection requirement is necessary to obtain and record responses from contractor personnel employed within the Office of the Under Secretary of Defense for Policy and its components. The survey results are analyzed by the Leadership and Organizational Development Office to assess the progress of the current human capital strategy and to address emerging human capital and training issues.

*Affected Public:* Individuals or households.

*Frequency:* Semi-annually.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

*DOD Clearance Officer:* Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 15, 2023.

**Natalie M. Ragland,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2023–17861 Filed 8–18–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2023–OS–0034]**

### Submission for OMB Review; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by September 20, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, *whs.mc-*

*alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Evaluation of the Family Advocacy Program's Domestic Violence Awareness and Child Abuse Prevention Campaigns; OMB Control Number 0704–EFAC.

*Type of Request:* New.

*Number of Respondents:* 9,632.

*Responses per Respondent:* 1.

*Annual Responses:* 9,632.

*Average Burden per Response:* 1 hour.

*Annual Burden Hours:* 9,632.

*Needs and Uses:* This project is needed to evaluate the effectiveness of the Family Advocacy Program's (FAP) Domestic Violence Awareness (DVA) and Child Abuse Prevention (CAP) campaigns at increasing knowledge and awareness. The Department of Defense, Service branches, and the Family Advocacy Program (FAP) have historically applied child abuse prevention and domestic violence awareness efforts during annual awareness months to leverage increased visibility and media coverage. Evaluation of the reach and penetration of these campaigns is imperative to assess the effectiveness of the messaging developed and delivered by the FAP.

*Affected Public:* Individuals or households.

*Frequency:* Once.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

*DOD Clearance Officer:* Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 15, 2023.

**Natalie M. Ragland,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2023–17856 Filed 8–18–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2023–HA–0073]**

### Proposed Collection; Comment Request

**AGENCY:** Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

**ACTION:** 60-Day information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Defense Health Agency (DHA) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by October 20, 2023.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

*Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Department of Defense, Washington Headquarters Services, ATTN: Executive Services Directorate, Directives Division, 4800 Mark Center Drive, Suite 03F09–09, Alexandria, VA 22350–3100, Angela Duncan, 571–372–7574.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Penile Implant Satisfaction in a Military Population; OMB control number 0720–PISM.

*Needs and Uses:* Inflatable Penile Prostheses (IPPs) are common procedures worldwide with over 53,000 American men aged ≥65 years-old undergoing penile implant surgery over a 9-year period. Despite the prevalence of these surgeries, the data on patient satisfaction has been limited. For example, Akakpo et al. (2017) evaluated almost 50 articles on patient satisfaction with penile implants from 2006–2016. 44% of the articles used questionnaires that were not intended for nor validated in IPP patients, while the remaining articles used proprietary, non-validated questionnaires.

These earlier IPP outcome assessments are problematic. The use of different instruments makes it difficult to compare results between studies. Thus, it is unsurprising that the satisfaction results vary widely. For example, one study found that 91% of IPP patients were 'very satisfied' whereas another study showed only 69% of men were satisfied with their IPP. This demonstrates the importance of a standardized IPP satisfaction questionnaire.

Recently, the first English-validated IPP satisfaction questionnaire- the Satisfaction Survey for Inflatable Penile Implant (SSIPI) was developed. This 16-item questionnaire assesses overall satisfaction, pain, function and appearance in men with IPPs. With the advent of SSIPI, it is vital that we use this novel instrument to accurately access IPP satisfaction in a military population.

The authority that authorizes this collection is: § 876.3350, 5 CFR 1320.5(d)(2), Title 10, Title 20, Title 42, American Urological Association, America Board of Urology, and the Sexual Medicine Society of North America.

The respondents are adult men with inflatable penile implants who are

patients at Madigan Army Medical Center. They are responding to this information collection as it will be part of their postoperative medical follow-ups. The survey will be given via Qualtrics, a web-based secure survey platform. Patients will access this via a QR code and answer the questions on their smartphones. They will complete the questions at the time of their medical follow-ups. This is returned electronically when they submit the survey.

*Affected Public:* Individuals and households.

*Annual Burden Hours:* 3.4.

*Number of Respondents:* 20.

*Responses per Respondent:* 1.

*Annual Responses:* 20.

*Average Burden per Response:* 10 minutes.

*Frequency:* On occasion.

Dated: August 16, 2023.

**Natalie M. Ragland,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2023–17878 Filed 8–18–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2023–OS–0070]**

### Proposed Collection; Comment Request

**AGENCY:** Office of the Assistant to the Secretary of Defense for Public Affairs (OASD(PA)), Department of Defense (DoD).

**ACTION:** 60-Day information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Assistant to the Secretary of Defense for Public Affairs announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by September 20, 2023.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

*Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to the Office of the Assistant to the Secretary of Defense for Public Affairs, ATTN: Community Engagement Directorate, 1400 Defense, The Pentagon, Washington, DC 20301–1400, or call Glen Roberts at (703) 697–6005.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Request for DoD Production Assistance, DD Form 3205; OMB Control Number: 0704–RPAF.

*Needs and Uses:* This information collection requirement is necessary to evaluate the eligibility of productions requesting DoD assistance for appropriateness and compliance with DoD policies and for coordination of the units involved to determine whether requested military assets are available.

*Affected Public:* Non-profit or for-profit entertainment media institutions, individual producers.

*Annual Burden Hours:* 150.

*Number of Respondents:* 200.

*Responses per Respondent:* 1.

*Annual Responses:* 200.

*Average Burden per Response:* 45 minutes.

*Frequency:* On Occasion.

Dated: August 15, 2023.

**Natalie M. Ragland,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2023–17869 Filed 8–18–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2023–OS–0071]**

### Proposed Collection; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

**ACTION:** 60-Day information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Undersecretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by October 20, 2023.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

*Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to CNA Corporation (Center

for Naval Analyses), 3003 Washington Blvd., Arlington, VA, Neil Carey, Ph.D., *careyn@cna.org,* 703–955–6415.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Overcoming Barriers to Safe Firearms Storage Among Different Groups; OMB Control Number 0704–OBFS.

*Needs and Uses:* The Defense Suicide Prevention Office (DSPO) has contracted with Center for Naval Analyses (CNA) to conduct a study titled ''Overcoming Barriers to Safe Firearms Storage Among Different Groups.'' The goal of the study is to assist the services in meeting the requirements set forth in Department of Defense (DoD) Instruction 6490.16 that all suicide prevention activities are developed from a relevant evidence-base and have an evaluation capability prior to implementation. DSPO wants to craft safe firearm storage messages that will be persuasive to servicemembers of varying races and genders in response to changing demographics of firearm owners and suicides completed using a firearm in the civilian sector. To do so, CNA has developed a survey that will address the following issues:

- What are the barriers to safe firearm storage practices among different groups?
- Do different demographic groups respond to messages differently, and if so, how should messaging be targeted? For example, would these servicemembers respond more positively if their demographic group were featured in safety appeals?
- What principles could be introduced to OSD lethal means safety messaging to make it better resonate across demographic groups?

This survey will provide unique information to help DoD (a) determine what attitudinal and other barriers prevent service members from adopting safe firearms storage practices, (b) decide which aspects of a safe storage message are most persuasive in overcoming those barriers, and (c) learn whether female and black service members respond differently to safe storage messaging. The findings from the survey will support DoD Instruction 6400.09's instruction to focus suicide prevention efforts on research-based programs, policies, and practices. They will also assist in executing data-informed actions to reduce and stop self-directed harm (Section 1.2.b), promoting an understanding of lethal means safety among the military community (Section 4.3.b), and addressing the needs of high-risk groups (Section 4.7.a.).

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 375.

*Number of Respondents:* 1,500.

*Responses per Respondent:* 1.

*Annual Responses:* 1,500.

*Average Burden per Response:* 15 minutes.

*Frequency:* Once.

Dated: August 15, 2023.

**Natalie M. Ragland,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2023–17870 Filed 8–18–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[Docket ID: USN–2023–HQ–0006]**

### Submission for OMB Review; Comment Request

**AGENCY:** Department of the Navy, Department of Defense (DoD).

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by September 20, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Distinguished Visitor (DV)/Friends of the Navy (FON) Embark Request; OMB Control Number: 0703–0060.

*Type of Request:* Reinstatement with change.

*Number of Respondents:* 3,000.

*Responses per Respondent:* 1.

*Annual Responses:* 3,000.

*Average Burden per Response:* 15 minutes.

*Annual Burden Hours:* 750.

*Needs and Uses:* The purpose of the Distinguished Visitor (DV)/Friends of the Navy (FON) Embark is to facilitate embarkation on U.S. Navy surface ships or submarines and determine embarkation qualification. This information may also be used for notification of next of kin in the event of death or serious injury or to permit transmission of public affairs information from the Navy to the individual concerned. Completion of the information is completely voluntary; however, failure to provide required information may result in denial of embarkation request. Respondents are interested persons, such as community leaders, legislators, business executives, educators, foreign military or dignitaries, and other Non-Federal Government employees wishing to embark on a Navy vessel.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

*DOD Clearance Officer:* Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 15, 2023.

**Natalie M. Ragland,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2023–17868 Filed 8–18–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[Docket ID: USN–2023–HQ–0016]**

### Proposed Collection; Comment Request

**AGENCY:** Department of the Navy, Department of Defense (DoD).

**ACTION:** 60-Day information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Navy announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by October 20, 2023.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

*Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Navy Survey Program Office, 701 S Courthouse Road Room, Arlington, VA 22204, ATTN: Dr. Richard Linton, or call 703–604–6058.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Navy Health of the Force Survey Program; OMB Control Number: 0703–HOFG.

*Needs and Uses:* The Navy Health of the Force (HoF) Surveys are strategic level engagement survey initiatives designed to assess climate and culture across the entire Department of the Navy enterprise. When deployed, the Health of the Force Survey is tailored to the unique population (Active Duty Navy, Reserve Navy, Active Duty Marine Corps, and Navy civilians) being surveyed, but includes a core set of questions and metrics that support comparisons across the Navy and provide a means for evaluating changes in culture and climate over time. While there is some comparability with other DoD survey initiatives, the HoF Survey program is unique in its ability to support Service-level and DON-level assessments of culture and climate, as well as comparisons across different segments of the DON enterprise. The DON is seeking a Generic Clearance for the HoF surveys as each one features a common set of core questions, utilizes similar statistical and analytical methods, and supports the same goal of assessing climate and culture across the DON enterprise.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 6,667.

*Number of Respondents:* 20,000.

*Responses per Respondent:* 1.

*Annual Responses:* 20,000.

*Average Burden per Response:* 20 minutes.

*Frequency:* Annually.

Dated: August 16, 2023.

**Natalie M. Ragland,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2023–17880 Filed 8–18–23; 8:45 am]

**BILLING CODE 5001–06–P**

## ELECTION ASSISTANCE COMMISSION

### Sunshine Act Meetings

**AGENCY:** U.S. Election Assistance Commission.

**ACTION:** Sunshine Act notice; Notice of public meeting agenda.

**SUMMARY:** Public Meeting: U.S. Election Assistance Commission

**DATES:** September 6, 2023, 1:00 p.m. EST

**ADDRESSES:** The Election Assistance Commission hearing room at 633 3rd St. NW, Washington, DC 20001. The meeting is open to the public and will be live streamed on the U.S. Election Assistance Commission YouTube Channel: *https://www.youtube.com/channel/UCpN6i0g2rlF4ITWhwvBwwZw.*

**FOR FURTHER INFORMATION CONTACT:** Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose:* In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will hold a public meeting on breaking down accessibility and language barriers to voting.

*Agenda:* The U.S. Election Assistance Commission (EAC) will host a public meeting to discuss areas such as accessibility for voters with disabilities as well as language accessibility. The meeting will also highlight the EAC's resources on these topics for voters and election officials, including best practices guides, new research, and a first-of-its-kind video training series.

The agenda includes panel discussions with representatives from the EAC, election administrators, and subject matter experts. Panelists will give remarks and respond to questions from the EAC Commissioners.

The full agenda will be posted in advance on the events page of the EAC website: *https://www.eac.gov/events/2023/09/06/us-election-assistance-commission-public-meeting-september-6-2023.*

*Background:* Through the Help America Vote Act of 2002 (HAVA), the EAC is tasked with maintaining a clearinghouse of election administration information. HAVA also ensures that all voters with disabilities have the right to mark, cast, and verify their ballots privately and independently. To fulfill this mission, the EAC provides best practices recommendations, training materials, and other resources for election officials. By enhancing the agency's work with voters with disabilities, those who are non-native English speakers, and the election officials who serve them, the EAC aims to improve accessibility and ensure an independent and private vote for all.

*Status:* This meeting will be open to the public.

**Camden Kelliher,**

*Senior Associate Counsel, U.S. Election Assistance Commission.*

[FR Doc. 2023–18057 Filed 8–17–23; 4:15 pm]

**BILLING CODE 4810–71–P**

## DEPARTMENT OF ENERGY

### Fusion Energy Sciences Advisory Committee

**AGENCY:** Office of Science, Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a virtual meeting of the Fusion Energy

Sciences Advisory Committee (FESAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Monday, September 18, 2023; 12:00 p.m. to 5:00 p.m.

**ADDRESSES:** This meeting is open to the public. This meeting will be held virtually via Zoom. Instructions for Zoom, as well as any updates to meeting times or meeting agenda, can be found on the FESAC meeting website at: *https://science.osti.gov/fes/fesac/Meetings.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Samuel J. Barish, Designated Federal Officer, Office of Fusion Energy Sciences (FES); U.S. Department of Energy; Office of Science; 1000 Independence Avenue SW; Washington, DC 20585; Telephone: (301) 903–2917, Email address: *sam.barish@science.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* The purpose of the Committee is to make recommendations on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the fusion energy sciences program.

*Tentative Agenda:*

- Report of the FESAC Subcommittee on International Benchmarking
- Public Comment
- Adjourn

*Public Participation:* The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make an oral statement regarding any of the items on the agenda, you should contact Dr. Barish at *sam.barish@science.doe.gov.* Reasonable provision will be made to include the scheduled oral statements during the Public Comment time on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The minutes of the meeting will be available for on the Fusion Energy Sciences Advisory Committee website: *https://science.osti.gov/fes/fesac/Meetings.*

Signed in Washington, DC, on August 15, 2023.

**LaTanya Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2023–17876 Filed 8–18–23; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 5596–020]**

### Town of Bedford, Virginia; Notice of Waiver Period for Water Quality Certification Application

On July 31, 2023, the Town of Bedford, Virginia submitted to the Federal Energy Regulatory Commission (Commission) a copy of its request for a Clean Water Act section 401(a)(1) water quality certification filed with the Virginia Department of Environmental Quality (Virginia DEQ), in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section 5.23(b) of the Commission's regulations,[1] we hereby notify the Virginia DEQ of the following:

*Date of Receipt of the Certification Request:* July 28, 2023.

*Reasonable Period of Time to Act on the Certification Request:* One year (July 28, 2024).

If Virginia DEQ fails or refuses to act on the water quality certification request on or before the above date, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: August 15, 2023.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2023–17906 Filed 8–18–23; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC23–121–000.

*Applicants:* Elgin Energy Center, LLC, Rocky Road Power, LLC, Ricochet Power, LLC.

*Description:* Joint Application for Authorization Under Section 203 of the Federal Power Act of Elgin Energy Center, LLC, et al.

*Filed Date:* 8/14/23.

*Accession Number:* 20230814–5263.

*Comment Date:* 5 p.m. ET 9/5/23.

*Docket Numbers:* EC23–122–000.

*Applicants:* Elgin Energy Center, LLC, Rocky Road Power, LLC, Middle River Power VI LLC, Middle River Power VII LLC.

*Description:* Joint Application for Authorization Under Section 203 of the Federal Power Act of Elgin Energy Center, LLC.

*Filed Date:* 8/14/23.

*Accession Number:* 20230814–5265.

*Comment Date:* 5 p.m. ET 9/28/23.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG23–257–000.

*Applicants:* Hardy Hills Solar Energy LLC.

*Description:* Hardy Hills Solar Energy LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

*Filed Date:* 8/15/23.

*Accession Number:* 20230815–5027.

*Comment Date:* 5 p.m. ET 9/5/23.

*Docket Numbers:* EG23–258–000.

*Applicants:* Grover Hill Wind, LLC.

*Description:* Grover Hill Wind, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

*Filed Date:* 8/15/23.

*Accession Number:* 20230815–5044.

*Comment Date:* 5 p.m. ET 9/5/23.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER18–99–009.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Compliance filing: South Central MCN LLC Amended Compliance Filing Pursuant to Order Issued to be effective 4/1/2018.

*Filed Date:* 8/15/23.

*Accession Number:* 20230815–5115.

*Comment Date:* 5 p.m. ET 9/5/23.

*Docket Numbers:* ER19–69–001.

*Applicants:* Rockland Wind Farm LLC.

*Description:* Compliance filing: Rockland Wind Farm LLC Revised MBR Tariff to be effective 8/16/2023.

*Filed Date:* 8/15/23.

*Accession Number:* 20230815–5072.

*Comment Date:* 5 p.m. ET 9/5/23.

*Docket Numbers:* ER23–2526–000.

*Applicants:* GreenStruxure LOR008, LLC.

*Description:* Supplement to July 31, 2023, GreenStruxure LOR008, LLC tariff filing.

*Filed Date:* 8/9/23.

*Accession Number:* 20230809–5193.

*Comment Date:* 5 p.m. ET 8/30/23.

*Docket Numbers:* ER23–2622–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: First Revised ISA, Service Agreement No. 6842; Queue No. AF2–134 to be effective 7/14/2023.

*Filed Date:* 8/14/23.

*Accession Number:* 20230814–5180.

[1] 18 CFR 5.23(b).

*Comment Date:* 5 p.m. ET 9/5/23.

*Docket Numbers:* ER23–2623–000.

*Applicants:* Puget Sound Energy, Inc.

*Description:* § 205(d) Rate Filing: 2nd Amendment to IA and NITS between PSE and Boeing to be effective 7/31/2023.

*Filed Date:* 8/15/23.

*Accession Number:* 20230815–5002.

*Comment Date:* 5 p.m. ET 9/5/23.

*Docket Numbers:* ER23–2624–000.

*Applicants:* American Electric Power Service Corporation, Ohio Power Company, AEP Ohio Transmission Company, Inc., PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: American Electric Power Service Corporation submits tariff filing per 35.13(a)(2)(iii: AEP submits two Facilities Agreements re: ILDSA, SA No. 1336 to be effective 10/16/2023.

*Filed Date:* 8/15/23.

*Accession Number:* 20230815–5073.

*Comment Date:* 5 p.m. ET 9/5/23.

*Docket Numbers:* ER23–2625–000.

*Applicants:* NRG Business Marketing LLC.

*Description:* § 205(d) Rate Filing: Notice of Succession and Request for Waiver to be effective 8/1/2023.

*Filed Date:* 8/15/23.

*Accession Number:* 20230815–5076.

*Comment Date:* 5 p.m. ET 9/5/23.

*Docket Numbers:* ER23–2626–000.

*Applicants:* NRG Power Marketing LLC.

*Description:* Tariff Amendment: Notice of Cancellation and Request for Waiver to be effective 8/1/2023.

*Filed Date:* 8/15/23.

*Accession Number:* 20230815–5079.

*Comment Date:* 5 p.m. ET 9/5/23.

*Docket Numbers:* ER23–2627–000.

*Applicants:* Northwest Iowa Power Cooperative.

*Description:* Annual Informational Attachment H filing of Northwest Iowa Power Cooperative.

*Filed Date:* 8/15/23.

*Accession Number:* 20230815–5100.

*Comment Date:* 5 p.m. ET 9/5/23.

*Docket Numbers:* ER23–2628–000.

*Applicants:* Duke Energy Florida, LLC.

*Description:* § 205(d) Rate Filing: DEF-Bartow Amended and Restated NITSA SA 145 to be effective 11/1/2023.

*Filed Date:* 8/15/23.

*Accession Number:* 20230815–5101.

*Comment Date:* 5 p.m. ET 9/5/23.

*Docket Numbers:* ER23–2629–000.

*Applicants:* High Banks Wind, LLC.

*Description:* Baseline eTariff Filing: High Banks Wind, LLC Application for Market-Based Rate Authorization to be effective 10/1/2023.

*Filed Date:* 8/15/23.

*Accession Number:* 20230815–5104.

*Comment Date:* 5 p.m. ET 9/5/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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.*

Dated: August 15, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–17901 Filed 8–18–23; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas and Oil Pipeline Rate and Refund Report filings:

**Filings in Existing Proceedings**

*Docket Numbers:* PR23–63–002.

*Applicants:* Black Hills/Kansas Gas Utility Company, LLC.

*Description:* § 284.123 Rate Filing: BHKG Amended SOC Filing to be effective 8/1/2023.

*Filed Date:* 8/15/23.

*Accession Number:* 20230815–5000.

*Comment Date:* 5 p.m. ET 8/28/23.

*Docket Numbers:* RP23–937–001.

*Applicants:* Rockies Express Pipeline LLC.

*Description:* Tariff Amendment: REX 2023–08–15 RP23–937 Amendment to be effective 8/1/2023.

*Filed Date:* 8/15/23.

*Accession Number:* 20230815–5085.

*Comment Date:* 5 p.m. ET 8/28/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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.*

Dated: August 15, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–17903 Filed 8–18–23; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2800–054]**

### Essex Company, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document (Pad), Commencement of Pre-Filing Process, and Scoping, Request For Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notice of Intent to File License Application for a New

License and Commencing Pre-filing Process.

b. *Project No.:* 2800–054.

c. *Dated Filed:* June 16, 2023.

d. *Submitted By:* Essex Company, LLC (Essex).

e. *Name of Project:* Lawrence Hydroelectric Project (Lawrence Project).

f. *Location:* The project is located on the Merrimack River in the City of Lawrence in Essex County, Massachusetts.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Applicant Contact:* Kevin Webb, Hydro Licensing Manager, Essex Company, 670 N Commercial Street, Suite 204, Manchester, NH 03101; (978) 935–6039; *kwebb@patriothydro.com.*

i. *FERC Contact:* Bill Connelly at (202) 502–8587 or email at *william.connelly@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 o 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. With this notice, we are initiating informal consultation with: (a) the U.S. Fish and Wildlife Service and/or the National Oceanic and Atmospheric Administration Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and (b) the State Historic Preservation Office, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Essex as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Essex filed with the Commission a Pre-Application Document (PAD), including a proposed process plan and schedule, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed on the Commission's website (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TYY, (202) 502–8659.

You may register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Commission staff's Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from staff related to the merits of the potential application must be filed with the Commission.

The Commission strongly encourages electronic filing. Please file all documents 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.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Support at *FERCOnlineSupport@ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2800–054.

All filings with the Commission must bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by October 14, 2023.[1]

p. 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.*

q. The Commission's scoping process will help determine the required level of analysis and satisfy the National Environmental Policy Act (NEPA) scoping requirements, irrespective of whether the Commission prepares an environmental assessment or environmental impact statement.

**Scoping Meetings**

Commission staff will hold two scoping meetings for the project to receive input on the scope of the NEPA document. An evening meeting will be held at 7:00 p.m. on September 13, 2023, at the Elk's Lodge #65 in Lawrence, Massachusetts, and will focus on receiving input from the public. A daytime meeting will be held at 10:00 a.m. on September 14, 2023, at Lawrence Public Library in Lawrence, Massachusetts, and will focus on the concerns of resource agencies, non-governmental organizations (NGOs), and Indian Tribes. We invite all interested agencies, Indian Tribes, non-governmental organizations, and individuals to attend one or both meetings. Spanish-English translation services will be provided. If a significant number of people are interested in providing oral comments, a time limit of 3 minutes may need to be implemented for each commentor.

The times and locations of these meetings are as follows:

*Evening Scoping Meeting*

*Date:* Wednesday, September 13, 2023.

*Time:* 7:00 p.m. (EDT).

*Place:* Elks Lodge #65.

*Address:* 652 Andover Street, Lawrence, MA 01843.

*Phone:* (978) 687–7274.

*Daytime Scoping Meeting*

*Date:* Thursday, September 14, 2023.

*Time:* 10:00 a.m. (EDT).

[1] The Commission's Rules of Practice and Procedure provide that if a filing deadline falls on a Saturday, Sunday, holiday, or other day when the Commission is closed for business, the filing deadline does not end until the close of business on the next business day. 18 CFR 385.2007(a)(2) (2022). Because the filing deadline falls on a Saturday (*i.e.,* September 2, 2023), the filing deadline is extended until the close of business on Monday, October 16, 2023.

*Place:* Lawrence Public Library, Sargent Auditorium.

*Address:* 51 Lawrence Street, Lawrence, MA 01841.

*Phone:* (978) 620–3600.

SD1, which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list and Essex's distribution list. Copies of SD1 may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

**Environmental Site Review**

The applicant and Commission staff will conduct an environmental site review of the project. All interested individuals, agencies, tribes, and NGOs are invited to attend. Please RSVP via email to *Mkinney@patriothydro.com* or notify Miley Kinney at (603) 732–8162 *on or before September 5, 2023* if you plan to attend the environmental site review. The time and location of the environmental site review is as follows:

*Lawrence Project*

*Date:* Wednesday, September 13, 2023.

*Time:* 9:00 a.m. (EDT).

*Place:*

Lawrence Gateway parking lot.

*Address:* 70 General Street, Lawrence, MA 01840.

Participants will meet at the Lawrence Gateway parking lot and depart to the Lawrence at 9:15 a.m. (EDT). Essex will provide transportation to the project facilities. All participants are responsible for their own transportation to the Lawrence Gateway parking lot.

All persons attending the environmental site review must wear sturdy, closed-toe shoes or boots. The applicant will provide hard hats to attendees for entry into low-overhead areas, if needed; however, participants who have their own hardhats should bring them.

**Meeting Objectives**

At the scoping meetings, Commission staff will: (1) initiate scoping of the issues; (2) review and discuss existing conditions; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the potential of any federal or state agency or Indian tribe to act as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n of this document.

**Meeting Procedures**

Commission staff are moderating the scoping meetings. The meetings are recorded by an independent stenographer and become part of the formal record of the Commission proceeding on the project. Individuals, NGOs, Indian Tribes, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the NEPA document.

Dated: August 15, 2023.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2023–17907 Filed 8–18–23; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–ORD–2015–0659; FRL—11250–01–ORD]**

## Proposed Information Collection Request; Comment Request; Generic Clearance for Participatory Science and Crowdsourcing Projects (Renewal)

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Generic Clearance for Participatory Science and Crowdsourcing Projects (Renewal)'' (EPA ICR No. 2521.39, OMB Control No. 2080–0083) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through January 31, 2024. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before October 20, 2023.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–ORD–2015–0659 referencing the Docket ID numbers provided for each item in the text, online using *https://www.regulations.gov/* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Heather Drumm, ORD–OSAPE, (8104R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–8239; email address: *Drumm.Heather@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents that explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *http://www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology. EPA will consider the comments

received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

*Abstract:* EPA relies on scientific information to achieve its' mission of protecting human health and the environment. Participatory science and crowdsourcing techniques allow the Agency to collect qualitative and quantitative data that could inform scientific research, assessments, or environmental screening; validate environmental models or tools; or enhance the quantity and quality of data collected across the country's diverse communities and ecosystems in support of the Agency's mission. Information gathered under this generic ICR may be used by the Agency to support the activities listed above. Collections under this generic ICR will be: (i) from participants who actively seek to participate on their own initiative through an open and transparent process (the Agency does not select participants or require participation); (ii) low-burden for participants; (iii) low-cost for both the participants and the Federal Government; and (iv) available to support the scientific research (including assessments, environmental screening, tools, models, etc.) of the Agency, states, Tribal or local entities where data collection occurs. EPA may, by virtue of collaborating with nonfederal entities, sponsor the collection of this type of information in connection with participatory science projects. When applicable, all such collections will comply with Agency policies and regulations related to human subjects research and will follow the established approval paths through EPA's Human Subjects Research Review Official. Finally, personally identifiable information will only be collected when necessary and in accordance with applicable federal procedures and policies. If a new collection is not within the parameters of this generic ICR, the Agency will submit a separate information collection request to OMB for approval.

*Form Numbers:* None.

*Respondents/affected entities:* Participants/respondents will be individuals, not specific entities.

*Respondent's obligation to respond:* Voluntary.

*Estimated number of respondents:* 17,500 (total).

*Frequency of response:* The frequency of responses will range from once to on occasion.

*Total estimated burden:* 389,083 hours (per year). Burden is defined at 5 CFR 1320.03(b).

T*otal estimated cost:* $16,209,198 (per year), includes $525,000 annualized capital or operation & maintenance costs.

*Changes in Estimates:* The dollar figures have been updated to reflect current wages.

**Mary A. Ross,**

*Director, Office of Science Advisor, Policy and Engagement, Office of Research and Development.*

[FR Doc. 2023–17931 Filed 8–18–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2023–0061; FRL–10581–07–OCSPP]**

## Certain New Chemicals; Receipt and Status Information for July 2023

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

**ACTION:** Notice.

**SUMMARY:** EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 7/1/2023 to 7/31/2023.

**DATES:** Comments identified by the specific case number provided in this document must be received on or before September 20, 2023.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2023–0061, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and 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:* Jim Rahai, Project Management and Operations Division (MC 7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov.*

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Executive Summary

*A. What action is the Agency taking?*

This document provides the receipt and status reports for the period from 7/01/2023 to 7/31/2023. The Agency is providing notice of receipt of PMNs, SNUNs, and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

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

Under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* a chemical substance may be either an ''existing'' chemical substance or a ''new'' chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances

(TSCA Inventory) is classified as a ''new chemical substance,'' while a chemical substance that is listed on the TSCA Inventory is classified as an ''existing chemical substance.'' (See TSCA section 3(11).) For more information about the TSCA Inventory please go to: *https://www.epa.gov/tsca-inventory.*

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN, or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for ''test marketing'' purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *https://www.epa.gov/chemicals-under-tsca.*

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

*C. Does this action apply to me?*

This action provides information that is directed to the public in general.

*D. Does this action have any incremental economic impacts or paperwork burdens?*

No.

*E. What should I consider as I prepare my comments for EPA?*

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

## II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (see the **Federal Register** of May 12, 1995 (60 FR 25798) (FRL–4942–7)). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

## III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter ''A'' (*e.g.* P–18–1234A). The version column designates submissions in sequence as ''1'', ''2'', ''3'', etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 07/01/2023 TO 07/31/2023

| Case No. | Version | Received date | Manufacturer | Use | Chemical substance |
|---|---|---|---|---|---|
| P–22–0001A .... | 3 | 07/07/2023 | CBI ..... | (G) Raw material for manufacturing chemicals. | (G) Alkane, disubstituted. |
| P–22–0057A .... | 3 | 07/10/2023 | CBI ..... | (G) Additive in-home care products ..... | (G) Polysaccharide, polymer with 2-propenoic acid, sodium salt. |

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 07/01/2023 TO 07/31/2023—Continued

| Case No. | Version | Received date | Manufacturer | Use | Chemical substance |
|---|---|---|---|---|---|
| P–22–0062A .... | 2 | 07/28/2023 | Vertellus Specialties, Inc ..... | (G) Fuel, Oil additive for consumer, industrial, and commercial applications. | (G) Alkene, heterocycle. |
| P–22–0063A .... | 2 | 07/28/2023 | Vertellus Specialties, Inc ..... | (G) Fuel, Oil additive for consumer, industrial, and commercial applications. | (G) Alkene, heterocycle. |
| P–22–0095A .... | 5 | 07/24/2023 | CBI ..... | (G) Surfactant for consumer, industrial, commercial applications. | (G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates. |
| P–22–0096A .... | 5 | 07/24/2023 | CBI ..... | (G) Surfactant for consumer, industrial, commercial applications. | (G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates. |
| P–22–0097A .... | 5 | 07/24/2023 | CBI ..... | (G) Surfactant for consumer, industrial, commercial applications. | (G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates. |
| P–22–0098A .... | 5 | 07/24/2023 | CBI ..... | (G) Surfactant for consumer, industrial, commercial applications. | (G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates. |
| P–22–0099A .... | 5 | 07/24/2023 | CBI ..... | (G) Surfactant for consumer, industrial, commercial applications. | (G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates. |
| P–22–0100A .... | 5 | 07/24/2023 | CBI ..... | (G) Surfactant for consumer, industrial, commercial applications. | (G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates. |
| P–22–0101A .... | 4 | 07/24/2023 | CBI ..... | (G) Surfactant for consumer, industrial, commercial applications. | (G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates, salts. |
| P–22–0102A .... | 4 | 07/24/2023 | CBI ..... | (G) Surfactant for consumer, industrial, commercial applications. | (G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates, salts. |
| P–22–0103A .... | 4 | 07/24/2023 | CBI ..... | (G) Surfactant for consumer, industrial, commercial applications. | (G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates, salts. |
| P–22–0104A .... | 4 | 07/24/2023 | CBI ..... | (G) Surfactant for consumer, industrial, commercial applications. | (G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates, salts. |
| P–22–0105A .... | 4 | 07/24/2023 | CBI ..... | (G) Surfactant for consumer, industrial, commercial applications. | (G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates, salts. |
| P–22–0106A .... | 4 | 07/24/2023 | CBI ..... | (G) Surfactant for consumer, industrial, commercial applications. | (G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates, salts. |
| P–22–0107A .... | 4 | 07/24/2023 | CBI ..... | (G) Surfactant for consumer, industrial, commercial applications. | (G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates, salts. |
| P–22–0108A .... | 4 | 07/24/2023 | CBI ..... | (G) Surfactant for consumer, industrial, commercial applications. | (G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates, salts. |
| P–22–0109A .... | 4 | 07/24/2023 | CBI ..... | (G) Surfactant for consumer, industrial, commercial applications. | (G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates, salts. |
| P–22–0110A .... | 4 | 07/24/2023 | CBI ..... | (G) Surfactant for consumer, industrial, commercial applications. | (G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates, salts. |
| P–22–0111A .... | 4 | 07/24/2023 | CBI ..... | (G) Surfactant for consumer, industrial, commercial applications. | (G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates, salts. |
| P–22–0112A .... | 4 | 07/24/2023 | CBI ..... | (G) Surfactant for consumer, industrial, commercial applications. | (G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates, salts. |
| P–22–0113A .... | 4 | 07/10/2023 | Solugen, Inc ..... | (G) Chemical intermediate, Additive ..... | (S) D-Glucaric acid. |
| P–22–0151A .... | 6 | 07/23/2023 | CBI ..... | (G) Surfactant for commercial applications. | (G) Glycolipids, sophorose-contg., yeast-fermented, from glycerides and carbohydrates. |
| P–22–0166 ..... | 4 | 07/21/2023 | CBI ..... | (G) Lubricant additive ..... | (G) Dicarboxylic acid, calcium salt. |
| P–22–0176A .... | 3 | 07/07/2023 | Colonial Chemical, Inc ..... | (G) Corrosion inhibitor ..... | (G) 6-[(alkyl-1-oxohexyl)amino]-hexanoic acid, compd. with 2,2′,2″-nitrilotris[ethanol] (1:1). |
| P–23–0070A .... | 4 | 07/18/2023 | CBI ..... | (G) Surfactant for cleaning products, pet shampoo, hand cleansing, laundry detergent, dishwasher detergent. | (S) Fatty Acids, C8–14, methyl-2-sulfoethyl esters, sodium salts. |
| P–23–0095 ..... | 3 | 07/17/2023 | CBI ..... | (G) Open, non-dispersive use in interior and comfort applications. | (S) Fatty acids, C18-unsatd., dimer, polymers with adipic acid, maleic anhydride, rosin, tall-oil fatty acids and triethylene glycol. |
| P–23–0098 ..... | 3 | 07/17/2023 | CBI ..... | (G) Open non-dispersive use in interior and comfort applications. | (S) Fatty acids, tall-oil, polymers with adipic acid, maleic anhydride, polymd. rosin, rosin and triethylene glycol. |
| P–23–0101A .... | 6 | 07/07/2023 | CBI ..... | (G) Chemical intermediate ..... | (G) Glycerides from fermentation of genetically modified microorganism, epoxidized. |

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 07/01/2023 TO 07/31/2023—Continued

| Case No. | Version | Received date | Manufacturer | Use | Chemical substance |
|---|---|---|---|---|---|
| P–23–0102A .... | 6 | 07/19/2023 | CBI | (G) Chemical component | (G) Glycerides from fermentation of genetically modified microorganism. |
| P–23–0103A .... | 6 | 07/19/2023 | CBI | (G) Reactant | (G) Glycerides from fermentation of genetically modified microorganism, epoxidized, reaction products with ethanol. |
| P–23–0117 ..... | 2 | 07/21/2023 | Braven Environmental, LLC | (S) Feedstock blended into fuels and fuel blendstocks, Chemical feedstock. | (G) Waste plastics, pyrolyzed, condensate. |
| P–23–0117A .... | 3 | 07/25/2023 | Braven Environmental, LLC | (S) Feedstock blended into fuels and fuel blendstocks, Chemical feedstock. | (G) Waste plastics, pyrolyzed, condensate. |
| P–23–0118A .... | 4 | 07/19/2023 | CBI | (G) Reactant | (G) Glycerides from fermentation of genetically modified microorganism, ethoxylated, reaction products with ethanol, polycyclic isocyanate. |
| P–23–0150 ..... | 2 | 07/14/2023 | CBI | (G) Industrial use for roll-on, brushing, and spray application. | (G) Branched Glycidyl Ester and Bisphenol Glycidyl Ether polymer adduct with Aralkyl Diamine. |
| P–23–0151A .... | 3 | 07/06/2023 | CBI | (G) Oil production | (G) Amides, from polyalkylamine, dioic acid anhydride and alkyl fatty acids. |
| P–23–0153 ..... | 1 | 07/12/2023 | Fujifilm Electronic Materials USA, Inc. | (G) Photoacid generator | (G) Triarylsulfonium, salt with alkylfluoro lactone sulfonyl alkyl sulfonamide. |
| P–23–0155 ..... | 1 | 07/17/2023 | Clariant Corporation | (S) Catalyst for use in petrochemical operations. | (S) Molybdenum niobium tellurium vanadium oxide. |
| P–23–0156 ..... | 1 | 07/10/2023 | Henkel Corporation | (S) Additive (*e.g.,* detergent, cleaning agent, dispersant, chelating agent, sequestering agent) used in laundry products (*e.g.,* pods, liquids). | (G) Polysubstitutedcarbocycle, polyhydroxy, polyalkyl. |
| P–23–0156A .... | 2 | 07/19/2023 | Henkel Corporation | (S) Additive (*e.g.,* detergent, cleaning agent, dispersant, chelating agent, sequestering agent) used in laundry products (*e.g.,* pods, liquids). | (G) Polysubstitutedcarbocycle, polyhydroxy, polyalkyl. |
| SN–22–0007A .. | 5 | 07/21/2023 | Braven Environmental, LLC | (G) Product of Pyrolysis manufacturing. .. | (S) Waste plastics, pyrolyzed, C5–12 fraction. |
| SN–22–0008A .. | 5 | 07/21/2023 | Braven Environmental, LLC | (G) Product of Pyrolysis Manufacturing ... | (S) Waste plastics, pyrolyzed, C20–55 fraction. |
| SN–22–0009A .. | 5 | 07/21/2023 | Braven Environmental, LLC | (G) Product of Pyrolysis Manufacturing ... | (S) Waste plastics, pyrolyzed, C9–20 fraction. |

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the type of amendment (*e.g.,* amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCS APPROVED * FROM 07/01/2023 TO 07/31/2023

| Case No. | Received date | Commencement date | If amendment, type of amendment | Chemical substance |
|---|---|---|---|---|
| P–20–0020 .... | 07/20/2023 | 07/14/2023 | N | (G) Fatty acid dimers, polymers with glycerol and triglycerides. |
| P–22–0013 .... | 07/07/2023 | 07/06/2023 | N | (G) 2-pyridinecarboxylic acid, 3-halo,4-nitrogen-substituted-5-halo-6-halo, aryl ester. |
| P–22–0021 .... | 07/24/2023 | 07/06/2023 | N | (G) Alkylphosphonic acid, calcium salt. |
| P–22–0115 .... | 07/14/2023 | 06/15/2023 | N | (S) Beta.-cyclodextrin, polymer with 2,3,5,6-tetrafluoro-1,4-benzenedicarbonitrile, hydrolyzed, 2-(trimethylammonio)ethyl ethers, chlorides. |

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission.

In Table III of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that has been received during this time-period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 07/01/2023 TO 07/31/2023

| Case No. | Received date | Type of test information | Chemical substance |
|---|---|---|---|
| P–16–0543 ..... | 07/27/2023 | Exposure Monitoring Report | (G) Halogenophosphoric acid metal salt. |

TABLE III—TEST INFORMATION RECEIVED FROM 07/01/2023 TO 07/31/2023—Continued

| Case No. | Received date | Type of test information | Chemical substance |
|---|---|---|---|
| P–22–0167 ..... | 07/21/2023 | Aquatic Invertebrate Acute Toxicity, Freshwater Daphnids (OECD Test Guideline 202); Freshwater and Saltwater Fish Acute Toxicity Test (OECD Test Guideline 203). | (G) 1,2-cycloalkanedicarboxylic acid, 1,2-bis(2-oxiranylalkyl) ester, reaction products with unsaturated carboxylic acid. |

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

*Authority:* 15 U.S.C. 2601 *et seq.*

Dated: August 15, 2023.

**Pamela Myrick,**

*Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2023–17846 Filed 8–18–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–11042–01–OA]**

## Public Meeting of the Science Advisory Board

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office is announcing a public meeting of the chartered Science Advisory Board. The purpose of the meeting is to: receive briefings from EPA; discuss a proposed SAB project to provide advice to EPA on environmental justice analysis; conduct quality reviews of three draft SAB reports titled: *SAB Review of EPA's Standardized Framework for Sewage Sludge Chemical Risk Assessment, Review of the Updated Methodology of EPA's Environmental Justice Screen (EJScreen) Mapping and Screening Tool (version 2.1),* and *Review of EPA's draft IRIS Toxicological Review of Hexavalent Chromium;* discuss a draft SAB commentary on *Volume Requirements for 2023 and Beyond under the Renewable Fuel Standard Program (RIN 2060–AV14),* and discuss recommendations received from the SAB Work Group for Review of Science Supporting EPA Decisions concerning SAB review of EPA planned regulatory actions.

**DATES:**

*Public meeting:* The chartered Science Advisory Board will meet on the following dates. All times listed are in Eastern Time.

1. Thursday, September 21, 2023, from 9:00 a.m. to 5:00 p.m.

2. Friday, September 22, 2023, from 9:00 a.m. to 3:00 p.m.

*Comments:* See the section titled ''Procedures for providing public input'' under **SUPPLEMENTARY INFORMATION** for instructions and deadlines.

**ADDRESSES:** The September 21–22, 2023 meeting will be conducted in person at the Washington Plaza Hotel, located at 10 Thomas Circle NW, Washington, DC 20005, and virtually. Please refer to the SAB website at *https://sab.epa.gov* for information on how to attend the meeting virtually.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public who wants further information concerning this notice may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), via telephone (202) 564–2155, or email at *armitage.thomas@epa.gov.* General information about the SAB, as well as any updates concerning the meeting announced in this notice, can be found on the SAB website at *https://sab.epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S. Code 10. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the chartered Science Advisory Board will hold a public meeting to receive briefings from EPA and deliberate on the following topics. (1) The SAB will discuss whether to undertake a proposed self-initiated project to provide advice to EPA on environmental justice analysis. (2) The SAB will conduct quality reviews of three draft reports developed by SAB panels. The draft reports are titled: *Review of EPA's Standardized Framework for Sewage Sludge Chemical Risk Assessment, Review of the Updated Methodology of EPA's Environmental Justice Screen (EJScreen) Mapping and Screening Tool (version 2.1),* and *Review of EPA's draft IRIS Toxicological Review of Hexavalent Chromium.* The SAB quality review process ensures that draft reports developed by SAB panels, committees, or workgroups are reviewed by the Chartered SAB before being finalized and transmitted to the EPA Administrator. (3) The SAB will discuss a draft commentary developed by an SAB workgroup on *Volume Requirements for 2023 and Beyond under the Renewable Fuel Standard Program (RIN 2060–AV14).* (4) The SAB will discuss recommendations received from the SAB Workgroup for Review of Science Supporting EPA Decisions concerning SAB review of EPA planned regulatory actions. Under the SAB's authorizing statute, the SAB ''may make available to the Administrator, within the time specified by the Administrator, its advice and comments on the adequacy of the scientific and technical basis'' of proposed rules. The SAB Workgroup for Review of Science Supporting EPA Decisions (SAB SSD Workgroup) is charged with identifying EPA planned actions that may warrant SAB review.

*Availability of meeting materials:* All meeting materials, including the agenda, will be available on the SAB web page at *https://sab.epa.gov.*

*Procedures for providing public input:* Public comment for consideration by EPA's Federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a Federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the committee's charge or meeting materials. Input from the public to the

SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comments should follow the instruction below to submit comments.

*Oral statements:* In general, individuals or groups requesting an oral presentation will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Persons interested in providing oral statements should contact the DFO, in writing (preferably via email) at the contact information noted under **FOR FURTHER INFORMATION CONTACT**, by September 14, 2023, to be placed on the list of registered speakers.

*Written statements:* Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB members, statements should be submitted to the DFO by September 14, 2023, for consideration at the September 21–22, 2023, meeting. Written statements should be supplied to the DFO at the contact information above via email. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without the explicit permission of the copyright holder.

*Accessibility:* For information on access or services for individuals with disabilities, please contact the DFO, at the contact information noted above, preferably at least ten days before the meeting, to give the EPA as much time as possible to process your request.

**V Khanna Johnston,**

*Deputy Director, Science Advisory Board Staff Office.*

[FR Doc. 2023–17384 Filed 8–18–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[CERCLA–04–2023–2526; FRL–10565–01–R4]**

### Mississippi Phosphates Corp. Superfund Site, Pascagoula, Mississippi; Notice of Proposed Settlement

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

**ACTION:** Notice of proposed settlement agreement.

**SUMMARY:** Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency is proposing to enter into an Administrative Settlement Agreement for Removal Action by Bona Fide Prospective Purchaser with Seven Seas Terminals, LLC concerning the Mississippi Phosphates Corp. Superfund Site. The settlement agreement addresses a removal action to be performed at the site by Seven Seas Terminals, LLC, a Bona Fide Prospective Purchaser.

**DATES:** The Agency will consider public comments on the proposed settlement agreement until September 20, 2023. The Agency will consider all comments received and may modify or withdraw its consent to the proposed settlement agreement, if comments received disclose facts or considerations which indicate that the proposed settlement agreement is inappropriate, improper or inadequate.

**ADDRESSES:** Copies of the settlement are available from the Agency by contacting Ms. Paula V. Painter, Program Analyst, using the contact information provided in this notice.

Comments may also be submitted by referencing the Site's name through one of the following methods:

*Internet: https://www.epa.gov/aboutepa/about-epa-region-4-southeast#r4-public-notices*

*Email: Painter.Paula@epa.gov*

**FOR FURTHER INFORMATION CONTACT:** Paula V. Painter at (404) 562–8887.

**Gregory Armstrong,**

*Acting Manager, Enforcement Branch, Superfund & Emergency Management Division.*

[FR Doc. 2023–17943 Filed 8–18–23; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[WC Docket No. 23–1; DA 23–697; FR ID [164366]**

### Next Meeting of the North American Numbering Council

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Commission released a public notice announcing the date of the first meeting of the North American Numbering Council (NANC) under its renewed charter running from September 2023 to September 2025.

**DATES:** October 25, 2023. The meeting will come to order at 2:00 p.m.

**ADDRESSES:** The meeting will be conducted via video conference and will be available to the public via the internet at *http://www.fcc.gov/live.*

**FOR FURTHER INFORMATION CONTACT:** You may also contact Christi Shewman, Designated Federal Officer, at *christi.shewman@fcc.gov* or 202–418–0646. More information about the NANC is available at *https://www.fcc.gov/about-fcc/advisory-committees/general/north-american-numbering-council.*

**SUPPLEMENTARY INFORMATION:** The NANC meeting is open to the public on the internet via live feed from the FCC's web page at *http://www.fcc.gov/live.* Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days' advance notice for accommodation requests; last minute requests will be accepted but may not be possible to accommodate. Members of the public may submit comments to the NANC in the FCC's Electronic Comment Filing System, ECFS, at *www.fcc.gov/ecfs.* Comments to the NANC should be filed in WC Docket No. 23–1. This is a summary of the Commission's document in WC Docket No. 23–1, DA 23–697, released August 14, 2023.

*Proposed Agenda:* At the October meeting, the NANC members will introduce themselves and receive

guidance from the Commission's Offices of General Counsel and Managing Director concerning federal advisory committee best practices. This agenda may be modified at the discretion of the NANC Chairwoman and the Designated Federal Officer. (5 U.S.C. app. 2 10(a)(2))

Federal Communications Commission.

**Jodie May,**

*Division Chief, Competition Policy Division, Wireline Competition Bureau.*

[FR Doc. 2023–17956 Filed 8–18–23; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** Tuesday, August 29, 2023 at 10:30 a.m. and its continuation at the conclusion of the open meeting on August 30, 2023.

**PLACE:** 1050 First Street NE, Washington, DC and virtual (This meeting will be a hybrid meeting).

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Compliance matters pursuant to 52 U.S.C. 30109.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

**CONTACT PERSON FOR MORE INFORMATION:** Judith Ingram, Press Officer; Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

**Laura E. Sinram,**

*Secretary and Clerk of the Commission.*

[FR Doc. 2023–18040 Filed 8–17–23; 4:15 pm]

**BILLING CODE 6715–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm*. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than September 5, 2023.

*A. Federal Reserve Bank of Kansas City* (Jeffrey Imgarten, Assistant Vice President) One Memorial Drive, Kansas City, Missouri 64198–0001) Comments can also be sent electronically to *KCApplicationComments@kc.frb.org*:

1. *David Clawson, individually, and as co-trustee of the LAC Clawson Irrevocable Trust, the TD Clawson Irrevocable Trust, and the MBCW Irrevocable Trust, all of Plains, Kansas*; to retain voting shares of Plains Bancshares, Inc., and thereby indirectly retain voting shares of Bank of the Plains, both of Plains, Kansas (formerly known as The Plains State Bank). Additionally, the *TD Clawson Irrevocable Trust, and David Clawson and Daniel Clawson, Plains, Kansas, as co-trustees, and Selah Farms LLC and Skybound Farms LLC, both of Meade, Kansas*; to join the Clawson Family Group, a group acting in concert, to retain voting shares of Plains Bancshares, Inc. David Clawson was previously approved by the Federal Reserve as a member of the Clawson Family Control Group.

Board of Governors of the Federal Reserve System.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2023–17929 Filed 8–18–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0182; Docket No. 2023–0053; Sequence No. 1]**

### Submission for OMB Review; Privacy Training

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding privacy training.

**DATES:** Submit comments on or before September 20, 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 Review—Open for Public Comments'' or by using the search function.

Additionally, submit a copy to GSA through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments.

*Instructions:* All items submitted must cite OMB Control No. 9000–0182, Privacy Training. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

**A. OMB Control Number, Title, and Any Associated Form(s)**

9000–0182, Privacy Training.

**B. Need and Uses**

This clearance covers the information that contractors must submit to comply with the following FAR requirements:

• 52.224–3(d). This clause requires contractors to:

(1) Maintain a record of initial and annual privacy training, for the contractor's employees that: (a) have access to a system of records; (b) create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information on behalf of an agency; or (c) design, develop, maintain, or operate a system of records; and

(2) Provide documentation of completion of such privacy training to the contracting officer if requested.

The contracting officer will use the information in contract administration and to establish that all applicable contractor and subcontractor employees comply with the privacy training requirements.

**C. Annual Burden**

*Respondents/Recordkeepers:* 1,227/49,097.

*Total Annual Responses:* 1,227.

*Total Burden Hours:* 147,598. (307 reporting hours + 147,291 recordkeeping hours).

**D. Public Comment**

A 60-day notice was published in the **Federal Register** at 88 FR 39254, on June 15, 2023. No comments were received.

*Obtaining Copies:* Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0182, Privacy Training.

**Janet Fry,**

*Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

[FR Doc. 2023–17927 Filed 8–18–23; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Notice of Meetings

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

**ACTION:** Notice of five AHRQ subcommittee meetings.

**SUMMARY:** The subcommittees listed below are part of AHRQ's Health Services Research Initial Review Group (IRG) Committee. Grant applications are to be reviewed and discussed at these meetings. Each subcommittee meeting will be closed to the public.

**DATES:** See below for dates of meetings:

1. *Healthcare Effectiveness and Outcomes Research (HEOR)*
   Date: October 11–12, 2023
2. *Healthcare Safety and Quality Improvement Research (HSQR)*
   Date: October 11–12, 2023
3. *Health System and Value Research (HSVR)*
   Date: October 12–13, 2023
4. *Healthcare Research Training (HCRT)*
   Date: October 19–20, 2023
5. *Healthcare Information Technology Research (HITR)*
   Date: October 26–27, 2023

**ADDRESSES:** Hilton Washington DC/Rockville Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** (to obtain a roster of members, agenda or minutes of the non-confidential portions of the meetings.)

Jenny Griffith, Committee Management Officer, Office of Extramural Research Education and Priority Populations, Agency for Healthcare Research and Quality (AHRQ), 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 427–1557

**SUPPLEMENTARY INFORMATION:** In accordance with section 10 (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), AHRQ announces meetings of the above-listed scientific peer review groups, which are subcommittees of AHRQ's Health Services Research Initial Review Group Committee. The subcommittee meetings will be closed to the public in accordance with the provisions set forth in 5 U.S.C. app. 2 section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: August 14, 2023.

**Marquita Cullom,**

*Associate Director.*

[FR Doc. 2023–17883 Filed 8–18–23; 8:45 am]

**BILLING CODE 4160–90–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–23–0214; Docket No. CDC–2023–0070]**

### 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 National Health Interview Survey (NHIS). NHIS is a voluntary and confidential household-based survey that collects demographic and health-related information from a nationally representative sample of the U.S. population, and has been in the field continuously since 1957.

**DATES:** CDC must receive written comments on or before October 20, 2023.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2023–0070 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**

National Health Interview Survey (NHIS) (OMB Control No. 0920–0214, Exp. 12/31/2023)—Revision — National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

Section 306 of the Public Health Service (PHS) Act (42 U.S.C.), as amended, authorizes that the Secretary of Health and Human Services (HHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States. The annual National Health Interview Survey (NHIS) is a major source of general statistics on the health of the U.S. population and has been in the field continuously since 1957. This voluntary and confidential household-based survey collects demographic and health-related information from a nationally representative sample of households and noninstitutionalized, civilian persons throughout the country. NHIS data have long been used by government, academic, and private researchers to evaluate both general health and specific issues, such as smoking, diabetes, health care coverage, and access to health care. The survey is also a leading source of data for the Congressionally-mandated ''Health US'' and related publications, as well as the single most important source of statistics to track progress toward HHS health objectives.

The NHIS sample adult and sample child questionnaires include annual core content that is scheduled to be fielded in the survey every year, rotating content that is fielded periodically, emerging content to address new topics of growing interest, and sponsored content that is fielded when external funding is available. Rotating sample adult and sample child core content on service utilization that was on the NHIS in 2023 will rotate off in 2024. Content on chronic pain and preventive services will also rotate off the sample adult core, and content on stressful life events will rotate off the sample child core. The 2024 sample adult rotating core will include items on health-related behaviors including smoking history and cessation, alcohol use, fatigue, physical activity, walking, doctor's advice to exercise, and sleep—content previously fielded on the 2022 NHIS. It will also include content on allergies and other health conditions and psychological distress, content that was previously fielded in 2021. The 2024 sample child rotating core will include questions on health-related behaviors including physical activity, neighborhood characteristics, sleep, screen time, and height and weight which were previously fielded in 2022. Sponsored content on vision and hearing will be removed from both the sample adult and sample child questionnaires. Sponsored content on arthritis will be removed from the sample adult questionnaire. Sponsored content on social support and stressful life events will be removed from the sample child questionnaire. Sponsored content on cancer control and immunizations will remain, but the specific questions will change. Sponsored cancer control content on breast, prostate, and colorectal cancer screening, family history of cancers, and genetic testing for cancer risk will be removed from the sample adult questionnaire. Sponsored cancer control content in the 2024 NHIS sample adult questionnaire will focus on cigarette smoking history, lung cancer screening, environment for walking, and sun safety, using similar questions that were used in the 2020 NHIS. Sponsored content for the 2024 NHIS sample adult and sample child questionnaire will also include questions about taste and smell that are similar to content included in the 2021 NHIS. Sponsored content on social support and loneliness will also be added to the 2024 NHIS sample adult questionnaire.

Like in past years, and in accordance with the 1995 initiative to increase the integration of surveys within the DHHS, respondents to the 2021 NHIS will serve as the sampling frame for the Medical Expenditure Panel Survey conducted by the Agency for Healthcare Research and Quality. A subsample of NHIS respondents and/or members of commercial survey panels may be identified to participate in short, web-based methodological and cognitive testing activities to evaluate the questionnaire and/or inform the development of new rotating and sponsored content using web and/or mail survey tools. In addition, subsamples of NHIS respondents may be recontacted by web, phone, or mail to ask follow-up questions on topics that are already included in the NHIS. The NHIS-Teen is a follow-back survey of adolescents that was fielded from 2021 to 2023 and may be fielded again between 2024 and 2026 if funding is available. The NHIS also includes content that is used to benchmark estimates and calibrate survey weights from probability-based online commercial survey panels as part of the NCHS Rapid Surveys System.

CDC requests OMB approval for an estimated 39,608 annual burden hours to collect from 2024–2026. There is no cost to the respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Adult Household Member | Household Roster | 36,000 | 1 | 4/60 | 2,400 |
| Sample Adult | Adult Questionnaire | 33,000 | 1 | 50/60 | 27,500 |
| Adult Family Member | Child Questionnaire | 10,000 | 1 | 22/60 | 4,000 |
| Adult Family Member | Methodological Projects | 15,000 | 1 | 20/60 | 5,000 |
| Sample Child | NHIS-Teen | 1,000 | 1 | 15/60 | 250 |
| Adult Family Member | Reinterview Survey | 5,500 | 1 | 5/60 | 458 |
| Total | | | | | 39,608 |

**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. 2023–17923 Filed 8–18–23; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–23–22DI]**

### Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Noise Exposures and Hearing Loss in the Oil and Gas Extraction Industry'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on May 12, 2023 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

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

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

**Proposed Project**

Noise Exposures and Hearing Loss in the Oil and Gas Extraction Industry—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

Oil and gas extraction (OGE) workers play an important role in supporting the United States economy and help fulfill the energy needs of Americans and American businesses. OGE workers have significant risks for a variety of exposures at oil and gas well sites. There has been no significant occupational noise exposure research in the United States onshore upstream OGE sector. This proposed project will characterize relationships between noise exposure, chemical exposures, hearing loss, and hearing loss prevention practices within the onshore OGE industry. Primary data will be collected using three approaches. First, researchers will collect direct measurements of noise and ototoxic chemicals on job sites, including personal exposure assessments of OGE workers. Second, researchers will use a questionnaire to collect information on noise and chemical exposures, hearing loss, and associated factors among OGE workers. Third, audiometry tests performed by NIOSH will be offered to industry partners to further understand extent of hearing loss amongst OGE workers.

CDC requests OMB approval for an estimated 106 annual burden 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) |
|---|---|---|---|---|
| Oil and Gas Workers | Noise and Hearing Questionnaire | 167 | 1 | 17/60 |
| Oil and Gas Workers | Informed Consent | 167 | 1 | 15/60 |
| Oil and Gas Workers | Audiometry Testing | 33 | 1 | 30/60 |

**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. 2023–17919 Filed 8–18–23; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–23–0314]**

### Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''The National Survey of Family Growth (NSFG)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on April 7, 2023 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

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

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

**Proposed Project**

The National Survey of Family Growth (NSFG) (OMB Control No. 0920–0314, Exp. 12/31/2024)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on ''family formation, growth, and dissolution,'' as well as ''determinants of health'' and ''utilization of health care'' in the United States. This clearance request includes the data collection in 2024–2026 for the continuous National Survey of Family Growth (NSFG).

The NSFG was conducted periodically between 1973 and 2002, continuously in 2006–2010, and after a break of 15 months, continuously in 2011–2019, by the NCHS, CDC. Each year, about 13,500 households will be screened, with about 5,000 participants interviewed annually. Participation in the NSFG is completely voluntary and confidential. Interviews are expected to average 50 minutes for males and 75 minutes for females. The response rate during the 2011–2019 data collection period ranged from 64.5% to 74.0%, and the cumulative response rate for this 8-year fieldwork period was 67.7%.

The NSFG program produces descriptive statistics which document factors associated with birth and pregnancy rates, including contraception, infertility, marriage, cohabitation, and sexual activity, in the US household population 15–49 years (15–44 prior to 2015), as well as behaviors that affect the risk of HIV and other sexually transmitted diseases (STD). The survey also disseminates statistics on the medical care associated with contraception, infertility, pregnancy, and related health conditions.

NSFG data users include the DHHS programs that fund the survey, including CDC/NCHS and eleven others within the Department of Health and Human Services:

- Eunice Kennedy Shriver National Institute for Child Health and Human Development (NIH/NICHD)
- Office of Population Affairs (OPA)
- Children's Bureau in the Administration for Children and Families (ACF/CB)
- Office of Planning, Research, and Evaluation (ACF/CB)
- Office on Women's Health (OASH/OWH)
- CDC's Division of HIV/AIDS Prevention (CDC/NCHHSTP/DHAP)
- CDC's Division of STD Prevention (CDC/NCHHSTP/DSTDP)
- CDC's Division of Adolescent and School Health (CDC/NCHHSTP/DASH)
- CDC's Division of Reproductive Health (CDC/NCCDPHP/DRH)
- CDC's Division of Cancer Prevention and Control (CDC/NCCDPHP/DCPC)
- CDC's Division of Violence Prevention (CDC/NCIPC/DVP)

The NSFG is also used by state and local governments (primarily for

benchmarking to national data); private research and action organizations focused on men's and women's health, child well-being, and marriage and the family; academic researchers in the social and public health sciences; journalists, and many others.

This submission requests approval for a revision to NSFG data collection for three years. The revision request includes the increase of the main survey incentive from $40 to $60, a small set of questionnaire revisions beginning in Year 3 (2024) data collection and to conduct several methodological studies designed to improve the efficiency and validity of NSFG data collection for the purposes described above. The total estimated annualized time burden to respondents is 6,584 hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Respondents | Form | Number of responses | Responses per respondent | Average burden/ response (in hours) |
|---|---|---|---|---|
| Household member | Screener Interview | 15,000 | 1 | 5/60 |
| Household Female 15–49 years of age | Female Interview | 2,750 | 1 | 75/60 |
| Household Male 15–49 years of age | Male Interview | 2,250 | 1 | 50/60 |
| Household member | Screener Verification | 230 | 1 | 2/60 |
| Household Individual 15–49 years of age | Main Verification | 150 | 1 | 5/60 |

**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. 2023–17920 Filed 8–18–23; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–23–0666; Docket No. CDC–2023–0068]**

### 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 continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled National Healthcare Safety Network (NHSN). NHSN provides facilities, States, regions, and the nation with data necessary to identify problem areas, measure the progress of prevention efforts, and ultimately eliminate healthcare-associated infections (HAIs) nationwide.

**DATES:** CDC must receive written comments on or before October 20, 2023.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2023–0068 by either of the following methods:

- *Federal eRulemaking Portal: ww.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

National Healthcare Safety Network (NHSN) (OMB Control No. 0920–0666, Exp. 6/30/2026)—Revision—National Center for Emerging and Zoonotic Infection Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

#### Background and Brief Description

The Division of Healthcare Quality Promotion (DHQP), National Center for Emerging and Zoonotic Infectious

Diseases (NCEZID), Centers for Disease Control and Prevention (CDC) collects data from healthcare facilities in the National Healthcare Safety Network (NHSN) (OMB Control No. 0920–0666). NHSN provides facilities, States, regions, and the nation with data necessary to identify problem areas, measure the progress of prevention efforts, and ultimately eliminate healthcare-associated infections (HAIs) nationwide. NHSN allows healthcare facilities to track blood safety errors and various healthcare-associated infection prevention practice methods such as healthcare personnel influenza vaccine status and corresponding infection control adherence rates. NHSN currently has seven components: Patient Safety (PS), Healthcare Personnel Safety (HPS), Biovigilance (BV), Long-Term Care Facility (LTCF), Outpatient Procedure (OPC), Dialysis, and Neonatal Component.

Data reported under the PS Component are used to determine the magnitude of the healthcare-associated adverse events and trends in the rates of the events, in the distribution of pathogens, and in the adherence to prevention practices. Data will help detect changes in the epidemiology of adverse events resulting from new medical therapies and changing patient risks. Additionally, reported data is being used to describe the epidemiology of antimicrobial use and resistance and to better understand the relationship of antimicrobial therapy to this rising problem. Under the HPS Component, protocols and data on events—both positive and adverse—are used to determine: (1) the magnitude of adverse events in healthcare personnel; and (2) compliance with immunization and sharps injuries safety guidelines. Under the BV Component, data on adverse reactions and incidents associated with blood transfusions are reported and analyzed to provide national estimates of adverse reactions and incidents. Under the LTCF Component, data is captured from skilled nursing facilities. Reporting methods under the LTCF component have been created by using forms from the PS Component as a model with modifications to specifically address the specific characteristics of LTCF residents and the unique data needs of these facilities reporting into NHSN. The Respiratory Tract Infection Form (RTI)—will not to be used by NHSN users, but as part of an EIP project with four EIP sites. The Form is titled *Denominators for Healthcare Associated Infections (HAIs): Respiratory Tract Infections.* The purpose of this form is to allow testing prior to introducing a new module and forms to NHSN users. The CDC's Epidemiology Research & Innovations Branch (ERIB) team will use the form to perform field testing of variables to explore the utilization, applicability, and data collection burden associated with these variables. This process will inform areas of improvement prior to incorporating the new module, including protocol, forms, and instructions into NHSN. The Dialysis Component offers a simplified user interface for dialysis users to streamline their data entry and analysis processes as well as provide options for expanding in the future to include dialysis surveillance in settings other than outpatient facilities. The Outpatient Procedure Component (OPC) gathers data on the impact of infections and outcomes related to operative procedures performed in Ambulatory Surgery Centers (ASCs). The OPC is used to monitor two event types: Same Day Outcome Measures and Surgical Site Infections (SSIs). The Neonatal Component focuses on premature neonates and the healthcare associated events that occur as a result of their prematurity. This component currently has one module, which includes Late Onset-Sepsis and Meningitis. NHSN has increasingly served as the operating system for HAI reporting compliance through legislation established by the States. As of July 2023, 37 States, the District of Columbia and the City of Philadelphia, Pennsylvania have opted to use NHSN as their primary system for mandated reporting. Reporting compliance is completed by healthcare facilities in their respective jurisdictions, with emphasis on those States and municipalities acquiring varying consequences for failure to use NHSN. Additionally, healthcare facilities in five U.S. territories (Puerto Rico, American Samoa, the U.S. Virgin Islands, Guam, and the Northern Mariana Islands) are voluntarily reporting to NHSN. Additional territories are projected to follow with similar use of NHSN for reporting purposes. NHSN's data is used to aid in the tracking of HAIs and guide infection prevention activities/practices that protect patients. The Centers for Medicare and Medicaid Services (CMS) and other payers use these data to determine incentives for performance at healthcare facilities across the U.S. and surrounding territories, and members of the public may use some protected data to inform their selection among available providers. Each of these parties is dependent on the completeness and accuracy of the data. CDC and CMS work closely and are fully committed to ensuring complete and accurate reporting, which are critical for protecting patients and guiding national, State, and local prevention priorities. CMS collects some HAI data and healthcare personnel influenza vaccination summary data, which is done on a voluntary basis as part of its Fee-for-Service Medicare quality reporting programs, while others may report data required by a Federal mandate. Facilities that fail to report quality measure data are subject to partial payment reduction in the applicable Medicare Fee-for-Service payment system. CMS links their quality reporting to payment for Medicare-eligible acute care hospitals, inpatient rehabilitation facilities, long-term acute care facilities, oncology hospitals, inpatient psychiatric facilities, dialysis facilities, and ambulatory surgery centers. Facilities report HAI data and healthcare personnel influenza vaccination summary data to CMS via NHSN as part of CMS's quality reporting programs to receive full payment. Still, many healthcare facilities, even in States without HAI reporting legislation, submit limited HAI data to NHSN voluntarily. NHSN's data collection updates continue to support the incentive programs managed by CMS. For example, survey questions support requirements for CMS' quality reporting programs. Additionally, CDC has collaborated with CMS on a voluntary National Nursing Home Quality Collaborative, which focuses on recruiting nursing homes to report HAI data to NHSN and to retain their continued participation.

The NHSN data collection was previously approved in June of 2023 for 6,209,922 responses and 1,693,215 annual burden hours. The proposed changes in this Revision include modifications to 15 existing data collection forms and one new form. CDC requests OMB approval for an estimated annual burden 1,524,039 hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

| Form number & name | Number of respondents | Number of responses per respondent | Average burden per response (min./hour) | Total burden (hours) |
|---|---|---|---|---|
| 57.100 NHSN Registration Form | 2,000 | 1 | 5/60 | 167 |
| 57.101 Facility Contact Information | 2,000 | 1 | 10/60 | 333 |
| 57.103 Patient Safety Component—Annual Hospital Survey | 5,311 | 1 | 135/60 | 11,950 |
| 57.104 Facility Administrator Change Request Form | 800 | 1 | 5/60 | 67 |
| 57.105 Group Contact Information | 1,000 | 1 | 5/60 | 83 |
| 57.106 Patient Safety Monthly Reporting Plan | 6,387 | 12 | 15/60 | 19,161 |
| 57.108 Primary Bloodstream Infection (BSI) | 5,775 | 5 | 38/60 | 18,288 |
| 57.111 Pneumonia (PNEU) | 1,800 | 2 | 30/60 | 1800 |
| 57.112 Ventilator-Associated Event | 5,463 | 8 | 28/60 | 20,395 |
| 57.113 Pediatric Ventilator-Associated Event (PedVAE) | 334 | 1 | 30/60 | 167 |
| 57.114 Urinary Tract Infection (UTI) | 6,000 | 5 | 20/60 | 10,000 |
| 57.115 Custom Event | 600 | 91 | 35/60 | 31,850 |
| 57.116 Denominators for Neonatal Intensive Care Unit (NICU) | 1,100 | 12 | 4/60 | 880 |
| 57.117 Denominators for Specialty Care Area (SCA)/Oncology (ONC) | 500 | 12 | 5/60 | 500 |
| 57.118 Denominators for Intensive Care Unit (ICU)/Other locations (not NICU or SCA) | 5,500 | 60 | 5/60 | 27,500 |
| 57.120 Surgical Site Infection (SSI) | 6,000 | 9 | 35/60 | 31,500 |
| 57.121 Denominator for Procedure | 6,000 | 602 | 10/60 | 602,000 |
| 57.122 HAI Progress Report State Health Department Survey | 55 | 1 | 28/60 | 26 |
| 57.123 Antimicrobial Use and Resistance (AUR)-Microbiology Data Electronic Upload Specification Tables | 5,500 | 12 | 5/60 | 5,500 |
| 57.124 Antimicrobial Use and Resistance (AUR)-Pharmacy Data Electronic Upload Specification Tables | 5,500 | 12 | 5/60 | 5,500 |
| 57.125 Central Line Insertion Practices Adherence Monitoring | 500 | 213 | 25/60 | 44,375 |
| 57.126 MDRO or CDI Infection Form | 720 | 11 | 30/60 | 3,960 |
| 57.127 MDRO and CDI Prevention Process and Outcome Measures Monthly Monitoring | 5,500 | 29 | 15/60 | 39,875 |
| 57.128 Laboratory-identified MDRO or CDI Event | 4,800 | 79 | 20/60 | 126,400 |
| 57.129 Adult Sepsis | 50 | 250 | 25/60 | 5,208 |
| 57.135 Late Onset Sepsis/Meningitis Denominator Form: Data Table for monthly electronic upload | 300 | 6 | 5/60 | 150 |
| 57.136 Late Onset Sepsis/Meningitis Event Form: Data Table for Monthly Electronic Upload | 300 | 6 | 5/60 | 150 |
| 57.137 Long-Term Care Facility Component—Annual Facility Survey | 17,700 | 1 | 122/60 | 35,990 |
| 57.138 Laboratory-identified MDRO or CDI Event for LTCF | 1,086 | 24 | 20/60 | 8,688 |
| 57.139 MDRO and CDI Prevention Process Measures Monthly Monitoring for LTCF | 1,019 | 12 | 20/60 | 4,076 |
| 57.140 Urinary Tract Infection (UTI) for LTCF | 339 | 36 | 35/60 | 7,119 |
| 57.141 Monthly Reporting Plan for LTCF | 1,099 | 12 | 15/60 | 3,297 |
| 57.142 Denominators for LTCF Locations | 714 | 12 | 35/60 | 4,998 |
| 57.143 Prevention Process Measures Monthly Monitoring for LTCF | 357 | 12 | 5/60 | 357 |
| 57.150 LTAC Annual Survey | 392 | 1 | 89/60 | 581 |
| 57.151 Rehab Annual Survey | 1,160 | 1 | 89/60 | 1,721 |
| 57.200 Healthcare Personnel Safety Component Annual Facility Survey | 50 | 1 | 480/60 | 400 |
| 57.204 Healthcare Worker Demographic Data | 50 | 200 | 20/60 | 3,333 |
| 57.205 Exposure to Blood/Body Fluids | 50 | 50 | 60/60 | 2,500 |
| 57.206 Healthcare Worker Prophylaxis/Treatment | 50 | 30 | 15/60 | 375 |
| 57.207 Follow-Up Laboratory Testing | 50 | 50 | 15/60 | 625 |
| 57.210 Healthcare Worker Prophylaxis/Treatment-Influenza | 50 | 50 | 10/60 | 417 |
| 57.300 Hemovigilance Module Annual Survey | 500 | 1 | 85/60 | 708 |
| 57.301 Hemovigilance Module Monthly Reporting Plan | 500 | 12 | 60/60 | 6,000 |
| 57.303 Hemovigilance Module Monthly Reporting Denominators | 500 | 12 | 70/60 | 7,000 |
| 57.305 Hemovigilance Incident | 500 | 10 | 10/60 | 833 |
| 57.306 Hemovigilance Module Annual Survey—Non-acute care facility | 500 | 1 | 35/60 | 292 |
| 57.307 Hemovigilance Adverse Reaction—Acute Hemolytic Transfusion Reaction | 500 | 4 | 20/60 | 667 |
| 57.308 Hemovigilance Adverse Reaction—Allergic Transfusion Reaction | 500 | 4 | 20/60 | 667 |
| 57.309 Hemovigilance Adverse Reaction—Delayed Hemolytic Transfusion Reaction | 500 | 1 | 20/60 | 167 |
| 57.310 Hemovigilance Adverse Reaction—Delayed Serologic Transfusion Reaction | 500 | 2 | 20/60 | 333 |
| 57.311 Hemovigilance Adverse Reaction—Febrile Non-hemolytic Transfusion Reaction | 500 | 4 | 20/60 | 667 |
| 57.312 Hemovigilance Adverse Reaction—Hypotensive Transfusion Reaction | 500 | 1 | 20/60 | 167 |
| 57.313 Hemovigilance Adverse Reaction—Infection | 500 | 1 | 20/60 | 167 |
| 57.314 Hemovigilance Adverse Reaction—Post Transfusion Purpura | 500 | 1 | 20/60 | 167 |
| 57.315 Hemovigilance Adverse Reaction—Transfusion Associated Dyspnea | 500 | 1 | 20/60 | 167 |
| 57.316 Hemovigilance Adverse Reaction—Transfusion Associated Graft vs. Host Disease | 500 | 1 | 20/60 | 167 |

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Form number & name | Number of respondents | Number of responses per respondent | Average burden per response (min./hour) | Total burden (hours) |
|---|---|---|---|---|
| 57.317 Hemovigilance Adverse Reaction—Transfusion Related Acute Lung Injury | 500 | 1 | 20/60 | 167 |
| 57.318 Hemovigilance Adverse Reaction—Transfusion Associated Circulatory Overload | 500 | 2 | 20/60 | 333 |
| 57.319 Hemovigilance Adverse Reaction—Unknown Transfusion Reaction | 500 | 1 | 20/60 | 167 |
| 57.320 Hemovigilance Adverse Reaction—Other Transfusion Reaction | 500 | 1 | 20/60 | 167 |
| 57.400 Outpatient Procedure Component—Annual Facility Survey | 350 | 1 | 10/60 | 117 |
| 57.401 Outpatient Procedure Component—Monthly Reporting Plan | 350 | 12 | 15/60 | 1,050 |
| 57.402 Outpatient Procedure Component Same Day Outcome Measures | 50 | 1 | 40/60 | 33 |
| 57.403 Outpatient Procedure Component—Monthly Denominators for Same Day Outcome Measures | 50 | 400 | 40/60 | 13,333 |
| 57.404 Outpatient Procedure Component—SSI Denominator | 300 | 100 | 10/60 | 5,000 |
| 57.405 Outpatient Procedure Component—Surgical Site (SSI) Event | 300 | 36 | 35/60 | 6,300 |
| 57.500 Outpatient Dialysis Center Practices Survey | 7,400 | 1 | 125/60 | 15,417 |
| 57.501 Dialysis Monthly Reporting Plan | 7,400 | 12 | 5/60 | 7,400 |
| 57.502 Dialysis Event | 7,400 | 30 | 27/60 | 99,900 |
| 57.503 Denominator for Outpatient Dialysis | 7,400 | 24 | 10/60 | 29,600 |
| 57.504 Prevention Process Measures Monthly Monitoring for Dialysis | 1,730 | 12 | 75/60 | 25,950 |
| 57.505 Dialysis Patient Influenza Vaccination | 615 | 50 | 10/60 | 5,125 |
| 57.506 Dialysis Patient Influenza Vaccination Denominator | 615 | 5 | 10/60 | 3075 |
| 57.507 Home Dialysis Center Practices Survey | 450 | 1 | 36/60 | 270 |
| Weekly Healthcare Personnel Influenza Vaccination Cumulative Summary for Non-Long-Term Care Facilities | 125 | 52 | 60/60 | 6,500 |
| Weekly Healthcare Personnel Influenza Vaccination Cumulative Summary for Long-Term Care Facilities | 1,200 | 52 | 60/60 | 62,400 |
| Weekly Resident Influenza Vaccination Cumulative Summary for Long-Term Care Facilities | 2,500 | 52 | 60/60 | 130,000 |
| Annual Healthcare Personnel Influenza Vaccination Summary | 5,000 | 1 | 120/60 | 10,000 |
| Healthcare-facility onset, antibiotic-treated Clostridioides difficile (C. difficile) Infection (HT–CDI) Event Module Annual Reporting Plan | 7,821 | 1 | 10/60 | 1,304 |
| Total Estimated Annual Burden Hours | ..... | ..... | ..... | 1,524,039 |

**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. 2023–17924 Filed 8–18–23; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Solicitation of Nominations for Appointment to the Board of Scientific Counselors, National Center for Health Statistics

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), is seeking nominations for membership on the Board of Scientific Counselors, National Center for Health Statistics (BSC, NCHS). The BSC, NCHS consists of up to 15 experts including the Chair in fields associated with the scientific and technical program objectives of the Center.

**DATES:** Nominations for membership on the BSC, NCHS will be accepted on a rolling basis. To be considered for the upcoming nomination slate, submissions should be received no later than September 22, 2023. Submissions received after this time will not be considered for the current membership cycle.

**ADDRESSES:** All nominations should be emailed to *NCHS-BSCmail@cdc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Rebecca Hines, M.H.S., Designated Federal Officer, Board of Scientific Counselors, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Mailstop P–08, Hyattsville, Maryland 20782. Telephone: (301) 458–4715; Email: *RSHines@cdc.gov.*

**SUPPLEMENTARY INFORMATION:** Nominations are sought for individuals who have the expertise and qualifications necessary to contribute to the accomplishment of the objective of the Board of Scientific Counselors, National Center for Health Statistics (BSC, NCHS) to provide advice and guidance on statistical and epidemiological research, data collection, and activities that support NCHS, such as: determinants of health; extent and nature of illness and disability, including life expectancy; incidence of various acute and chronic illnesses/impairments and accidental injuries; prevalence of chronic diseases and impairments; infant and maternal morbidity and mortality; nutrition status; environmental, social, and other hazards affecting health status; health resources associated with physician and dental visits, hospitalizations, nursing, extended care facilities, home health agencies, and other health institutions; utilization of health care in a broad array of settings; trends in prices/costs and sources of payments; federal, state, and local government expenditures for health care services; the relationship between demographic and socioeconomic characteristics and health characteristics; family formation, growth, and dissolution; new or improved methods for obtaining current data on the aforementioned factors; data security and confidentiality and

comparability of data; and standardized means to collect information and statistics.

Nominees will be selected based on expertise in fields associated with statistical, demographic, and epidemiological research, such as biostatistics/biometry, survey methodology and polling, sociology, reproductive health, minority health, nutrition, social and behavioral health sciences, and population-based public and environmental health; public health practice, *e.g.,* state and local health data systems; operations research, health policy, and health services research, including health economics and econometrics; provision of health services, *e.g.,* medicine, nursing, rehabilitation, other allied health care, and preventive medicine; health quality measurement and health indicators; health promotion; medical informatics; and data and health information security, storage, confidentiality, and dissemination.

The Board makes recommendations about opportunities for NCHS programs to examine and employ new approaches to monitoring and evaluating key public health, health policy, and public policy changes. This includes automation, data modernization, and technological improvements to enhance data collection, analysis, access, and reporting capabilities of the Center. Members of the BSC, NCHS are responsible for surveying the state-of-the-art of their respective disciplines, and reporting, as appropriate, to the full Board and recommending convening of workshops or symposia to educate or update all Board members.

The selection of members is based on candidates' qualifications to contribute to accomplishing BSC, NCHS objectives (*https://www.cdc.gov/nchs/about/bsc.htm*). Members may be invited to serve for up to four-year terms.

Department of Health and Human Services (HHS) policy stipulates that committee membership be balanced in terms of points of view represented and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens and cannot be full-time employees of the U.S. Government. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Board members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning of and annually during their terms. The Centers for Disease Control and Prevention (CDC) reviews potential candidates for BSC, NCHS membership each year and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in June, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year. Candidates should submit the following items:

- Cover letter that includes a statement of interest for serving on the Board and the names of two professional references. Candidates may submit references from current HHS employees if they wish, but at least one reference must be submitted by a person not employed by an HHS agency (*e.g.,* CDC, Health Resources and Services Administration, National Institutes of Health, Agency for Healthcare Research and Quality).
- Current resume/curriculum vitae, including complete contact information (telephone numbers, work and home postal mailing addresses, email address) in Microsoft Word or PDF format.
- Short biographical sketch, including the top 3–5 areas of expertise.

Nominations may be submitted by the candidate or by the person/organization recommending the candidate.

The Director, Office of Strategic Business Initiatives, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Office of Strategic Business Initiatives, Centers for Disease Control and Prevention.*

[FR Doc. 2023–17848 Filed 8–18–23; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60-Day–23–23HM; Docket No. CDC–2023–0071]**

### 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 information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Assessing Fatigue and Fatigue Management in U.S. Onshore Oil and Gas Extraction. This study is designed to examine oil and gas extraction workers' determinants of fatigue and fatigue mitigation strategies.

**DATES:** CDC must receive written comments on or before October 20, 2023.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2023–0071 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**

Assessing Fatigue and Fatigue Management in U.S. Onshore Oil and Gas Extraction—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

Oil and gas extraction (OGE) workers play an important role in supporting the United States economy and help fulfill the energy needs of Americans and American businesses. OGE workers have significant risks for a variety of exposures at oil and gas well sites. There has been no significant fatigue research in the United States onshore upstream OGE sector. This proposed project will characterize relationships between sleep, alertness, fatigue, fatigue management, and related factors, within the onshore OGE industry. Primary data will be collected using three approaches. First, researchers will collect direct measurements of sleep and alertness among OGE workers. Second, researchers will use questionnaires to collect information on OGE worker demographics, occupation, general heath, normal working hours, commute times, physical sleeping environment, and typical sleep quality. Third, researchers will collect qualitative information through interviews with workers, front-line supervisors, health and safety leaders, as well as subject matter experts, to understand challenges and opportunities related to fatigue management in OGE.

CDC requests OMB approval for an estimated 404 annual burden 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) |
|---|---|---|---|---|---|
| Land-based OGE workers | Baseline Questionnaire | 80 | 1 | 15/60 | 20 |
| Land-based OGE workers | Daily Pre-Shift Questionnaires | 80 | 14 | 3/60 | 56 |
| Land-based OGE workers | Daily Post-Shift Questionnaires | 80 | 14 | 3/60 | 56 |
| Land-based OGE workers | Psychomotor Vigilance Test (PVT) | 80 | 28 | 5/60 | 187 |
| Land-based OGE workers | Actigraphy | 80 | 1 | 15/60 | 20 |
| Land-based OGE workers | Worker Interview Guide | 30 | 1 | 1.5 | 45 |
| Field-level Supervisors | Manager Interview Guide | 10 | 1 | 1 | 10 |
| Health and Safety Leaders | HSE Interview Guide | 7 | 1 | 1 | 7 |
| Subject Matter Experts | SME Interview Guide | 3 | 1 | 1 | 3 |
| Total | | | | | 404 |

**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. 2023–17922 Filed 8–18–23; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–23–1373; Docket No. CDC–2023–0069]**

### 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 continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Fire Fighter Fatality Investigation and Prevention Program (FFFIPP) Survey. This data collection will evaluate fire department implementation of the NIOSH FFFIPP recommendations, and assess whether NIOSH FFFIPP recommendations are utilized by fire departments to identify barriers to implementation of

recommendations and to identify areas for potential intervention projects.

**DATES:** CDC must receive written comments on or before October 20, 2023.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2023–0069 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**

Fire Fighter Fatality Investigation and Prevention Program (FFFIPP) Survey (OMB Control No. 0920–1373, Exp. 10/31/2023)—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Fire Fighter Fatality Investigation and Prevention Program (FFFIPP) conducts independent investigations of fire fighter (FF) line-of-duty deaths (LODD) and recommends ways to prevent deaths and injuries. In 2003, an evaluation was conducted to determine the extent to which recommendations from NIOSH investigations of FF fatalities are being implemented by fire departments (FDs). Since then, there have been changes to the Program recommendations and methods of disseminating FFFIPP reports. For example, there have been changes to: (1) the details and types of recommendations for preventing FF fatalities; and (2) the method to disseminate the FFFIPP reports to FDs (driven in large part by cost). Dissemination methods have evolved from hardcopy mailings to FDs, to internet-based, with notifications of new FFFIPP reports by the fire service media and if FDs sign-up at the NIOSH website for notifications of new reports.

Understanding how, or if NIOSH recommendations are used by various types of FDs will allow a better understanding of barriers to the use of proven prevention recommendations and help identify approaches to improve the delivery of services to FDs. Additionally, we will gain insight into whether changes to the communication and dissemination have impacted the reach of these recommendations. Knowing if different types of FDs are aware of and willing to access FFFIPP reports and recommendations in non-print formats is critical, as these recommendations cannot have the intended impact of saving FF lives if large numbers of FDs do not know where to find NIOSH reports or have the resources to access them.

The purpose of this data collection is to assess FD implementation of the NIOSH FFFIPP recommendations and identify barriers to implementation of recommendations. Results will provide an understanding of current FD operational procedures, insight into MV-related activities and related policies, and identify whether FFFIPP recommendations are being utilized by FDs. Findings will inform strategies for communication of future recommendations and identify areas for potential intervention projects in order to improve the delivery of services and help ensure an effective and efficient stakeholder experience with the Program. The estimate for burden hours is based on a pilot test of the survey instrument by eight FD personnel. In the pilot test, the average time to complete the survey, including time for reviewing instructions, gathering needed information, and completing the survey was 10–25 minutes. There are screening questions at the beginning of the survey so all respondents may not actually participate. The respondent universe is based on: (1) 4,500 fire departments; (2) eight strata (region, department type); and (3) position (FF, chief, company officer). An estimated 13,500 respondents are anticipated to participate in the survey; the annual respondent burden is estimated to be 4,050 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) |
|---|---|---|---|---|---|
| Firefighters (FF) | Survey | 4,500 | 1 | 18/60 | 1,350 |

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| Fire Chiefs | Survey | 4,500 | 1 | 18/60 | 1,350 |
| Company Officers | Survey | 4,500 | 1 | 18/60 | 1,350 |
| Total | | | | | 4,050 |

**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. 2023–17926 Filed 8–18–23; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–23–22FZ; Docket No. CDC–2023–0072]**

### 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 mChoice: Improving PrEP Uptake and Adherence among Minority MSM through Tailored Provider Training and Adherence Assistance in Two High Priority Settings. The collection is part of a research study designed to implement and evaluate the effectiveness of an intervention that utilizes evidence-based education and support tools to improve preexposure prophylaxis (PrEP) adherence among young men who have sex with men (YMSM).

**DATES:** CDC must receive written comments on or before October 20, 2023.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2023–0072 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**

*mChoice:* Improving PrEP Uptake and Adherence among Minority MSM through Tailored Provider Training and Adherence Assistance in Two High Priority Settings—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention is requesting approval for 36 months of data collection titled, ''mChoice: Improving PrEP Uptake and Adherence among Minority MSM through Tailored Provider Training and Adherence Assistance in Two High Priority Settings.'' The purpose of this study is to implement and evaluate the effectiveness of a clinic-based intervention that utilizes evidence-based education and support tools to improve preexposure prophylaxis (PrEP) adherence among young men who have sex with men (YMSM). The goals of this research study are to: (1) improve the overall PrEP experience of providers and YMSM patients; and (2) increase our understanding of provider and patient factors that influence the choice of PrEP regimen by MSM in clinical settings. This study will be carried out in four clinics in New York, NY (two clinics) and Birmingham, AL (two clinics).

Aim 1 of the study will enroll 400 YMSM (ages 18–39) who identify as male, non-binary, or genderqueer; were assigned male sex at birth; are taking or initiating PrEP; own a smartphone; understand and read English or Spanish; have a self-reported history of sex with men in the past 12-months; and live in the NYC or Birmingham, AL areas. Participants may identify as any race or ethnicity, but to ensure a diverse sample comprised mainly of racial/ethnic minority participants, the study will utilize recruitment controls to enroll at least 50% African American/Black and/or Hispanic/Latino participants. Patient participants will be recruited to the study through a combination of approaches including flyers and social media, referral, in-person outreach, and through word of mouth. Rolling enrollment will continue until enrollment targets are reached; each Aim 1 participant will be followed for 12 months. All participants will receive PrEP clinical services congruent with CDC PrEP guidelines. Participants using oral PrEP will receive CleverCap, an electronic medication monitoring device, that will track and support medication adherence. At the 3-month study visit, participants using oral PrEP will receive the mChoice mobile phone application, an evidence-based intervention that supports PrEP use through medication monitoring, study staff interaction, and other resources. Aim 1 assessments include: a baseline survey of self-reported demographic factors, sexual and drug use behaviors, and potential cofactors of sexual and drug use behavior including attitudes, beliefs, knowledge, traits, and other psychosocial factors; follow-up surveys at 3-, 6-, 9-, and 12-month study visits which will assess experiences with PrEP, PrEP adherence, and behavioral and social factors; medication adherence data from CleverCap; participant use and voluntary self-reported adherence and HIV exposure risk-related data from the mChoice app; PrEP clinical care data from clinic electronic medical records; and urine studies assessing PrEP adherence. The information collected in Aim 1 will be used to evaluate the effectiveness of the mChoice intervention to improve PrEP adherence and persistence, and to increase understanding of PrEP experiences and factors that influence PrEP choices among MSM in clinical settings.

Aim 2 of the study will enroll 30 YMSM who participated in Aim 1; 15 from New York and 15 from Alabama. Participants will be recruited at Aim 1 study visits. Study staff will conduct in-depth interviews with Aim 2 participants exploring their experiences with PrEP, reasons for PrEP choices, and thoughts about the mChoice intervention. Data collected in Aim 2 will contribute to the evaluation of the mChoice intervention, implementation, and contribute to understanding factors that influence PrEP choices by MSM in clinical settings.

Aim 3 of the study will include 20 health care providers (10 from New York and 10 from Alabama) involved in the direct delivery of PrEP services at participating clinical sites. Providers may include nurse practitioners, physicians, PrEP coordinators/navigators, medical assistants, and other cross-trained coordinators from the participating clinics. Providers will be recruited via flyers, emails to clinic staff, and referrals. Providers will receive education and training designed to improve knowledge of PrEP options and clinical recommendations and enhance provider communications with patients. Aim 3 includes practice facilitation, an intervention that includes identification of a clinic champion who will engage other providers in embracing PrEP recommendations, as well as ongoing support from a practice coach who will offer tools, resources, hands-on guidance, and content expertise to assist the clinic team in developing strategies to improve clinical PrEP services. Aim 3 assessments include notes from practice facilitation coaching sessions; in-depth interviews of participating providers exploring their experiences with the intervention and thoughts about providing PrEP clinical services; and a clinic assessment completed by clinic staff every six months to describe the current implementation of PrEP services at their clinical site. These data will inform ongoing practice improvement in PrEP clinical services and increase understanding of provider experiences with providing PrEP clinical services.

It is expected that half of screened persons will meet study eligibility. For all aims we anticipate that screening and completion of the locator form will each take five minutes. Study staff will assist Aim 1 participants with onboarding the CleverCap device and mChoice app, a process that will take 20 minutes. Aim 1 participants will complete the baseline survey once (anticipated 30 minutes completion time) and the follow-up survey four times (anticipated completion time 30 minutes each) over their 12-month participation period. Total study enrollment for Aim 1 is 400, over the 3-year data collection period the estimated annual enrollment is 134. Aims 2 and 3 interviews will take 60 minutes to complete. For Aim 2, total study enrollment is 30, over the 3-year data collection period the estimated annual enrollment is 10. For Aim 3, total study enrollment is 20, over the 3-year data collection period the estimated annual enrollment is seven. Additionally, a single Aim 3 participant at each of the four participating clinic sites will complete a clinic assessment form every six months throughout the study period.

There are no costs to the participants other than their time. The total number of burden hours is 1,323 across 36 months of data collection. The total estimated annualized burden hours are 441.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hr) | Total burden (in hr) |
|---|---|---|---|---|---|
| Aim 1 participants—YMSM; General public, adults. | Aim 1 Participant Eligibility Screener | 268 | 1 | 5/60 | 22 |
| Aim 1 participants—YMSM; General public, adults. | Aim 1 Participant Locator Form ..... | 134 | 1 | 5/60 | 12 |
| Aim 1 participants—YMSM; General public, adults. | Aim 1 mChoice Onboarding Guide .. | 134 | 1 | 20/60 | 45 |
| Aim 1 participants—YMSM; General public, adults. | Aim 1 Participant Baseline Survey .. | 134 | 1 | 30/60 | 67 |

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hr) | Total burden (in hr) |
|---|---|---|---|---|---|
| Aim 1 participants—YMSM; General public, adults. | Aim 1 Participant Follow-up Survey | 134 | 4 | 30/60 | 268 |
| Aim 2 participants—YMSM; General public, adults. | Aim 2 Participant Eligibility Screener | 20 | 1 | 5/60 | 2 |
| Aim 2 participants—YMSM; General public, adults. | Aim 2 Participant Locator Form ..... | 10 | 1 | 5/60 | 1 |
| Aim 2 participants—YMSM; General public, adults. | Aim 2 Participant Interview Guide ... | 10 | 1 | 1.0 | 10 |
| Aim 3 participants—providers; General public, adults. | Aim 3 Participant Eligibility Screener | 14 | 1 | 5/60 | 2 |
| Aim 3 participants—providers; General public, adults. | Aim 3 Participant Locator Form ..... | 7 | 1 | 5/60 | 1 |
| Aim 3 participants—providers; General public, adults. | Aim 3 Participant Interview Guide ... | 7 | 1 | 1.0 | 7 |
| Aim 3 participant—clinic staff respondent, 1 per clinic site; General public, adults. | Aim 3 Clinic Assessment ..... | 4 | 2 | 30/60 | 4 |
| Total ..... | ..... | ..... | ..... | ..... | 441 |

**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. 2023–17921 Filed 8–18–23; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–23–1319; Docket No. CDC–2023–0073]**

### 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 continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled National Surveillance of Community Water Systems and Corresponding Populations with the Recommended Fluoridation Level. This surveillance collects the fluoridation status of, and population served by the nation's 52,000 community water systems (CWS) which serve the 50 States and the District of Columbia.

**DATES:** CDC must receive written comments on or before October 20, 2023.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2023–0073 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**

National Surveillance of Community Water Systems and Corresponding Populations with the Recommended Fluoridation Level (OMB Control No. 0920–1319, Exp. 2/29/2024)—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Community water fluoridation is the process of adjusting the fluoride concentration of a community water system (CWS) to the level beneficial for prevention of dental caries as recommended by the U.S. Public Health Service (PHS). Community water fluoridation is a major factor contributing to the large decline in caries in the U.S. in the past 75 years and is recognized as one of 10 great public health achievements of the twentieth century. Community water fluoridation reduces dental caries by 25% and is a safe and the cost-effective way to deliver fluoride to people of all ages, regardless of education and income level. It is especially important for populations with limited access to preventive dental measures.

CDC is authorized to collect the information under the U.S. Public Health Service Act. This data collection aligns with CDC's strategy to use public health surveillance to inform programs and policies to improve the oral health of the nation by reducing disparities and expanding access to effective prevention programs. CDC uses the Water Fluoridation Reporting System (WFRS) to collect water fluoridation coverage and quality throughout the U.S. This data allows CDC and States to monitor the performance and efficiency of their water fluoridation programs, which will improve and extend program delivery. Respondents to the information collection are State fluoridation managers or other State government officials designated by the State dental director or drinking water administrator. State participation in the data collection is voluntary.

CDC requests OMB approval for an estimated 2,824 annual burden 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) |
|---|---|---|---|---|---|
| State Official | Fluoridation status and population | 50 | 1 | 38 | 1,900 |
| State Official | Fluoride testing data | 33 | 1 | 28 | 924 |
| Total | | | | | 2,824 |

**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. 2023–17925 Filed 8–18–23; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2018–N–3240]**

### List of Bulk Drug Substances for Which There is a Clinical Need Under Section 503B of the Federal Food, Drug, and Cosmetic Act

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA, the Agency, or we) is evaluating substances that have been nominated for inclusion on a list of bulk drug substances (active pharmaceutical ingredients) for which there is a clinical need (the 503B Bulks List). Drug products that outsourcing facilities compound using bulk drug substances on the 503B Bulks List can qualify for certain exemptions from the Federal Food, Drug, and Cosmetic Act (FD&C Act) provided certain conditions are met. This notice identifies two bulk drug substances that FDA has considered and is not including on the list at this time: ephedrine sulfate and hydroxychloroquine sulfate. Additional bulk drug substances nominated by the public for inclusion on this list are currently under consideration and will be the subject of future notices.

**DATES:** The announcement of the notice is published in the **Federal Register** on August 21, 2023.

**ADDRESSES:** 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:** Tracy Rupp, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Silver Spring, MD 20993, 301–796–3100.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Section 503B of the FD&C Act (21 U.S.C. 353b) describes the conditions that must be satisfied for drug products compounded in an outsourcing facility to be exempt from section 505 (21 U.S.C. 355) (concerning the approval of drugs under new drug applications (NDAs) or abbreviated new drug applications (ANDAs)), section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use), and section 582 of the FD&C Act (21 U.S.C. 360eee–1) (concerning drug supply chain security requirements).[1]

Compounded drug products that meet the conditions set forth in section 503B are not exempt from current good manufacturing practice (CGMP) requirements in section 501(a)(2)(B) of the FD&C Act (21 U.S.C. 351(a)(2)(B)).[2] Outsourcing facilities are also subject to FDA inspections according to a risk-based schedule, adverse event reporting requirements, and other conditions that help to mitigate the risks of the drug products they compound.[3] Outsourcing facilities may or may not obtain prescriptions for identified individual patients and can, therefore, distribute compounded drugs to healthcare

[1] Section 503B(a) of the FD&C Act.

[2] Compare section 503A(a) of the FD&C Act (21 U.S.C. 353a(a) (exempting drugs compounded in accordance with that section)) with section 503B(a) of the FD&C Act (not providing an exemption from CGMP requirements).

[3] Section 503B(b)(4) and (5) of the FD&C Act.

practitioners for ''office stock,'' to hold in their offices in advance of patient need.[4]

One of the conditions that must be met for a drug product compounded by an outsourcing facility to qualify for the exemptions under section 503B of the FD&C Act is that the outsourcing facility may not compound a drug using a bulk drug substance unless: (1) the bulk drug substance appears on a list established by the Secretary of Health and Human Services (the Secretary) identifying bulk drug substances for which there is a clinical need (the 503B Bulks List) or (2) the drug compounded from the bulk drug substance appears on the drug shortage list in effect under section 506E of the FD&C Act (21 U.S.C. 356e) at the time of compounding, distribution, and dispensing.[5]

Section 503B of the FD&C Act directs FDA to establish the 503B Bulks List by: (1) publishing a notice in the **Federal Register** proposing bulk drug substances to be included on the list, including the rationale for such proposal; (2) providing a period of not less than 60 calendar days for comment on the notice; and (3) publishing a notice in the **Federal Register** designating bulk drug substances for inclusion on the list.[6]

FDA has published a series of **Federal Register** notices addressing bulk drug substances nominated for inclusion on the 503B Bulks List.[7] This notice identifies two bulk drug substances that FDA has considered and is not including on the 503B Bulks List.

For purposes of section 503B of the FD&C Act, *bulk drug substance* means an active pharmaceutical ingredient as defined in 21 CFR 207.1.[8] *Active pharmaceutical ingredient* means any substance that is intended for incorporation into a finished drug product and is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body, but the term does not include intermediates used in the synthesis of the substance.[9] [10]

## II. Methodology for Developing the 503B Bulks List

### *A. Process for Developing the List*

FDA requested nominations for specific bulk drug substances for the Agency to consider for inclusion on the 503B Bulks List in the **Federal Register** of December 4, 2013 (78 FR 72838). FDA reopened the nomination process in the **Federal Register** of July 2, 2014 (79 FR 37747) and provided more detailed information on what FDA needs to evaluate nominations for the list. On October 27, 2015 (80 FR 65770), the Agency opened a new docket, FDA–2015–N–3469, to provide an opportunity for interested persons to submit new nominations of bulk drug substances, renominate substances with sufficient information, or submit comments on nominated substances.

As FDA evaluates bulk drug substances, it intends to publish notices for public comment in the **Federal Register** that describe its proposed position on each substance along with the rationale for that position.[11] After considering any comments on FDA's proposals regarding whether to include nominated substances on the 503B Bulks List, FDA intends to consider whether input from the Pharmacy Compounding Advisory Committee (PCAC) on the nominations would be helpful to the Agency in making its determination, and if so, it will seek PCAC input.[12] Depending on its review of the docket comments and other relevant information before the Agency, FDA may finalize its proposed determination without change, or it may finalize a modification to its proposal to reflect new evidence or analysis regarding clinical need. FDA will then publish in the **Federal Register** a final determination identifying the bulk drug substances for which it has determined there is a clinical need and FDA's rationale in making that final determination. FDA will also publish in the **Federal Register** a final determination regarding those substances it considered but found that there is no clinical need to use in compounding and FDA's rationale in making this decision.

FDA intends to maintain a list of all bulk drug substances it has evaluated on its website and separately identify bulk drug substances it has placed on the 503B Bulks List and those it has decided not to place on the 503B Bulks List. This list is available at *https://www.fda.gov/media/120692/download.* FDA will only place a bulk drug substance on the 503B Bulks List when it has determined there is a clinical need for outsourcing facilities to compound drug products using the bulk drug substance. If a clinical need to compound drug products using the bulk drug substance has not been demonstrated, based on the information submitted by the nominator and any other information considered by the Agency, FDA will not place a bulk drug substance on the 503B Bulks List.

FDA is evaluating bulk drug substances nominated for the 503B Bulks List on a rolling basis. FDA intends to evaluate and publish in the **Federal Register** the proposed and final determinations in groups of bulk drug substances until all nominated substances that were sufficiently supported have been evaluated and either placed on the 503B Bulks List or identified as bulk drug substances that were considered but determined not to be appropriate for inclusion on the 503B Bulks List.[13]

### *B. Analysis of Substances Nominated for the List*

As noted above, the 503B Bulks List will include bulk drug substances for which there is a clinical need. The

[4] Section 503B(d)(4)(C) of the FD&C Act.

[5] Section 503B(a)(2)(A) of the FD&C Act.

[6] Section 503B(a)(2)(A)(i)(I) to (III) of the FD&C Act.

[7] See **Federal Register** of August 28, 2018 (83 FR 43877), March 4, 2019 (84 FR 7383), September 3, 2019 (84 FR 46014), July 31, 2020 (85 FR 46126), March 24, 2021 (86 FR 15673), November 23, 2022 (87 FR 71642), and April 6, 2023 (88 FR 20531). The comment period for the July 2020 notice was reopened for 30 days on January 8, 2021 (86 FR 1515), to allow interested parties an additional opportunity to comment. FDA has not yet reached a final determination on whether each of the substances evaluated in the September 2019, July 2020, or March 2021 notices will be added to the 503B Bulks List. In addition, bumetanide, which was considered in the August 2018 notice, remains under consideration by the Agency.

[8] See section 503B(a)(2) of the FD&C Act, which defines bulk drug substances used in compounding under section 503B according to 21 CFR 207.3(a)(4) ''or any successor regulation.'' 21 CFR 207.1 is the successor regulation.

[9] Section 503B(a)(2) of the FD&C Act and 21 CFR 207.1.

[10] Inactive ingredients are not subject to section 503B(a)(2) of the FD&C Act and will not be included in the 503B Bulks List because they are not included within the definition of a bulk drug substance. Pursuant to section 503B(a)(3), inactive ingredients used in compounding must comply with the standards of an applicable U.S. Pharmacopeia (USP) or National Formulary (NF) monograph, if a monograph exists.

[11] This is consistent with procedures set forth in section 503B(a)(2)(A)(i) of the FD&C Act. Although the statute only directs FDA to issue a **Federal Register** notice and seek public comment when it proposes to include bulk drug substances on the 503B Bulks List, we intend to seek comment when the Agency has evaluated a nominated substance and proposes either to include or not to include the substance on the list.

[12] Section 503B of the FD&C Act does not require FDA to consult the PCAC before developing the 503B Bulks List.

[13] In January 2017, FDA announced the availability of a revised final guidance for industry that provides additional information regarding FDA's policies for bulk drug substances nominated for the 503B Bulks List pending FDA's evaluation under the ''clinical need'' standard, entitled ''Interim Policy on Compounding Using Bulk Drug Substances Under Section 503B of the Federal Food, Drug, and Cosmetic Act'' (the ''Interim Policy''), available at *https://www.fda.gov/media/94402/download.* We update guidances periodically. For the most recent version of a guidance, check the FDA guidance web page at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.*

Agency is evaluating bulk drug substances that were nominated for inclusion on the 503B Bulks List, proceeding case by case, under the standard provided by the statute.[14] In applying this standard to make its determinations regarding the substances set forth in this notice, FDA interprets the phrase ''bulk drug substances for which there is a clinical need'' to mean that the 503B Bulks List may include a bulk drug substance if: (1) there is a clinical need for an outsourcing facility to compound the drug product and (2) the drug product must be compounded using the bulk drug substance. FDA does not interpret supply issues, such as backorders, to be within the meaning of ''clinical need'' for compounding with a bulk drug substance. Section 503B of the FD&C Act separately provides for compounding from a bulk drug substance under the exemptions from the FD&C Act discussed above if the drug product compounded from the bulk drug substance is on the FDA drug shortage list at the time of compounding, distribution, and dispensing. Additionally, FDA does not consider convenience in administering a particular compounded drug product (*e.g.,* a ready-to-use form) or the cost of the compounded drug product as compared with an FDA-approved drug product when assessing ''clinical need.''

Both bulk drug substances addressed in this notice, ephedrine sulfate and hydroxychloroquine sulfate, are components of FDA-approved drug products. FDA therefore began its evaluation by asking one or both, as applicable, of the following questions:

1. Is there a basis to conclude, for each FDA-approved product that includes the nominated bulk drug substance, that (a) an attribute of the FDA-approved drug product makes it medically unsuitable to treat certain patients for a condition that FDA has identified for evaluation, and (b) the drug product proposed to be compounded is intended to address that attribute?

2. Is there a basis to conclude that the drug product proposed to be compounded must be produced from a bulk drug substance rather than from an FDA-approved drug product?

The reason for question 1 is that unless an attribute of the FDA-approved drug is medically unsuitable for certain patients, and a drug product to be compounded using a bulk drug substance that is a component of the FDA-approved drug is intended to address that attribute, there is no clinical need to compound a drug product using that bulk drug substance. Rather, such compounding would unnecessarily expose patients to the risks associated with drug products that do not meet the standards applicable to FDA-approved drug products for safety, effectiveness, quality, and labeling and would undermine the drug approval process. The reason for question 2 is that to place a bulk drug substance on the 503B Bulks List, FDA must determine that there is a clinical need for outsourcing facilities to compound a drug product *using the bulk drug substance* rather than starting with an FDA-approved drug product. When it is feasible to compound a drug product by starting with an FDA-approved drug product, there are certain benefits of doing so over starting with a bulk drug substance, including that FDA-approved drugs have undergone premarket review for safety, effectiveness, and quality, and are manufactured by a facility that is subject to premarket assessment, including site inspection, as well as routine post-approval risk-based inspections. In contrast, FDA does not conduct a premarket review of the quality standards, specifications, and controls for bulk drug substances used in compounding and does not conduct a premarket assessment of the manufacturer of the bulk drug substance.

If the answer to both of the above questions is ''yes,'' there may be a clinical need for outsourcing facilities to compound using the bulk drug substance, and we would evaluate the substance further, applying the factors described below. If the answer to either of these questions is ''no,'' we generally would not include the bulk drug substance on the 503B Bulks List, because there would not be a basis to conclude that there may be a clinical need to compound drug products using the bulk drug substance instead of administering an FDA-approved drug or compounding starting with an FDA-approved drug product. FDA did not answer ''yes'' to both of the threshold questions for the two bulk drug substances that are components of FDA-approved drug products that we are addressing in this notice. Accordingly, as explained below, we did not proceed further in our evaluation of these substances and have decided not to include them on the 503B Bulks List.

## III. FDA's Determinations Regarding Substances Proposed for the 503B Bulks List

The two bulk drug substances that FDA has evaluated, proposed not to include on the 503B Bulks List in a **Federal Register** notice, and has now decided not to place on the 503B Bulks List are ephedrine sulfate (Refs. 1 and 2) and hydroxychloroquine sulfate (Ref. 3).

In September 2019, the Agency issued a **Federal Register** notice in which it evaluated nine nominated bulk drug substances under the section 503B statutory standard—dipyridamole, ephedrine sulfate, famotidine, hydralazine HCl, methacholine chloride, sodium bicarbonate, sodium tetradecyl sulfate, trypan blue, and vecuronium bromide—and proposed not to include them on the 503B Bulks List (the September 2019 notice).[15] In the present notice, after review of the comments submitted to the docket for the September 2019 notice, FDA is making its final determination not to include ephedrine sulfate on the 503B Bulks List. At this time, FDA is not making a final determination regarding famotidine, hydralazine HCl, sodium tetradecyl sulfate, trypan blue, and vecuronium bromide.[16] These substances remain under consideration by FDA.

In March 2021, the Agency issued a **Federal Register** notice in which it evaluated five nominated bulk drug substances under the section 503B statutory standard (the March 2021 notice).[17] FDA proposed to include quinacrine hydrochloride (for oral use only) on the 503B Bulks List. FDA proposed not to include bromfenac sodium, mitomycin-C, nepafenac, and hydroxychloroquine sulfate on the 503B Bulks List. In April 2023, after review of comments submitted to the March 2021 docket, the Agency issued a **Federal Register** notice, making its final determination to include quinacrine hydrochloride on the 503B Bulks List to compound drug products for oral use only.[18] In the present notice, after review of the comments submitted to the docket for the March 2021 notice, FDA is making its final determination

[14] In March 2019, FDA announced the availability of a final guidance entitled ''Evaluation of Bulk Drug Substances Nominated for Use in Compounding Under Section 503B of the Federal Food, Drug, and Cosmetic Act'' (the ''Clinical Need Guidance''), available at *https://www.fda.gov/media/121315/download*. This guidance describes FDA policies for developing the 503B Bulks List and the Agency's interpretation of the phrase ''bulk drug substances for which there is a clinical need'' as it is used in section 503B. The analysis under the statutory ''clinical need'' standard described in this notice is consistent with the approach described in FDA's guidance.

[15] See 84 FR 46014.

[16] FDA made a final determination not to include dipyridamole on the 503B Bulks List (see 87 FR 4240). FDA made a final determination not to include methacholine chloride and sodium bicarbonate on the 503B Bulks List (see 88 FR 20531).

[17] 86 FR 15673.

[18] 88 FR 20531.

not to include hydroxychloroquine sulfate on the 503B Bulks List. At this time, FDA is not making a final determination regarding bromfenac sodium, mitomycin-C, and nepafenac. These substances remain under consideration by FDA.

Because both ephedrine sulfate and hydroxychloroquine sulfate are components of FDA-approved drug products, FDA considered one or both of the following questions: (1) is there a basis to conclude that an attribute of each FDA-approved drug product containing the bulk drug substance makes each one medically unsuitable to treat certain patients for a condition that FDA has identified for evaluation, and the drug product(s) proposed to be compounded is intended to address that attribute in each FDA-approved drug product and (2) is there a basis to conclude that the drug product(s) proposed to be compounded must be compounded using a bulk drug substance. FDA considered comments to the docket submitted within the public comment period, but as explained below, none of the comments received on these bulk drug substances provided information that led FDA to change its determination.

*A. Ephedrine Sulfate*

Ephedrine sulfate was nominated for inclusion on the 503B Bulks List to compound drug products to treat acute bronchospasm, drug induced hypotension due to anesthesia, and nasal congestion.[19] The proposed route of administration is intravenous, the proposed dosage form is a preservative-free solution, and the proposed strengths are 5 mg/mL and 10 mg/mL.[20] During the comment period for the September 2019 notice, a commenter proposed that there was a clinical need to compound higher concentration ephedrine sulfate drug products to treat priapism. The proposed route of administration for this new proposed use is intracorporeal, the proposed dosage form is a solution, and the proposed strength is 100 mg/mL.[21] Because additional references were provided supporting this proposed use and route of administration, FDA considered this use and this route of administration before reaching a final clinical need determination (Ref. 2).

As noted above, ephedrine sulfate is a component of FDA-approved drug products (*e.g.,* NDAs 208943 and 208289). FDA-approved ephedrine sulfate is available as a 1 mL single-dose drug product that contains 50 mg/mL (50 mg/mL) ephedrine sulfate, preservative-free, for intravenous administration, and as a 10 mL multi-dose vial that contains 500 mg/10 mL (50 mg/mL) ephedrine sulfate, with preservative, for intravenous administration.[22] These ephedrine sulfate drug products must be diluted before administration to achieve the desired concentration for their labeled indications. Ephedrine sulfate is also available as a 5 mL single dose, prefilled syringe that contains 25 mg/5 mL (5 mg/mL) ephedrine sulfate, preservative-free, for intravenous administration, and as a 10 mL single dose, prefilled syringe that contains 50 mg/10 mL (5 mg/mL) ephedrine sulfate, preservative-free, for intravenous administration.[23] The products available as prefilled syringes are premixed formulations and do not require dilution prior to administration for their labeled indications.

1. Suitability of FDA-Approved Drug Product

In its proposal to not include ephedrine sulfate on the 503B Bulks List, FDA explained that the nominations did not identify an attribute of the FDA-approved drug products that make them medically unsuitable to treat certain patients and that the proposed compounded drug products are intended to address. Several comments received agreed with FDA's proposal not to include ephedrine sulfate on the 503B Bulks List.[24] Several comments were not supportive. However, none of the comments received on FDA's proposal provided information that led FDA to change its position on this question. A commenter stated that there is a clinical need for an intracorporeal, single-ingredient, higher concentration ephedrine sulfate compounded drug product for use to treat priapism.[25] However, the commenter failed to identify an attribute of the FDA-approved drug products, including the intravenous formulations of ephedrine sulfate 50 mg/mL solution for dilution (*e.g.,* NDA 208943), that is medically unsuitable for patients with priapism or identify an attribute of the FDA-approved products that the proposed compounded drug product is intended to address. The FDA-approved products are available in the concentration of 50 mg/mL (undiluted) and can be administered in a sufficient volume or in multiple doses to achieve the proposed dose of 100 mg for the treatment of priapism.[26] [27] A commenter also stated that the FDA-approved ephedrine sulfate products are not compatible with new technology such as syringe-robotics and vial docking technology to easily make stock

[19] See Docket No. FDA–2013–N–1524, document nos. FDA–2013–N–1524–2292 and FDA–2013–N–1524–2298.

[20] Nominator(s) proposed to compound a preservative-free solution. However, they failed to acknowledge that there is a preservative-free formulation of ephedrine sulfate that is marketed or explain why that formulation would be medically unsuitable for certain patients. Additionally, since the September 2019 notice, ephedrine sulfate has been FDA-approved as a preservative-free, 25 mg/5mL (5 mg/mL) single dose, premixed, labeled syringe (not for dilution) (See NDA 213407 labeling available as of the date of this notice at *https://www.accessdata.fda.gov/spl/data/3155f177-4aff-4560-9f7c-f77649d065d9/3155f177-4aff-4560-9f7c-f77649d065d9.xml*) and a preservative-free, 50 mg/10mL (5 mg/mL) single dose, premixed vial (See NDA 213407 labeling available as of the date of this notice at *https://www.accessdata.fda.gov/spl/data/54276f21-7800-44f4-ae51-0060fb1c43ad/54276f21-7800-44f4-ae51-0060fb1c43ad.xml*).

[21] See Docket No. FDA–2018–N–3240, document no. FDA–2018–N–3240–0047. Other commenters proposed additional uses and routes of administration: intramuscular administration of a higher concentration of ephedrine sulfate for postoperative nausea and vomiting refractory to traditional antiemetics; intravenous or intrathecal administration of ephedrine sulfate for hypotension in patients that received a certain type of anesthesia or received an overdose of a drug that can lower blood pressure; and continuous (intravenous) infusion to prevent hypotension secondary to spinal anesthesia during cesarean section. These other uses will not be considered further because the commenters either proposed uses or routes of administration already evaluated in the September 2019 notice and the literature provided in the comments did not contain any new information that would support FDA's reconsideration of its proposal on the substance, or the commenters proposed new uses or routes of administration but did not provide sufficient information, including citations to relevant literature, supporting a clinical need.

[22] See, *e.g.,* NDAs 208943 and 208289.

[23] See, *e.g.,* NDAs 208289 and NDA 213407.

[24] See Docket No. FDA–2018–N–3240, document nos. FDA–2018–N–3240–0043, FDA–2018–N–3240–0045, FDA–2018–N–3240–0050, FDA–2018–N–3240–0052.

[25] See Docket No. FDA–2018–N–3240, document no. FDA–2018–N–3240–0047.

[26] In noting this issue, we do not mean to suggest or imply that the approved drug products, or products prepared from them, are approved for the use proposed by the commenter. For the Part 1.a. analysis we asked a limited, threshold question to determine whether there might be clinical need for a compounded drug product, by asking what attributes of the FDA-approved drug the proposed compounded drug would change, and why. Because this proposed product did not pass through Part 1.a. (for the reasons described in the memo) we did not reach Part 2 and therefore did not consider the Part 2 factors, including the available evidence of effectiveness or lack of effectiveness of a drug product compounded with ephedrine sulfate. FDA-approved ephedrine sulfate 50 mg/mL solution for dilution has not been shown to be safe and effective for intracorporal administration to treat priapism.

[27] The commenter proposes that in order to achieve a 100 mg/mL dose, more than one vial of FDA-approved ephedrine sulfate is needed. While there is a 50 mg/mL formulation that is available in 1 mL vials, there is also an FDA-approved formulation of intravenous ephedrine sulfate solution that is available as a 500 mg/10 mL vial (dilution required). In order to achieve the 100 mg/mL dose, 2 mL of ephedrine sulfate could be used.

solutions to produce onsite.[28] However, FDA is not aware of issues with using the FDA-approved product when the compounding process and equipment are appropriately selected. Additionally, these arguments do not take into account the approval by FDA of two ephedrine sulfate drug products that are pre-diluted and thus would not need additional manipulation at the bedside by a medical provider before use for their labeled indications.[29] Commenters also made various arguments addressing supply issues, convenience, and cost.[30] However, as explained above, FDA does not consider supply issues, convenience, and costs to be within the meaning of ''clinical need'' for compounding with a bulk drug substance under section 503B of the FD&C Act. Accordingly, with respect to the ephedrine sulfate drug products proposed to be compounded, FDA finds no basis to conclude that an attribute of the FDA-approved product makes it medically unsuitable to treat certain patients for a condition that FDA has identified for evaluation.

2. Whether the Drug Product Must Be Compounded From a Bulk Drug Substance

The nominations do not provide support for the position that drug products containing ephedrine sulfate must be compounded from bulk drug substances rather than the approved drug product. No further information was supplied during the comment period that supports the need for compounding ephedrine sulfate drug products from bulk drug substances. Because there is no basis to conclude that an attribute of the FDA-approved ephedrine sulfate products makes them medically unsuitable for some patients; however, FDA has not considered whether there is a basis to conclude that the proposed compounded products must be made from a bulk drug substance rather than from an FDA-approved product.

*B. Hydroxychloroquine Sulfate*

Hydroxychloroquine sulfate was nominated for inclusion on the 503B Bulks List to compound drug products to treat rheumatoid arthritis and juvenile arthritis (also known as juvenile idiopathic arthritis).[31] The proposed route of administration is oral, the proposed dosage forms are a capsule or suspension, and the proposed doses or concentrations are 200 to 500 mg capsules and 100 to 200 mg/mL suspension. The nominated bulk drug substance is a component of FDA-approved drug products (*e.g.,* NDA 009768, ANDA 040104, and ANDA 213342).[32] [33] [34]

FDA-approved hydroxychloroquine sulfate is available as 200 mg (equivalent to 155 mg of hydroxychloroquine base), film-coated tablets for oral administration.[35]

1. Suitability of FDA-Approved Drug Product(s)

As described in FDA's preliminary **Federal Register** notice addressing this substance, there is a basis to conclude that an attribute of the approved hydroxychloroquine sulfate tablets for oral administration makes them medically unsuitable for the treatment of some patients with rheumatoid arthritis and juvenile arthritis.[36] The nomination suggested that the FDA-approved oral tablets, a solid oral dosage form, are medically unsuitable in pediatric patients who are unable to swallow tablets. We agree that there may be certain patients for whom the approved oral tablets are medically unsuitable, and this would depend on a patient's clinical presentation and age, among other considerations. As a general matter, the drug product proposed to be compounded appears to address the potential unsuitability of a solid oral dosage form because the nominator proposes to compound a suspension of hydroxychloroquine sulfate for oral administration.

The nomination further states that ''pediatric dosing is not standardized but weight-based, making getting the correct dose difficult with tablets.'' We agree that an oral suspension could allow for more flexible dosing when compared to the approved tablets when following weight-based dosing recommendations, and that this also supports the proposition that the approved product may be unsuitable for certain patients.[37]

In addition to the proposed suspension, the nomination also proposes that there is a clinical need to compound hydroxychloroquine sulfate 200 to 500 mg capsules for oral administration. The nomination does not explain how the proposed compounded capsule products are intended to address the medical unsuitability of the approved product. Similar to tablets, capsules are less flexible in dosing and would be difficult for patients to take if they are unable to swallow tablets. In addition, the nomination does not identify any data or information as to the need for compounded products with a higher concentration than the approved product. No further information was supplied on this point during the comment period.

The nomination also claims that some patients are ''unable to tolerate excipients'' in the approved product, but the nomination does not identify which excipients they are referring to, nor do they provide any data or information supporting how the proposed drug products will address that particular attribute. No further information was supplied on this point during the comment period.

2. Whether the Drug Product Must Be Compounded From a Bulk Drug Substance

Because there is a basis to conclude that an attribute of the approved hydroxychloroquine sulfate tablets makes them medically unsuitable for some patients, and the proposed compounded oral suspension is intended to address that attribute, FDA

[28] See Docket No. FDA–2018–N–3240, document no. FDA–2018–N–3240–0047.

[29] See footnote 20 above.

[30] See Docket No. FDA–2018–N–3240, document nos. FDA–2018–N–3240–0053, FDA–2018–N–3240–0049, and FDA–2018–N–3240–0047.

[31] See Docket No. FDA–2015–N–3469, document no. FDA–2015–N–3469–0165.

[32] See, *e.g.,* NDA 009768 labeling available as of the date of this notice at *https://www.accessdata.fda.gov/drugsatfda_docs/label/2017/009768s037s045s047lbl.pdf.*

[33] See, *e.g.,* ANDA 040104 labeling available as of the date of this notice at *https://www.accessdata.fda.gov/spl/data/e5375cf7-9423-40a4-bd33-ce5812da4a73/e5375cf7-9423-40a4-bd33-ce5812da4a73.xml.*

[34] See, *e.g.,* ANDA 213342 labeling available as of the date of this notice at *https://www.accessdata.fda.gov/spl/data/a594d892-e496-38f5-e053-2a95a90a9da8/a594d892-e496-38f5-e053-2a95a90a9da8.xml.*

[35] See, *e.g.,* NDA 009768 labeling available as of the date of this notice at *https://www.accessdata.fda.gov/drugsatfda_docs/label/2017/009768s037s045s047lbl.pdf.*

[36] In noting this issue, we do not mean to suggest or imply that the approved drug products, or products prepared from them, are approved for all of the uses proposed by the nomination. For the question 1 analysis we asked a limited, threshold question to determine whether there might be a clinical need for a compounded drug product, by asking what attributes of the approved drug the proposed compounded drug would change, and why. Because this nomination did not pass through question 2, we did not reach the balancing test and therefore did not consider the four factors, including the available evidence of effectiveness or lack of effectiveness of a drug product compounded with hydroxychloroquine sulfate. The safety and efficacy of chronic use of hydroxychloroquine sulfate have not been established for juvenile idiopathic arthritis.

[37] We note that the nominator's proposed concentration of 100 to 200 mg/mL would offer little benefit in the younger aged pediatric population because a suspension at this strength would likely require administration of small volumes (*e.g.,* ≤1 mL). We are aware of several published pharmacy compounding formulations for hydroxychloroquine sulfate 25 mg/mL suspensions (Refs. 4 to 6), which may be more suitable for the younger pediatric population.

next considers whether there is a basis to conclude that the proposed oral suspension must be made from a bulk drug substance rather than from an FDA-approved product. The approved hydroxychloroquine sulfate drug products are 200 mg immediate release tablets with film coating.[38]

As described in FDA's preliminary **Federal Register** notice addressing this substance, although the approved products are film-coated, the coating is not intended to change/control the release profile. FDA is not aware of issues with using the FDA-approved product when the compounding process and equipment are appropriately selected. No further information was supplied on this point during the comment period. We also note that there is a draft USP monograph for the compounded suspension that uses an FDA-approved film-coated tablet as the starting material (Ref. 6).[39] As with all suspensions, the particle size of the powder should be carefully controlled and the density of suspension vehicle should be selected appropriately in order to make the oral suspension uniform and stable, which can affect the dose administrated to the patients.

One commenter supported FDA's proposal not to include hydroxychloroquine sulfate on the 503B Bulks List. Commenters provided no new information supporting the clinical need for compounding from the bulk drug substance hydroxychloroquine sulfate. Because we do not find a basis to conclude that a bulk drug substance is needed to compound the proposed compounded hydroxychloroquine sulfate oral suspension, rather than starting with the FDA-approved product, we do not find a clinical need to include hydroxychloroquine sulfate on the 503B Bulks List under question 2.

## IV. Other Issues Raised in Nominations and Comments

Commenters expressed concern that nominations submitted before FDA issued the Clinical Need Guidance in March 2019 are disadvantaged in demonstrating clinical need because the nominators might not have fully understood FDA's thinking on clinical need when they submitted their nominations.[40] In addition, there was also concern expressed about whether FDA is evaluating bulk drug substances for clinical need pursuant to a non-binding guidance document.

FDA disagrees with these comments. First, as explained in section II.B of this notice, FDA is evaluating bulk drug substances nominated for inclusion on the 503B Bulks List under the ''clinical need'' standard provided by the FD&C Act, as amended by the Drug Quality and Security Act in 2013.[41] The analysis under the statutory ''clinical need'' standard described in this notice is consistent with the approach described in FDA's Clinical Need Guidance. Second, there have been many opportunities for nominators and interested members of the public to provide information supporting a clinical need to compound drug products containing the bulk drug substances that are the subject of this notice. As explained in section II.A, a public docket, FDA–2015–N–3469, is available for interested persons to submit nominations, including updated or revised nominations, or comments on nominated substances. Furthermore, during the comment periods for the September 2019 and March 2021 **Federal Register** notices, commenters had an additional opportunity to submit comments to the docket associated with those notices to provide additional supporting information for the bulk drug substances that are the subject of this notice, and many did so.

Another issue raised was whether FDA is regulating and interfering with the practice of medicine by not placing bulk drug substances on the 503B Bulks List despite some physicians wanting to prescribe drug products compounded from those bulk drug substances. FDA disagrees with these comments. The Agency's evaluation under the clinical need standard only regulates the ability of certain compounded drug products to reach the market and is well within the Agency's authorities.[42] The Agency is fulfilling its statutory mandate of regulating outsourcing facilities' production and distribution of compounded drug products, not interfering with physicians' clinical decisions regarding which drug products to prescribe. Indeed, a Federal court considered the very claim raised in these comments and determined that FDA's evaluation under the clinical need standard ''regulates the type of drug that reaches the marketplace,'' a decision that ''rests well within FDA's regulatory authority under the [FD&C Act] . . . and . . . does not intrude on the practice of medicine.'' [43]

Another concern was the possibility that FDA is promoting the off-label use of FDA-approved drug products. FDA disagrees that it is promoting the off-label use of FDA-approved drug products. In performing the clinical need evaluation, FDA asks a limited, threshold question to determine whether there might be a clinical need for a compounded drug product, by asking what attributes of the approved drug product the proposed compounded drug product would change and why. Asking this question helps ensure that if a bulk drug substance is included on the 503B Bulks List, it is to compound drug products that include a needed change to an approved drug product, rather than to compound drug products without such a change. We do not suggest that the approved drug product or products prepared from it are approved for the use proposed by the nomination being evaluated.

Regarding FDA's decision to evaluate clinical need in the context of the specific drug products proposed to be compounded in the nomination, a concern was raised that requiring nominators to provide information on specific drug products is unnecessary to determine whether there is a clinical need for the bulk drug substance and that FDA should not evaluate bulk drug substances in the context of finished dosage forms for drug products. FDA disagrees with these comments. As explained in section I of this notice, section 503B of the FD&C Act limits the bulk drug substances that outsourcing facilities can use in compounding to those that are used to compound drugs in shortage or that appear on a list developed by FDA of bulk drug substances for which there is a clinical need.[44] Section 503B of the FD&C Act includes this limitation, among others,

[38] The tablet is not scored. The approved product labeling states that the ''film-coated tablets cannot be divided, therefore they should not be used to treat patients who weigh less than 31 kg.''

[39] We note that the product labeling for hydroxychloroquine sulfate film-coated tablets (*e.g.,* NDA 009768, ANDA 213342) states, ''Do not crush or divide hydroxychloroquine sulfate film-coated tablets.'' However, this does not change our view that the product can be compounded starting with the approved drug product.

[40] See 84 FR 7390, which is available at *https://www.federalregister.gov/documents/2019/03/04/2019-03807/evaluation-of-bulk-drug-substances-nominated-for-use-in-compounding-under-section-503b-of-the.*

[41] See Public Law 113–54, section 102(a) (2013), which is available at *https://www.govinfo.gov/content/pkg/PLAW-113publ54/pdf/PLAW-113publ54.pdf.*

[42] See *United States* v. *Evers,* 643 F.2d 1043, 1048 (5th Cir. 1981) (''[W]hile the [FD&C Act] was not intended to regulate the practice of medicine, it was obviously intended to control the availability of drugs for prescribing by physicians.''); *United States* v. *Regenerative Scis., LLC,* 741 F.3d 1314, 1319–20 (D.C. Cir. 2014); (citing *Evers* and noting that the FD&C Act ''regulate[s] the distribution of drugs by licensed physicians''); *Gonzales* v. *Raich,* 545 U.S. 1, 28 (2005) (''[T]he dispensing of new drugs, even when doctors approve their use must await federal approval.'').

[43] *Athenex Inc.* v. *Azar,* 397 F. Supp. 3d 56, 72 (D.D.C. 2019).

[44] Section 503B(a)(2(A)(i) and (ii) of the FD&C Act.

to help ensure that outsourcing facilities do not grow into conventional manufacturing operations making unapproved new drug products without complying with critical requirements, such as new drug approval. Outsourcing facilities, as opposed to other compounders, may compound and distribute drug products for ''office stock'' without first receiving a prescription for an individually identified patient [45] and without conditions on interstate distribution that are applicable to other compounded drugs.[46] Because of these differences and others, section 503B of the FD&C Act places different conditions on drugs compounded by outsourcing facilities, including limitation on the outsourcing facilities' use of bulk drug substances, which are more stringent than those placed on other compounders' use of bulk drug substances.[47] The clinical need standard in section 503B of the FD&C Act requires FDA to perform a sorting function—to distinguish bulk drug substances for which there is a clinical need from those for which there is not—and this requires FDA to apply its expertise to consider whether there is a need for the finished drug product that would be compounded from the bulk drug substance. Indeed, a Federal court considered the very claim raised in these comments and determined that ''[o]nly when 'clinical need' is assessed against the availability and suitability of an approved drug does the term perform the classifying function that Congress intended.'' [48] In reaching this view, the court found that only when the clinical need evaluation ''considers the actual way in which the active pharmaceutical ingredient supplies a therapeutic benefit—by its administration as a finished drug product—does the inquiry produce the categorization that Congress surely envisioned'' in enacting section 503B of the FD&C Act.[49] FDA's clinical need assessments help limit patient exposure to compounded drug products that have not been demonstrated to be safe and effective to those situations in which the compounded drug product is necessary for patient treatment. In addition, FDA's assessments preserve the incentives for applicants to invest in the research and testing required to obtain FDA approval and continue to manufacture FDA-approved drug products, thereby helping to maintain a supply of high-quality, safe, and effective drugs.

Finally, changes to the Interim Policy were requested. These comments are outside the scope of FDA's bulk drug substance evaluations and decisions that are the subject of this notice. FDA welcomes public comments on its guidance documents that address human drug compounding. Comments on the Interim Policy may be submitted to the docket for the guidance, Docket No. FDA–2015–D–3539, at any time at *https://www.regulations.gov.*

## V. Conclusion

For the reasons stated above, we find that there is no clinical need for outsourcing facilities to compound using the bulk drug substances ephedrine sulfate and hydroxychloroquine sulfate, and therefore we are not including these bulk drug substances on the 503B Bulks List.

## VI. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

*1. FDA Memorandum to File, ''Clinical Need for Ephedrine Sulfate in Compounding Under Section 503B of the FD&C Act,'' March 2021.

*2. FDA Memorandum to File, ''Clinical Need Supplemental Memorandum for Ephedrine Sulfate in Compounding Under Section 503B of the FD&C Act,'' August 2023.

*3. FDA Memorandum to File, ''Clinical Need for Hydroxychloroquine Sulfate in Compounding Under Section 503B of the FD&C Act,'' March 2021.

4. McHenry, A.R., M.F. Wempe, and P.J. Rice, (2017) ''Stability of Extemporaneously Prepared Hydroxychloroquine Sulfate 25-mg/mL Suspensions in Plastic Bottles and Syringes,'' *International Journal of Pharmaceutical Compounding,* 21(3), 251–254 (APA). Retrieved from *https://ijpc.com/Abstracts/Abstract.cfm?ABS=4322.*

5. American Society of Hospital Pharmacists (ASHP 2020), ''Hydroxychloroquine Sulfate Suspension 25 mg/mL.'' Retrieved from *www.ashp.org.*

6. USP 2020, ''USP Draft Compounded Preparation Monograph for Hydroxychloroquine Sulfate Compounded Oral Suspension.'' Published for public comment in *Pharmacopeial Forum* 46(2). Retrieved from *https://go.usp.org/l/323321/2020-04-08/33wcg6.*

Dated: August 15, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–17881 Filed 8–18–23; 8:45 am]

**BILLING CODE 4164–01–P**

[45] By contrast, to qualify for the exemptions in section 503A of the FD&C Act, drug products compounded by licensed pharmacists in State-licensed pharmacies or Federal facilities, or by licensed physicians, must be compounded based on the receipt of a valid prescription for an individually identified patient. This means that for drug products compounded under section 503A, to meet the conditions of that section and qualify for the exemptions in the statute, the pharmacist or physician compounding under section 503A of the FD&C Act must compound either: (1) after receiving a valid prescription for an identified, individual patient or (2) before receiving a patient-specific prescription, in limited quantities, based on a history of receiving valid orders generated solely within the context of an established relationship with the patient or prescriber. See FDA's final guidance for industry ''Prescription Requirement Under Section 503A of the Federal Food, Drug, and Cosmetic Act'' (December 2016).

[46] For drug products compounded under section 503A of the FD&C Act to meet the conditions of that section and qualify for the exemptions in the statute, drug products must be compounded in a State: (i) that has entered into a memorandum of understanding with the Secretary which addresses the distribution of inordinate amounts of compounded drug products interstate and provides for appropriate investigation by a State agency of complaints relating to compounded drug products distributed outside such State; or (ii) that has not entered into the memorandum of understanding described in clause (i) and the licensed pharmacist, licensed pharmacy, or licensed physician distributes (or causes to be distributed) compounded drug products out of the State in which they are compounded in quantities that do not exceed 5 percent of the total prescription orders dispensed or distributed by such pharmacy or physician (see section 503A(b)(3)(a)(B)(i) and (ii) of the FD&C Act). *See also* FDA Guidance for Industry, ''Prescription Requirement Under Section 503A of the Federal Food, Drug, and Cosmetic Act,'' December 2016 (available at *https://www.fda.gov/media/97347/download*).

[47] Licensed pharmacies and physicians who compound drugs under the conditions of section 503A of the FD&C Act, including the requirement to compound drugs only pursuant to a prescription for an identified individual patient, may use many bulk drug substances by operation of the statute, without action by FDA. See section 503A(b)(1)(A)(i)(I) and (II) of the FD&C Act (providing that a drug product may be compounded consistent with the exemptions in section 503A of the FD&C Act if the licensed pharmacist or licensed physician compounds the drug product using bulk drug substances that comply with the standards of an applicable USP or NF monograph, if a monograph exists, and the USP chapter on pharmacy compounding; or if such a monograph does not exist, are drug substances that are components of drugs approved by the Secretary).

[48] *Athenex Inc.,* 397 F. Supp. 3d at 65.

[49] *Id.*

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Statement of Organization, Functions, and Delegations of Authority

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a notice entitled ''Statement of Organization, Functions, and Delegations of Authority'' that appeared in the **Federal Register** of August 14, 2023. The document announced amendments to the organization structure for FDA, Center for Devices and Radiological Health (CDRH), Office of Strategic Partnerships and Technology Innovation (OST). Although HHS approved these amendments on June 27, 2023, the Notice inadvertently omitted to include the following language: ''FDA will not implement the new organizational structure until after the necessary requirements are completed.'' This document corrects that error.

**FOR FURTHER INFORMATION CONTACT:** Denise Huttenlocker, Associate Director for Management, Office of Management, Center for Devices and Radiological Health, Food and Drug Administration, Bldg. 66, 10903 New Hampshire Ave., Silver Spring, MD 20993, 240–743–1760.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of August 14, 2023 (88 FR 55053), in FR Doc. 2023–17379, the following corrections are made:

1. On page 55053, in the second column, in the **DATES** section, after the first sentence, add ''FDA will not implement the new organizational structure until after the necessary requirements are completed.''

2. On page 55053, in the third column, in section III., remove the first sentence and add in its place, ''After completion of the necessary requirements for implementation, this reorganization will be reflected in FDA's Staff Manual Guide (SMG).''

Dated: August 17, 2023.

**Elizabeth J. Gramling,**

*Executive Secretary to the Department, Department of Health and Human Services.*

[FR Doc. 2023–18009 Filed 8–17–23; 4:15 pm]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Supplemental Award for Family Engagement and Leadership in Systems of Care Program

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice of supplemental award.

**SUMMARY:** HRSA is providing approximately $600,000 in supplemental award funds in federal fiscal year 2023 to the recipient of the Family Engagement and Leadership in Systems of Care award to support technical assistance and provide subawards to Family-to-Family Health Information Centers (F2F HIC) to support Medicaid redetermination education, guidance, and support to children with special health care needs and their families, particularly those receiving services through Medicaid Home and Community Based Services waivers.

**FOR FURTHER INFORMATION CONTACT:** Jessica Teel, Senior Public Health Analyst, Integrated Services Branch, Division of Services for Children with Special Health Needs, Maternal and Child Health Bureau, HRSA, at *jteel@hrsa.gov* or (240) 645–5518.

**SUPPLEMENTARY INFORMATION:** *Intended Recipient of the Award:* Family Voices, as the sole recipient under HRSA–23–078.

*Amount of Non-Competitive Award:* One award at approximately $600,000.

*Project Period:* June 1, 2023, to May 31, 2024.

*CFDA Number:* 93.110.

*Award Instrument:* Cooperative Agreement.

*Authority:* Social Security Act, Title V, § 501(a)(2) (42 U.S.C. 701(a)(2)), as amended.

TABLE 1—RECIPIENTS AND AWARD AMOUNTS

| Grant No. | Award recipient name | City, state | Award amount |
|---|---|---|---|
| U40MC00149 | Family Voices | Concord, MA | $600,000 (estimated). |

*Justification:* HRSA will provide supplemental funds of approximately $600,000 to enable subawards to F2F HICs to support Medicaid redetermination education, guidance, and support to children with special health care needs and their families, particularly those receiving services through Medicaid Home and Community Based Services waivers.

**Carole Johnson,**

*Administrator.*

[FR Doc. 2023–17909 Filed 8–18–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; The Dog Aging Project.

*Date:* August 28, 2023.

*Time:* 12:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Ivan Tadeu Rebustini, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, RM: 100, Bethesda, MD 20892, (301) 555–1212, *ivan.rebustini@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. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 16, 2023.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17961 Filed 8–18–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Cellular Senescence and Healthspan.

*Date:* November 1, 2023.

*Time:* 12:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Ivan Tadeu Rebustini, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, RM: 100, Bethesda, MD 20892, (301) 555–1212, *ivan.rebustini@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 16, 2023.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17959 Filed 8–18–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Advisory Committee to the Deputy Director for Intramural Research.

The meeting will be open to the public as a virtual meeting. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

*Name of Committee:* Advisory Committee on Research on Women's Health.

*Date:* October 18, 2023.

*Time:* 9:30 a.m. to 4:00 p.m.

*Agenda:* ORWH Director's Report, Presentation from the Director of the National Institute of General Medical Sciences (NIGMS), Panel discussion with Institutional Development Award (IDeA) Program participants, Presentation of five concepts for Advisory Committee clearance including ORWH Office of Autoimmune Disease Research (ORWH–OADR); Understudied, Underrepresented, and Underreported (U3) Administrative Supplement Program; Gender as a Social and Structural Variable; Women and HIV; and; the Building Interdisciplinary Research Careers in Women's Health (BIRCWH) Program Request for Applications (RFA).

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Samia Noursi, Ph.D., Associate Director Science Policy, Planning, and Analysis, Office of Research on Women's Health, National Institutes of Health, 6707 Democracy Blvd., Room 402, Bethesda, MD 20892, 301–496–9472, *samia.noursi@nih.gov*.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meetings. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://orwh.od.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: August 16, 2023.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17968 Filed 8–18–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 of Child Health and Human Development Initial Review Group—Population Sciences Study Section.

*Date:* October 6, 2023.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2121B, Bethesda, MD 20817 (Virtual Meeting).

*Contact Person:* Christiane M. Robbins, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human

Development, National Institute of Health, 6710B Rockledge Drive, Rm 2121B, Bethesda, MD 20817, 301–451–4989, *crobbins@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS.)

Dated: August 15, 2023.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17887 Filed 8–18–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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:* Eunice Kennedy Shriver National Institute of Child Health and Human Development Special Emphasis Panel; Multicenter Clinical Trials; Leveraging Network (U01 Clinical Trial Optional).

*Date:* September 21, 2023.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Eunice Kennedy Shriver National Institute of Child and Human Development, 6710B Rockledge Drive, Room 2137B, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Vera A. Cherkasova, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2137B, Bethesda, MD 20892, (240) 478–4580, *vera.cherkasova@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health, HHS)

Dated: August 15, 2023.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17888 Filed 8–18–23; 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 the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; HEAL Initiative: Biomarker review meeting.

*Date:* September 27, 2023.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate cooperative agreement applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

*Contact Person:* Abhignya Subedi, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NIH/NINDS, NSC, 6001 Executive Blvd., Rockville, MD 20852, 301–496–9223, *abhi.subedi@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: August 15, 2023.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17886 Filed 8–18–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Cancer Advisory Board.

The meeting will be held as a virtual meeting and is open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: *http://videocast.nih.gov/.*

A portion of the National Cancer Advisory Board 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 for the review, discussion, and evaluation of intramural programs and projects conducted by the National Cancer Institute, including consideration of research scientist qualifications and the overall competence of those investigators to conduct research, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. In addition, 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 Cancer Advisory Board.

*Date:* September 6, 2023.

*Open:* 1:00 p.m. to 4:00 p.m.

*Agenda:* Director's and Program reports and presentations; business of the Board.

*Closed:* 4:15 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Closed:* 5:00 p.m. to 6:00 p.m.

*Agenda:* Review of intramural leadership of clinical and basic research efforts and the discussion of other related confidential personnel issues.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Paulette S. Gray, Ph.D., Director, Division of Extramural Activities, National Cancer Institute—Shady Grove National Institutes of Health, 9609 Medical Center Drive, 7th Floor, Room 7W444,

Bethesda, MD 20892, 240–276–6340, *grayp@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: NCAB: *https://deainfo.nci.nih.gov/advisory/ncab/ncabmeetings.htm,* where an agenda, instructions for accessing the virtual NCAB meetings, and any additional information for the meetings will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 16, 2023.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17914 Filed 8–18–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

This will be a hybrid meeting held in-person and virtually and will be open to the public, as indicated below, with attendance limited to space available. Individuals who plan to attend in-person or view the virtual meeting and need special assistance such as sign language interpretation or other reasonable accommodations, should notify Dr. Gillian Acca via email at *gillian.acca@nih.gov* five days in advance of the meeting. The open session of the meeting can be accessed from the NIH Videocast at the following link: *https://videocast.nih.gov/.*

A portion of 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 Council on Drug Abuse.

*Date:* September 12, 2023.

Closed: 10:30 a.m. to 11:45 a.m.

*Agenda:* To review and evaluate grant applications.

Open: 12:45 p.m. to 5:00 p.m.

*Agenda:* Presentations and other business of the Council.

*Place:* Neuroscience Center, Conference Room 1155/1145, National Institutes of Health, 6001 Executive Boulevard, Rockville, MD 20852 (Hybrid Meeting).

*Contact Person:* Susan R.B. Weiss, Ph.D., Director, Division of Extramural Research, Office of the Director, National Institute on Drug Abuse, NIH, Three White Flint North, RM 09D08, 11601 Landsdown Street, Bethesda, MD 20852, 301–443–6480, *sweiss@nida.nih.gov.*

*Contact Person:* Gillian Acca, Ph.D., Health Science Policy Analyst, Division of Extramural Research, Office of Extramural Policy, National Institute on Drug Abuse, NIH, Three White Flint North, RM 09C70, 11601 Landsdown Street, Bethesda, MD 20852, 301–827–5863, *gillian.acca@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to Dr. Gillian Acca via email at *gillian.acca@nih.gov.* The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.drugabuse.gov/NACDA/NACDAHome.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: August 15, 2023.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17889 Filed 8–18–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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:* Eunice Kennedy Shriver National Institute of Child Health and Human Development Initial Review Group Pediatrics Study Section.

*Date:* October 12, 2023.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room 2140 Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Joanna Kubler-Kielb, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2140, Bethesda, MD 20892, (301) 435–6916 *kielbj@mail.nih.gov.*

*Name of Committee:* Eunice Kennedy Shriver National Institute of Child Health and Human Development Initial Review Group Health, Behavior, and Context Study Section.

*Date:* October 16, 2023.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room 2137C Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Kimberly L. Houston, M.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2137C, Bethesda, MD 20892, (301) 827–4902, *kimberly.houston@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health, HHS)

Dated: August 15, 2023.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17890 Filed 8–18–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; 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 of Diabetes and Digestive and Kidney Diseases Initial Review Group; Fellowships in Diabetes Endocrinology and Metabolic Diseases.

*Date:* October 12, 2023.

*Time:* 10:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Thomas A. Tatham, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Boulevard, Room: 7021, Bethesda, MD 20892–2542, (301) 594–3993, *tathamt@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 16, 2023.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17967 Filed 8–18–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Initial Review Group; Career Development For Early Career Investigators Study Section.

*Date:* October 5–6, 2023.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Carmen Moten, Ph.D., MPH, Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, RM: 2W200, Bethesda, MD 20892, 301 496–8589, *cmoten@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 16, 2023.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17963 Filed 8–18–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 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 of Allergy and Infectious Diseases Special Emphasis Panel; Sexually Transmitted Infections (STI) Cooperative Research Centers (CRC): Vaccine Development (U01 Clinical Trial Not Allowed).

*Date:* September 21, 2023.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F52A, Rockville, MD 20892 (Virtual Meeting).

*Contact Person:* Shilpakala Ketha, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F52A, Rockville, MD 20852, (301) 761–6821, *shilpa.ketha@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 15, 2023.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17891 Filed 8–18–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; 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 of Diabetes and Digestive and Kidney Diseases

Initial Review Group; Fellowships in Digestive Diseases and Nutrition Fellowships in Digestive Diseases and Nutrition.

*Date:* October 12–13, 2023.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Jian Yang, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Boulevard, Room: 7111, Bethesda, MD 20892–2542, (301) 594–7799, *yangj@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 16, 2023.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17965 Filed 8–18–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Diet, mitochondria and multi-system regeneration and rejuvenation.

*Date:* October 18, 2023.

*Time:* 12:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Ivan Tadeu Rebustini, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, RM: 100, Bethesda, MD 20892, (301) 555–1212, *ivan.rebustini@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 16, 2023.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17960 Filed 8–18–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Initial Review Group; Career Development Facilitating The Transition to Independence Study Section.

*Date:* October 23–24, 2023.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Joshua Park, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, RM: 2W200, Bethesda, MD 20892, (301) 496–6208, *joshua.park4@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 16, 2023.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17964 Filed 8–18–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; 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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–22–069: High Impact, Interdisciplinary Science in NIDDK Research Areas (RC2).

*Date:* October 19, 2023.

*Time:* 11:00 a.m. to 12:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Lan Tian, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Boulevard, Room: 7016, Bethesda, MD 20892–2542, (301) 496–7050.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 16, 2023.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17966 Filed 8–18–23; 8:45 am]

**BILLING CODE 4140–01–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 cooperative agreement applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the cooperative agreement 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; NCATS CTSA UM1 Review Special Emphasis Panel.

*Date:* October 19, 2023.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate cooperative agreement applications.

*Place:* National Institutes of Health, National Center for Advancing Translational Sciences, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Victor Henriquez, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1080, Bethesda, MD 20892, (301) 435–0813, *henriquv@mail.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: August 16, 2023.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17969 Filed 8–18–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Long Term Dementia Care in Nursing Homes.

*Date:* September 18, 2023.

*Time:* 8:30 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Sandhya Sanghi, Ph.D., Scientific Research Officer, 7201 Wisconsin Avenue (2N230), NIA/SRB, Bethesda, MD 20814, (301) 496–2879, *sandhya.sanghi@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 11, 2023.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17962 Filed 8–18–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket Number USCG–2023–0330]**

### Removal of Smith Point Traffic Separation Scheme From Nautical Charts

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of inquiry; request for comments

**SUMMARY:** We, the Coast Guard, have received requests to remove a vessel traffic routing measure, which is known as the ''Smith Point Traffic Separation Scheme'' (TSS) and depicted on the nautical charts of the Chesapeake Bay. If there is no longer a need for this measure, we would request that the National Oceanic and Atmospheric Administration (NOAA), which produces the nation's nautical charts, remove the TSS from these charts and take out language regarding the TSS from the applicable Coast Pilot. We would then make conforming changes to the buoy that marks the turning point in the separation zone of the TSS. We are seeking comments on whether there is any continued need for this vessel traffic routing measure before we do so.

**DATES:** Your comments and related material must reach the Coast Guard on or before November 20, 2023.

**ADDRESSES:** You may submit comments identified by docket number USCG–2023–0330 using the Federal 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 notice of inquiry, call or email, LTJG Carmel McAndrews, District Prevention Waterways Management Office, U.S. Coast Guard; telephone: 757–398–6298 or email at *Carmel.M.McAndrews@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

#### I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
TSS Traffic Separation Scheme
U.S.C. United States Code

#### II. Background and Purpose

The Smith Point TSS was put in place in 1969, before the promulgation of any regulations governing formal Traffic Separation Schemes. It was never formally established by rule and exists only as a notation on the nautical charts. Lying at the mouth of the Potomac River, in the Chesapeake Bay, just south of the border between Maryland and Virginia, it has historically been used by vessel traffic that transits to and from destinations within the Lower Chesapeake Bay, the Potomac River, and the Upper Chesapeake Bay. In contrast to Offshore TSS's, which are codified in 33 CFR part 167, and which are the only TSS's that have been established by rule to date, the Smith Point TSS lies in the inland waters, as defined in 33 CFR 2.26.

See Figure 1, contained in a ''Figures'' document separate from this Notice of Inquiry, for a graphical depiction of the Smith Point TSS. For instructions on locating the ''Figures'' document, see the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section.

As nearby ports and indeed the maritime industry itself have grown over the fifty years since the Smith Point TSS was first charted, traffic patterns, traffic density, and vessel sizes have all changed considerably. Meanwhile, both the development and growth of the port community, and the growth in the size of the ships navigating these waters, appear to have rendered the Smith Point TSS obsolete. With the advent of the Global Positioning System, Automatic Identification System and overall improved navigation technology since

1969, today's maritime pilots have better communications and awareness of the locations of other vessels navigating in the vicinity of Smith Point. These pilots have safely coordinated large vessel traffic despite not being able to use the TSS as designed.

Due to the increase in size and draft of typical cargo vessels since the Smith Point TSS was first identified on the charts in 1969, depths in the north-bound and south-bound vessel traffic lanes are inadequate for modern deep draft vessels transiting through this area and today's larger vessels can no longer use the routing measure as designed. The natural bottom contours of the Bay provide the greatest depths in the center of the southbound lane of the TSS. See Figures 2 & 3 in the Figures document in the docket. And while the Inland Navigational Rules (eCFR, 2023) provide that a vessel shall, so far as practicable, avoid crossing traffic lanes, larger inbound vessels must use the opposing outbound lane of the Smith Point TSS to avoid the risk of grounding. This scenario leads to a traffic pattern contrary to the charted routing measure and not in accordance with Rule 10 of the Inland Rules, which may actually increase the risk of collisions. As the Smith Point TSS appears to be counterproductive today, we are seeking public comments regarding its continued need.

If after consideration of the comments received we determine that the Smith Point TSS should be removed from nautical charts and publications, we will then reestablish the current Smith Point Fairway Lighted Buoy SP (LLNR 7490), which marks the turning point of the TSS separation zone, as the Smith Point Lighted Buoy SP, a white and red striped Safe Water Buoy. The light will change from yellow to white with Morse Code ''A'' flash characteristic. We also seek public comment from waterway users on the Coast Guard's plan to change the signal and meaning of this buoy.

## III. Information Requested

If you believe there is some reason the Smith Point TSS should be retained, please let us know that and provide us with your reasoning for wanting to keep it in place. Please include comments regarding the potential impacts of this possible change and any other concerns that you may have regarding the Smith Point TSS.

## IV. Public Participation and Request for Comments

We encourage you to submit comments in response to this notification of inquiry through the Federal Decision Making portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0330 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. In your submission, please include the docket number for this notification of inquiry and provide a reason for each suggestion or recommendation. If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

To view documents mentioned in this notification of inquiry 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. We review all comments received, but we may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

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

We do not plan to hold a public meeting to receive oral comments on this notification of inquiry; however, should the need arise, we will announce the date, time, and location in a separate document published in the **Federal Register**. If you have signed up for docket email alerts mentioned in the paragraph above, you will receive an email notice when the public meeting notice is published and placed in the docket.

This document is issued under authority of 5 U.S.C. 552(a).

Dated: August 15, 2023.

**Mary Ellen J. Durley,**

*Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.*

[FR Doc. 2023–17849 Filed 8–18–23; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Immigration and Customs Enforcement

**[Docket No. ICEB–2023–0003]**

**RIN 1653–ZA40**

## Employment Authorization for Ukrainian F–1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the Current Armed Conflict in Ukraine

**AGENCY:** U.S. Immigration and Customs Enforcement; Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice announces that the Secretary of Homeland Security (Secretary) is suspending certain regulatory requirements for F–1 nonimmigrant students whose country of citizenship is Ukraine, regardless of country of birth (or individuals having no nationality who last habitually resided in Ukraine), and who are experiencing severe economic hardship as a direct result of the current armed conflict in Ukraine. The Secretary is taking action to provide relief to these Ukrainian students who are in lawful F–1 nonimmigrant student status, so the students may request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain their F–1 nonimmigrant student status. The U.S. Department of Homeland Security (DHS) will deem an F–1 nonimmigrant student granted employment authorization by means of this notice to be engaged in a ''full course of study'' for the duration of the employment authorization, if the nonimmigrant student satisfies the minimum course load requirement described in this notice.

**DATES:** This action is effective October 20, 2023, through April 19, 2025.

**FOR FURTHER INFORMATION CONTACT:** Sharon Snyder, Unit Chief, Policy and Response Unit, Student and Exchange Visitor Program, MS 5600, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Washington, DC 20536–5600. email: *sevp@ice.dhs.gov,* telephone: (703) 603–3400. This is not a toll-free number. Program information can be found at *https://www.ice.gov/sevis/.*

**SUPPLEMENTARY INFORMATION:**

**What action is DHS taking under this notice?**

The Secretary is exercising authority under 8 CFR 214.2(f)(9) to temporarily suspend the applicability of certain requirements governing on-campus and off-campus employment for F–1 nonimmigrant students whose country of citizenship is Ukraine regardless of country of birth (or individuals having no nationality who last habitually resided in Ukraine), who are present in the United States in lawful F–1 nonimmigrant student status on the date of publication of this notice, and who are experiencing severe economic hardship as a direct result of current armed conflict in Ukraine. The original notice, which applied to F–1 nonimmigrant students who met certain criteria, including having been lawfully present in the United States in F–1 nonimmigrant status on April 19, 2022, was effective from April 19, 2022, through October 19, 2023. *See* 87 FR 23189 (Apr. 19, 2022). Effective with this publication, suspension of the employment limitations is available through April 19, 2025, for those who are in lawful F–1 nonimmigrant status on the date of publication of this notice. DHS will deem an F–1 nonimmigrant student granted employment authorization through this notice to be engaged in a ''full course of study'' for the duration of the employment authorization, if the student satisfies the minimum course load set forth in this notice.[1] *See* 8 CFR 214.2(f)(6)(i)(F).

**Who is covered by this notice?**

This notice applies exclusively to F–1 nonimmigrant students who meet all of the following conditions:

(1) Are a citizen of Ukraine regardless of country of birth (or an individual having no nationality who last habitually resided in Ukraine);

(2) Were lawfully present in the United States on the date of publication of this notice in F–1 nonimmigrant status under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(F)(i);

(3) Are enrolled in an academic institution that is Student and Exchange Visitor Program (SEVP)-certified for enrollment for F–1 nonimmigrant students;

(4) Are currently maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the current armed conflict in Ukraine.

This notice applies to F–1 nonimmigrant students in an approved private school in kindergarten through grade 12, public school grades 9 through 12, and undergraduate and graduate education. An F–1 nonimmigrant student covered by this notice who transfers to another SEVP-certified academic institution remains eligible for the relief provided by means of this notice.

**Why is DHS taking this action?**

DHS is taking action to provide relief to Ukrainian F–1 nonimmigrant students experiencing severe economic hardship due to the current armed conflict in Ukraine. Based on its review of country conditions in Ukraine and input received from the U.S. Department of State (DOS), DHS is taking action to allow eligible F–1 nonimmigrant students from Ukraine to request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant status.

On February 24, 2022, the Government of the Russian Federation, launched an unprovoked full-scale invasion of Ukraine.[2] According to the United Nations Refugee Agency (UNHCR), the armed conflict in Ukraine has sparked the world's largest human displacement crisis in Europe since World War II.[3]

More than a year later, over 17.7 million people are in need of assistance, and more than 6.2 million refugees, mostly women, children, and elderly people, left Ukraine and were recorded to be residing in cities across Europe and beyond.[4] According to the Centre for Research & Analysis of Migration (CReAM), over five million Ukrainians have registered for Temporary Protection, or similar national protection schemes, in Europe in the last year.[5] [6]

*Economy*

The current armed conflict has significantly impacted Ukraine's economic growth and has led to massive fiscal reallocations toward defense funding.[7] Since the beginning of the full-scale invasion, 35 percent of Ukrainians have fled their homes. Data from the World Bank indicates that 8 million Ukrainians now live in poverty, reversing 15 years of development gains and resulting in a 15-year setback in poverty reduction goals.[8] Economic disruptions, combined with heavy internal displacement and flows of refugees, have caused unprecedented economic loses, prompting President Zelenskyy to seek additional economic support and aid for Ukraine.[9]

According to the World *Bank Group Support to Ukraine Report,* Ukraine's economy shrank by 30 percent in 2022. This is due to loss and destruction of infrastructure, damage to agricultural land, and a significant labor shortage.[10] The inflation rate has increased more than threefold, from 2.73 percent in 2020 to 9.36 percent in 2021.[11]

In a report titled *Analysis: 2022 Economic Results for Ukraine, Prospects for 2023,* by the Kyiv Post, the unemployment rate for Ukraine was

[1] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of April 19, 2025, provided the student satisfies the minimum course load requirements in this notice.

[2] Karl Ritter and Geir Moulson, US: Russia has committed crimes against humanity in Ukraine, The Associated Press (AP), Feb. 18, 2023, available at *https://apnews.com/article/us-russia-ukraine-crimes-against-humanity-harris-cee87f06cbf3fcdf37e0bb398360c8ee* (last viewed Apr. 17, 2023).

[3] International Rescue Committee Watchlist 2023: The top 10 crises the world can't ignore in 2023, The International Rescue Committee (IRC), Dec. 14, 2022, available at *https://www.rescue.org/article/top-10-crises-world-cant-ignore-2023* (last visited Mar. 31, 2023).

[4] Operational Data Portal: Ukraine Refugee Situation, UNHCR, available at *https://data2.unhcr.org/en/situations/ukraine* (last visited August 8, 2023).

[5] Current migration flows from Ukraine, Centre for Research & Analysis of Migration, last updated Feb. 14, 2023, available at *https://cream-migration.org/ukraine-detail.htm?article=3573* (last visited Apr. 11, 2023).

[6] Ukraine Humanitarian Response—Key Achievements in 2022 Situation Report, United Nations Office for the Coordination of Humanitarian Affairs (OCHA), last updated Feb. 10, 2023, available at *https://reports.unocha.org/en/country/ukraine/* (last visited Apr. 14, 2023).

[7] Matt Bernardini and Darryl Coote, U.S. announces $2.6 billion in new military aid to Ukraine, United Press International (UPI), Apr. 4, 2023, available at *https://www.upi.com/Top_News/US/2023/04/04/Ukraine-Russia-military-aid/4281680633050/#:~:text=April%204%20%28UPI%29%20--%20The%20White%20House%20announced,of%20air-defense%20systems%2C%20mortar%20systems%2C%20and%20anti-armor%20systems* (last visited Apr. 14, 2023).

[8] The World Bank in Ukraine, The World Bank, available at *https://www.worldbank.org/en/country/ukraine/overview* (last visited on Apr. 14, 2023).

[9] The Latest: War in Ukraine, Zelenskyy Asks Top Finance Officials to Increase Economic Support for Ukraine, The New York Times, Apr. 12, 2023, available at *https://www.nytimes.com/live/2023/04/12/world/russia-ukraine-news* (last visited on Apr. 14, 2023).

[10] World Bank Group Support to Ukraine report, The World Bank, available at *https://thedocs.worldbank.org/en/doc/50b29fa867fbd7af6fb96ed5c3dd2513-0080012023/original/World-Bank-Group-Support-to-Ukraine.pdf* (last visited on Apr. 14, 2023).

[11] The World Factbook, Central Intelligence Agency (CIA), Mar. 28, 2023, available at *https://www.cia.gov/the-world-factbook/countries/ukraine/#economy* (last visited Apr. 4, 2023).

24.5 percent at the end of December 2022, compared to an estimated 8.9 percent in 2021. The International Labour Organization (ILO) assessed 4.8 million jobs have been lost since the beginning of the full-scale invasion, which is equivalent to 30 percent of pre-2022 employment in Ukraine.[12] Russia's full-scale invasion of Ukraine has resulted in a significant negative impact on the Ukrainian economy and has further slowed its growth and development.

*Impact of the Conflict on Critical Infrastructure*

Critical infrastructure has been negatively impacted by Russia's full-scale invasion of Ukraine.[13] Water systems have either been damaged or destroyed, aggravating hardship for the local population. At least 45 million square meters of housing, more than 1,200 educational institutions, and 656 hospitals have been destroyed and/or damaged. Nearly 25,000 kilometers of roads, 300 bridges, and 12 airports have also been destroyed or damaged due to Russian air strikes.[14]

According to research from the Kyiv School of Economics, Russia's full-scale invasion of Ukraine has caused $108.3 billion in damage to the country's infrastructure, with the minimum recovery cost estimated to be well over $180 billion.[15] Additionally, Russia's full-scale invasion continues to disrupt the global supply of commodities and has sharply increased food and energy prices across the globe, further challenging global economic recovery tactics from the COVID–19 pandemic.[16] While Ukraine continues to confront this crisis, many persons in Ukraine continue to have limited access to safety, healthcare, food, water, and economic opportunity.

*Population Harmed*

Since the start of Russia's full-scale invasion of Ukraine in 2022, the armed conflict has significantly impacted the civilian population.[17] The Office of the UN High Commissioner for Human Rights (OHCHR) has recorded 22,734 civilian casualties in the country: 8,490 killed and 14,244 injured.[18] OHCHR further stated that the majority of the recorded civilian casualties were caused by explosive weapons with wide area effects, including shelling from heavy artillery, multiple launch rocket systems, missiles, and air strikes.[19] The U.S. Department of State's 2022 Country Report on Human Rights Practices in Ukraine detailed that Russia's forces continue to mine roads, streets, fields, urban structures such as hospitals and civic centers, as well as household objects.[20]

The Organization for Security and Co-operation in Europe (OSCE) stated on February 24, 2023, that the magnitude of the destruction across Ukraine is massive. Thousands of Ukrainians have died, and millions have been forced to flee their homes.

The UNOCHA (OCHA) issued the Humanitarian Needs Overview 2023 report, which reviews the impact of Landmines/Explosive Remnants of War (ERW). The report concluded that an estimated 25 percent of Ukraine's land area has been exposed to armed conflict activity since February 2022. The report also estimated that over 250,000 explosive devices have been removed and destroyed since March 2022, with millions more yet to be removed.[21]

Russia's full-scale invasion of Ukraine continues to place civilians at substantial risk of physical harm, leaving many stranded or unable to flee Ukraine due to rising violence, the damage and destruction of bridges and roads, and lack of resources or information on where to find safety and shelter.[22]

As of August 8, 2023, approximately 2,425 F–1 nonimmigrant students from Ukraine are enrolled at SEVP-certified academic institutions in the United States. Given the extent of the current armed conflict in Ukraine, affected students whose primary means of financial support comes from Ukraine may need to be exempt from the normal student employment requirements to continue their studies in the United States. The current armed conflict has made it unfeasible for many students to safely return to Ukraine for the foreseeable future. Without employment authorization, these students may lack the means to meet basic living expenses.

**What is the minimum course load requirement to maintain valid F–1 nonimmigrant status under this notice?**

Undergraduate F–1 nonimmigrant students who receive on-campus or off-campus employment authorization under this notice must remain registered for a minimum of six semester or quarter hours of instruction per academic term. Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B) and (F). A graduate-level F–1 nonimmigrant student who receives on-campus or off-campus employment authorization under this notice must remain registered for a minimum of three semester or quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v). Nothing in this notice affects the applicability of other minimum course load requirements set by the academic institution.

In addition, an F–1 nonimmigrant student (either undergraduate or graduate) granted on-campus or off-campus employment authorization under this notice may count up to the

[12] The impact of the Ukraine crisis on the world of work: Initial assessments, International Labour Organization (ILO), May 11, 2022, available at *https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/documents/briefingnote/wcms_844295.pdf* (last visited Apr. 11, 2023).

[13] Ukraine: Russian Invasion Causing Widespread Suffering for Civilians, Accountability for Apparent War Crimes, Other Abuses Crucial, Human Rights Watch (HRW), available at *https://www.hrw.org/news/2023/01/12/ukraine-russian-invasion-causing-widespread-suffering-civilians* (last visited Mar. 24, 2023).

[14] PM Shmyhal: Sum of infrastructure damages has reached $104B, Ukrinform, June 18, 2022, available at *https://www.ukrinform.net/rubric-economy/3509806-pm-shmyhal-sum-of-infrastructure-damages-has-reached-104b.html* (last visited Apr. 10, 2023).

[15] The total amount of documented damages has reached $108.3 billion, minimum recovery needs for destroyed assets—$185 billion, Kyiv School of Economics, Aug. 2, 2022, available at *https://kse.ua/about-the-school/news/the-total-amount-of-documented-damages-has-reached-108-3-billion-minimum-recovery-needs-for-destroyed-assets-185-billion/* (last visited Mar. 24, 2023).

[16] Assessing the Impact of Russia's War against Ukraine on Eastern Partner Countries, Organisation for Economic Cooperation and Development (OECD), Jan. 21, 2023, available at *https://www.oecd-ilibrary.org/sites/946a936c-en/index.html?itemId=/content/publication/946a936c-en* (last visited Apr. 12, 2023).

[17] Ukraine: Russian Invasion Causing Widespread Suffering for Civilians Accountability for Apparent War Crimes, Other Abuses Crucial, Human Rights Watch, Jan. 12, 2023, available at *https://www.hrw.org/news/2023/01/12/ukraine-russian-invasion-causing-widespread-suffering-civilians* (last visited on Apr. 17, 2023).

[18] Ukraine: civilian casualty update, United Nations Human Rights Office of High Commissioner (OHCHR), Apr. 10, 2023, available at *https://www.ohchr.org/en/news/2023/04/ukraine-civilian-casualty-update-10-april-2023* (last visited Apr. 12, 2023).

[19] Ukraine: civilian casualty update, OHCHR, Apr. 10, 2023, available at *https://www.ohchr.org/en/news/2023/04/ukraine-civilian-casualty-update-10-april-2023* (last visited Apr. 12, 2023).

[20] U.S. Dep't of State, 2022 Country Reports on Human Rights Practices: Ukraine, available at *https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/ukraine/* (last visited Apr. 12, 2023).

[21] Report on the Human Rights Situation in Ukraine, OHCHR, Mar. 24, 2023, available at *https://reliefweb.int/report/ukraine/ukraine-humanitarian-needs-overview-2023-december-2022-enuk* (last visited August 3, 2023).

[22] War in Ukraine One Year On, Nowhere Safe, The Armed Conflict Location & Event Data Project (ACLED), Mar. 1, 2023, available at *https://acleddata.com/2023/03/01/war-in-ukraine-one-year-on-nowhere-safe/* (last visited Apr. 13, 2023).

equivalent of one class or three credits per session, term, semester, trimester, or quarter of online or distance education toward satisfying this minimum course load requirement, unless their course of study is in an English language study program. *See* 8 CFR 214.2(f)(6)(i)(G). An F–1 nonimmigrant student attending an approved private school in kindergarten through grade 12 or public school in grades 9 through 12 must maintain ''class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress toward graduation,'' as required under 8 CFR 214.2(f)(6)(i)(E). Nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors.

**May an eligible F–1 nonimmigrant student who already has on-campus or off-campus employment authorization benefit from the suspension of regulatory requirements under this notice?**

Yes. An F–1 nonimmigrant student who is a Ukrainian citizen, regardless of country of birth (or an individual having no nationality who last habitually resided in Ukraine), who already has on-campus or off-campus employment authorization and is otherwise eligible may benefit under this notice, which suspends certain regulatory requirements relating to the minimum course load requirement under 8 CFR 214.2(f)(6)(i) and certain employment eligibility requirements under 8 CFR 214.2(f)(9). Such an eligible F–1 nonimmigrant student may benefit without having to apply for a new Form I–766, Employment Authorization Document (EAD). To benefit from this notice, the F–1 nonimmigrant student must request that their designated school official (DSO) enter the following statement in the remarks field of the student's Student and Exchange Visitor Information System (SEVIS) record, which the student's Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status, will reflect:

Approved for more than 20 hours per week of [DSO must insert ''on-campus'' or ''off-campus,'' depending upon the type of employment authorization the student already has] employment authorization and reduced course load under the Special Student Relief authorization from [DSO must insert the beginning date of the notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert either the student's program end date, the current EAD expiration date (if the student is currently authorized for off-campus employment), or the end date of this notice, whichever date comes first].[23]

**Must the F–1 nonimmigrant student apply for reinstatement after expiration of this special employment authorization if the student reduces his or her ''full course of study''?**

No. DHS will deem an F–1 nonimmigrant student who receives and comports with the employment authorization permitted under this notice to be engaged in a ''full course of study'' [24] for the duration of the student's employment authorization, provided that a qualifying undergraduate level F–1 nonimmigrant student remains registered for a minimum of six semester or quarter hours of instruction per academic term, and a qualifying graduate level F–1 nonimmigrant student remains registered for a minimum of three semester or quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v) and (f)(6)(i)(F). Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B) and (F). DHS will not require such students to apply for reinstatement under 8 CFR 214.2(f)(16) if they are otherwise maintaining F–1 nonimmigrant status.

**Will an F–2 dependent (spouse or minor child) of an F–1 nonimmigrant student covered by this notice be eligible for employment authorization?**

No. An F–2 spouse or minor child of an F–1 nonimmigrant student is not authorized to work in the United States and, therefore, may not accept employment under the F–2 nonimmigrant status, consistent with 8 CFR 214.2(f)(15)(i).

**Will the suspension of the applicability of the standard student employment requirements apply to an individual who receives an initial F–1 visa and makes an initial entry into the United States after the effective date of this notice in the Federal Register?**

No. The suspension of the applicability of the standard regulatory requirements only applies to certain F–1 nonimmigrant students who meet the following conditions:

(1) Are a citizen of Ukraine regardless of country of birth (or an individual having no nationality who last habitually resided in Ukraine);

(2) Were lawfully present in the United States on the date of publication of this notice in F–1 nonimmigrant status, under section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i);

(3) Are enrolled in an academic institution that is SEVP-certified for enrollment of F–1 nonimmigrant students;

(4) Are maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the current armed conflict in Ukraine.

An F–1 nonimmigrant student who does not meet all these requirements is ineligible for the suspension of the applicability of the standard regulatory requirements (even if experiencing severe economic hardship as a direct result of the current armed conflict in Ukraine).

**Does this notice apply to a continuing F–1 nonimmigrant student who departs the United States after the effective date of this notice in the Federal Register and who needs to obtain a new F–1 visa before returning to the United States to continue an educational program?**

Yes. This notice applies to such an F–1 nonimmigrant student, but only if the DSO has properly notated the student's SEVIS record, which will then appear on the student's Form I–20. The normal rules for visa issuance remain applicable to a nonimmigrant who needs to apply for a new F–1 visa to continue an educational program in the United States.

**Does this notice apply to elementary school, middle school, and high school students in F–1 status?**

Yes. However, this notice does not by itself reduce the required course load for F–1 nonimmigrant students from Ukraine enrolled in kindergarten through grade 12 at a private school, or grades 9 through 12 at a public high school. Such students must maintain the minimum number of hours of class

[23] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of April 19, 2025, provided the student satisfies the minimum course load requirements in this notice.

[24] *See* 8 CFR 214.2(f)(6).

attendance per week prescribed by the academic institution for normal progress toward graduation, as required under 8 CFR 214.2(f)(6)(i)(E). The suspension of certain regulatory requirements related to employment through this notice is applicable to all eligible F–1 nonimmigrant students regardless of educational level. Eligible F–1 nonimmigrant students from Ukraine enrolled in an elementary school, middle school, or high school may benefit from the suspension of the requirement in 8 CFR 214.2(f)(9)(i) that limits on-campus employment to 20 hours per week while school is in session.

**On-Campus Employment Authorization**

**Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice be authorized to work more than 20 hours per week while school is in session?**

Yes. For an F–1 nonimmigrant student covered in this notice, the Secretary is suspending the applicability of the requirement in 8 CFR 214.2(f)(9)(i) that limits an F–1 nonimmigrant student's on-campus employment to 20 hours per week while school is in session. An eligible F–1 nonimmigrant student has authorization to work more than 20 hours per week while school is in session if the DSO has entered the following statement in the remarks field of the student's SEVIS record, which will be reflected on the student's Form I–20:

Approved for more than 20 hours per week of on-campus employment and reduced course load, under the Special Student Relief authorization from [DSO must insert the beginning date of this notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert the student's program end date or the end date of this notice, whichever date comes first].[25]

To obtain on-campus employment authorization, the F–1 nonimmigrant student must demonstrate to the DSO that the employment is necessary to avoid severe economic hardship directly resulting from the current armed conflict in Ukraine. An F–1 nonimmigrant student authorized by the DSO to engage in on-campus employment by means of this notice does not need to file any applications with U.S. Citizenship and Immigration Services (USCIS). The standard rules permitting full-time employment on-campus when school is not in session or during school vacations apply, as described in 8 CFR 214.2(f)(9)(i).

**Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain his or her F–1 nonimmigrant student status?**

Yes. DHS will deem an F–1 nonimmigrant student who receives on-campus employment authorization under this notice to be engaged in a ''full course of study'' [26] for the purpose of maintaining their F–1 nonimmigrant student status for the duration of the on-campus employment, if the student satisfies the minimum course load requirement described in this notice, consistent with 8 CFR 214.2(f)(6)(i)(F). However, the authorization to reduce the normal course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if the reduction would not meet the academic institution's minimum course load requirement for continued enrollment.[27]

**Off-Campus Employment Authorization**

**What regulatory requirements does this notice temporarily suspend relating to off-campus employment?**

For an F–1 nonimmigrant student covered by this notice, as provided under 8 CFR 214.2(f)(9)(ii)(A), the Secretary is suspending the following regulatory requirements relating to off-campus employment:

(a) The requirement that a student must have been in F–1 nonimmigrant student status for one full academic year to be eligible for off-campus employment;

(b) The requirement that an F–1 nonimmigrant student must demonstrate that acceptance of employment will not interfere with the student's carrying a full course of study;

(c) The requirement that limits an F–1 nonimmigrant student's employment authorization to no more than 20 hours per week of off-campus employment while the school is in session; and

(d) The requirement that the student demonstrate that employment under 8 CFR 214.2(f)(9)(i) is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.

**Will an F–1 nonimmigrant student who receives off-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain F–1 nonimmigrant status?**

Yes. DHS will deem an F–1 nonimmigrant student who receives off-campus employment authorization by means of this notice to be engaged in a ''full course of study'' [28] for the purpose of maintaining F–1 nonimmigrant student status for the duration of the student's employment authorization if the student satisfies the minimum course load requirement described in this notice, consistent with 8 CFR 214.2(f)(6)(i)(F). The authorization for a reduced course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if such reduced course load would not meet the school's minimum course load requirement.[29]

**How may an eligible F–1 nonimmigrant student obtain employment authorization for off-campus employment with a reduced course load under this notice?**

An F–1 nonimmigrant student must file a Form I–765, Application for Employment Authorization, with USCIS to apply for off-campus employment authorization based on severe economic hardship directly resulting from the current armed conflict in Ukraine.[30] Filing instructions are located at *https://www.uscis.gov/i-765.*

*Fee considerations.* Submission of a Form I–765 currently requires payment of a $410 fee. An applicant who is unable to pay the fee may submit a completed Form I–912, Request for Fee Waiver, along with the Form I–765, Application for Employment Authorization. *See https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-*

[25] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' see 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of April 19, 2025, provided the student satisfies the minimum course load requirements in this notice.

[26] See 8 CFR 214.2(f)(6).

[27] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

[28] See 8 CFR 214.2(f)(6).

[29] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

[30] *See* 8 CFR 274a.12(c)(3)(iii).

*waiver.* The submission must include an explanation about why USCIS should grant the fee waiver and the reason(s) for the inability to pay, and any evidence to support the reason(s). *See* 8 CFR 103.7(c) (Oct. 1, 2020).

*Supporting documentation.* An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship must demonstrate the following to their DSO:

(1) This employment is necessary to avoid severe economic hardship; and

(2) The hardship is a direct result of the current armed conflict in Ukraine.

If the DSO agrees that the F–1 nonimmigrant student is entitled to receive such employment authorization, the DSO must recommend application approval to USCIS by entering the following statement in the remarks field of the student's SEVIS record, which will then appear on that student's Form I–20:

Recommended for off-campus employment authorization in excess of 20 hours per week and reduced course load under the Special Student Relief authorization from the date of the USCIS authorization noted on Form I–766 until [DSO must insert the program end date or the end date of this notice, whichever date comes first].[31]

The F–1 nonimmigrant student must then file the properly endorsed Form I–20 and Form I–765 according to the instructions for the Form I–765. The F–1 nonimmigrant student may begin working off campus only upon receipt of the EAD from USCIS.

*DSO recommendation.* In making a recommendation that an F–1 nonimmigrant student be approved for Special Student Relief, the DSO certifies that:

(a) The F–1 nonimmigrant student is in good academic standing and is carrying a ''full course of study'' [32] at the time of the request for employment authorization;

(b) The F–1 nonimmigrant student is a citizen of Ukraine, regardless of country of birth (or an individual having no nationality who last habitually resided in Ukraine), and is experiencing severe economic hardship as a direct result of the current armed conflict in Ukraine, as documented on the Form I–20;

(c) The F–1 nonimmigrant student has confirmed that the student will comply with the reduced course load requirements of this notice and register for the duration of the authorized employment for a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if the student is at the graduate level,[33] and

(d) The off-campus employment is necessary to alleviate severe economic hardship to the individual as a direct result of the current armed conflict in Ukraine.

*Processing.* To facilitate prompt adjudication of the student's application for off-campus employment authorization under 8 CFR 214.2(f)(9)(ii)(C), the F–1 nonimmigrant student should do both of the following:

(a) Ensure that the application package includes the following documents:

(1) A completed Form I–765 with all applicable supporting evidence;

(2) The required fee or properly documented fee waiver request as defined in 8 CFR 103.7(c) (Oct. 1, 2020); and

(3) A signed and dated copy of the student's Form I–20 with the appropriate DSO recommendation, as previously described in this notice; and

(b) Send the application in an envelope which is clearly marked on the front of the envelope, bottom right-hand side, with the phrase ''SPECIAL STUDENT RELIEF.'' [34] Failure to include this notation may result in significant processing delays.

If USCIS approves the student's Form I–765, USCIS will send the student a Form I–766 EAD as evidence of employment authorization. The EAD will contain an expiration date that does not exceed the end of the granted temporary relief.

**Temporary Protected Status (TPS) Considerations**

*Can an F–1 nonimmigrant student apply for TPS and for benefits under this notice at the same time?*

Yes. An F–1 nonimmigrant student who has not yet applied for TPS or for other relief that reduces the student's course load per term and permits an increased number of work hours per week, such as Special Student Relief,[35] under this notice has two options.

Under the first option, the F–1 nonimmigrant student may apply for TPS according to the instructions in the USCIS notice designating Ukraine for TPS elsewhere in this issue of the **Federal Register**. All TPS applicants must file a Form I–821, Application for Temporary Protected Status, with the appropriate fee (or request a fee waiver). Although not required to do so, if F–1 nonimmigrant students want to obtain a new TPS-related EAD that is valid through April 19, 2025, and to be eligible for automatic EAD extensions that may be available to certain EADs with an A–12 or C–19 category code, they must file Form I–765 and pay the Form I–765 fee (or request a fee waiver). After receiving the TPS-related EAD, an F–1 nonimmigrant student may request that their DSO make the required entry in SEVIS and issue an updated Form I–20, which notates that the nonimmigrant student has been authorized to carry a reduced course load, as described in this notice. As long as the F–1 nonimmigrant student maintains the minimum course load described in this notice, does not otherwise violate their nonimmigrant status, including as provided under 8 CFR 214.1(g), and maintains TPS, then the student maintains F–1 status and TPS concurrently.

Under the second option, the F–1 nonimmigrant student may apply for an EAD under Special Student Relief by filing Form I–765 with the location specified in the filing instructions. At the same time, the F–1 nonimmigrant student may file a separate TPS application but must submit the Form I–821 according to the instructions provided in the **Federal Register** notice designating Ukraine for TPS. If the F–1 nonimmigrant student has already applied for employment authorization under Special Student Relief, they are not required to submit the Form I–765 as part of the TPS application. However, some nonimmigrant students may wish to obtain a TPS-related EAD in light of certain extensions that may be available to EADs with an A–12 or C–19 category code that are not available to the C–3 category under which Special Student Relief falls. The F–1 nonimmigrant student should check the appropriate box when filling out Form I–821 to indicate whether a TPS-related EAD is being requested. Again, so long as the F–1 nonimmigrant student maintains the minimum course load described in

[31] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of April 19, 2025, provided the student satisfies the minimum course load requirements in this notice.

[32] *See* 8 CFR 214.2(f)(6).

[33] 8 CFR 214.2(f)(5)(v).

[34] Guidance for direct filing addresses can be found here:*https://www.uscis.gov/i-765-addresses.*

[35] *See* DHS Study in the States, Special Student Relief, *https://studyinthestates.dhs.gov/students/special-student-relief* (last visited May 10, 2023).

this notice and does not otherwise violate the student's nonimmigrant status, included as provided under 8 CFR 214.1(g), the nonimmigrant will be able to maintain compliance requirements for F–1 nonimmigrant student status while having TPS.

**When a student applies simultaneously for TPS and benefits under this notice, what is the minimum course load requirement while an application for employment authorization is pending?**

The F–1 nonimmigrant student must maintain normal course load requirements for a ''full course of study'' [36] unless or until the nonimmigrant student receives employment authorization under this notice. TPS-related employment authorization, by itself, does not authorize a nonimmigrant student to drop below twelve credit hours, or otherwise applicable minimum requirements (*e.g.,* clock hours for non-traditional academic programs). Once approved for a TPS-related EAD and Special Student Relief employment authorization, as indicated by the DSO's required entry in SEVIS and issuance of an updated Form I–20 , the F–1 nonimmigrant student may drop below twelve credit hours, or otherwise applicable minimum requirements (with a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if at the graduate level). *See* 8 CFR 214.2(f)(5)(v), (f)(6), and (f)(9)(i) and (ii).

**How does a student who has received a TPS-related EAD then apply for authorization to take a reduced course load under this notice?**

There is no further application process with USCIS if a student has been approved for a TPS-related EAD. The F–1 nonimmigrant student must demonstrate and provide documentation to the DSO of the direct economic hardship resulting from the current armed conflict in Ukraine. The DSO will then verify and update the student's record in SEVIS to enable the F–1 nonimmigrant student with TPS to reduce the course load without any further action or application. No other EAD needs to be issued for the F–1 nonimmigrant student to have employment authorization.

[36] See 8 CFR 214.2(f)(6).

**Can a noncitizen who has been granted TPS apply for reinstatement of F–1 nonimmigrant student status after the noncitizen's F–1 nonimmigrant student status has lapsed?**

Yes. Regulations permit certain students who fall out of F–1 nonimmigrant student status to apply for reinstatement. *See* 8 CFR 214.2(f)(16). This provision may apply to students who worked on a TPS-related EAD or dropped their course load before publication of this notice, and therefore fell out of student status. These students must satisfy the criteria set forth in the F–1 nonimmigrant student status reinstatement regulations.

**How long will this notice remain in effect?**

This notice grants temporary relief until April 19, 2025,[37] to eligible F–1 nonimmigrant students. DHS will continue to monitor the situation in Ukraine. Should the special provisions authorized by this notice need modification or extension, DHS will announce such changes in the **Federal Register**.

**Paperwork Reduction Act (PRA)**

An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship resulting from the current armed conflict in Ukraine must demonstrate to the DSO that this employment is necessary to avoid severe economic hardship. A DSO who agrees that a nonimmigrant student should receive such employment authorization must recommend an application approval to USCIS by entering information in the remarks field of the student's SEVIS record. The authority to collect this information is in the SEVIS collection of information currently approved by the Office of Management and Budget (OMB) under OMB Control Number 1653–0038.

This notice also allows an eligible F–1 nonimmigrant student to request employment authorization, work an increased number of hours while the academic institution is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

[37] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of April 19, 2025, provided the student satisfies the minimum course load requirements in this notice.

To apply for employment authorization, certain F–1 nonimmigrant students must complete and submit a currently approved Form I–765 according to the instructions on the form. OMB has previously approved the collection of information contained on the current Form I–765, consistent with the PRA (OMB Control No. 1615–0040). Although there will be a slight increase in the number of Form I–765 filings because of this notice, the number of filings currently contained in the OMB annual inventory for Form I–765 is sufficient to cover the additional filings. Accordingly, there is no further action required under the PRA.

**Alejandro Mayorkas,**

*Secretary, U.S. Department of Homeland Security.*

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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Immigration and Customs Enforcement

**[Docket No. ICEB–2023–0004]**

**RIN 1653–ZA39**

## Employment Authorization for Sudanese F–1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the Current Crisis in Sudan

**AGENCY:** U.S. Immigration and Customs Enforcement; Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice announces that the Secretary of Homeland Security (Secretary) is suspending certain regulatory requirements for F–1 nonimmigrant students whose country of citizenship is Sudan, regardless of country of birth (or individuals having no nationality who last habitually resided in Sudan), and who are experiencing severe economic hardship as a direct result of the current crisis in Sudan. The Secretary is taking action to provide relief to these Sudanese students who are in lawful F–1 nonimmigrant student status, so the students may request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain their F–1 nonimmigrant student status. The U.S. Department of Homeland Security (DHS) will deem an F–1 nonimmigrant student granted employment authorization by means of this notice to

be engaged in a ''full course of study'' for the duration of the employment authorization, if the nonimmigrant student satisfies the minimum course load requirement described in this notice.

**DATES:** This action is effective October 20, 2023, through April 19, 2025.

**FOR FURTHER INFORMATION CONTACT:** Sharon Snyder, Unit Chief, Policy and Response Unit, Student and Exchange Visitor Program, MS 5600, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Washington, DC 20536–5600; email: *sevp@ice.dhs.gov,* telephone: (703) 603–3400. This is not a toll-free number. Program information can be found at *https://www.ice.gov/sevis/.*

**SUPPLEMENTARY INFORMATION:**

## What action is DHS taking under this notice?

The Secretary is exercising authority under 8 CFR 214.2(f)(9) to temporarily suspend the applicability of certain requirements governing on-campus and off-campus employment for F–1 nonimmigrant students whose country of citizenship is Sudan regardless of country of birth (or individuals having no nationality who last habitually resided in Sudan), who are present in the United States in lawful F–1 nonimmigrant student status on the date of publication of this notice, and who are experiencing severe economic hardship as a direct result of the current crisis in Sudan. The original notice, which suspended certain regulatory requirements for F–1 nonimmigrant students experiencing severe economic hardship as a direct result of the crisis at that time is effective from April 19, 2022, through October 19, 2023. *See* 87 FR 23195 (Apr. 19, 2022). Effective with this publication, suspension of the employment limitations is available through April 19, 2025, for those who are in lawful F–1 nonimmigrant status on the date of publication of this notice. DHS will deem an F–1 nonimmigrant student granted employment authorization through this notice to be engaged in a ''full course of study'' for the duration of the employment authorization, if the student satisfies the minimum course load set forth in this notice.[1] *See* 8 CFR 214.2(f)(6)(i)(F).

## Who is covered by this notice?

This notice applies exclusively to F–1 nonimmigrant students who meet all of the following conditions:

(1) Are a citizen of Sudan regardless of country of birth (or an individual having no nationality who last habitually resided in Sudan);

(2) Were lawfully present in the United States on the date of publication of this notice in F–1 nonimmigrant status under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(F)(i);

(3) Are enrolled in an academic institution that is Student and Exchange Visitor Program (SEVP)-certified for enrollment for F–1 nonimmigrant students;

(4) Are currently maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the current crisis in Sudan.

This notice applies to F–1 nonimmigrant students in an approved private school in kindergarten through grade 12, public school grades 9 through 12, and undergraduate and graduate education. An F–1 nonimmigrant student covered by this notice who transfers to another SEVP-certified academic institution remains eligible for the relief provided by means of this notice.

## Why is DHS taking this action?

DHS is taking action to provide relief to Sudanese F–1 nonimmigrant students experiencing severe economic hardship due to the current crisis in Sudan. Based on its review of country conditions in Sudan and input received from the U.S. Department of State (DOS), DHS is taking action to allow eligible F–1 nonimmigrant students from Sudan to request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

In August 2019, a transitional government,[2] known as the Sovereign Council, comprised of military and civilian members, was established in Sudan.[3] General Abdel Fatah al-Burhan, a top military figure in the Sudanese Armed Forces (SAF) led the council.[4] General Mohammed Hamdan Dagalo, also known as Hemedti, head of the Rapid Support Forces (RSF),[5] served as the deputy to General al-Burhan.[6] On August 20, 2021, Dr. Abdalla Hamdok was sworn in as the prime minister of Sudan.[7] However, on October 25, 2021, Sudan faced a military takeover of the transitional government led by General al-Burhan with the support of General Hemedti.[8] Prime Minister Hamdok was removed from power and taken to an undisclosed location. In December 2021, General al-Burhan ''issued an edict giving authorities sweeping powers to clamp down on dissent, including granting security officers immunity from prosecution in carrying out these orders.'' [9] Prime Minister Hamdock was eventually freed and officially resigned as the Sudanese prime minister on January 2, 2022.[10]

In February 2023, the United Nations (UN) Panel of Experts on Sudan reported that Sudan continued to face a political crisis at the national level, with regular demonstrations against the rule of the military.[11] It further reported that a path to a transition towards a fully

[1] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F-1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of April 19, 2025, provided the student satisfies the minimum course load requirements in this notice.

[2] The Sovereign Council removed Sudan's former President Omar al-Bashir, after 30 years in power. After Bashir, A New Dawn in Sudan? U.S. Institute of Peace, April 17, 2019, available at *https://www.usip.org/publications/2019/04/after-bashir-new-dawn-sudan-part-1* (last visited on Apr. 17, 2023).

[3] 2020 Country Reports on Human Rights Practices: Sudan, DOS, March 30, 2020, available at *https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/sudan/* (last visited on Apr. 17, 2023).

[4] *Id.*

[5] Rapid Support Forces (RSF) is a paramilitary force established in 2013 by former President al-Bashir. It was ''fashioned out of Janjaweed militias and was assembled in response to anti-government rebel movements in Darfur.'' ''It has also been accused of a myriad of human rights abuses in Darfur and elsewhere.'' The Rapid Support Forces and the Escalation of Violence in Sudan, ACLED, July 2019, *acleddata.com/2019/07/02/the-rapid-support-forces-and-the-escalation-of-violence-in-sudan/* (last visited May 10, 2023).

[6] Sudan strongman is seen as an insider with powerful allies, AP News, October 27, 2021, available at *https://apnews.com/article/sudan-who-is-abdel-fattah-burhan-3f2d4d660fabf1b526f09f04808af7c8* (last visited on Apr. 17, 2023).

[7] 2019 Country Reports on Human Rights Practices: Sudan, U.S. Department of State, March 30, 2020, available at *https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/sudan/* (last visited Apr. 17, 2023).

[8] Appetite for Destruction: The Military Counterrevolution in Sudan, ACLED, October 29, 2021, available at *https://acleddata.com/2021/10/29/appetite-for-destruction-the-military-counter-revolution-in-sudan/* (last visited July 25, 2023).

[9] Watch List 2022; Sudan: Toward a Reset for the Transition, International Crisis Group, Jan. 27, 2022, available at *https://www.ecoi.net/en/document/2069005.html* (last visited Mar. 29, 2023).

[10] Sudan coup: Prime Minister Abdalla Hamdok resigns after mass protests, BBC News, 3 Jan. 2022, available at *https://www.bbc.com/news/world-africa-59855246* (last visited May 10, 2022).

[11] Letter dated 7 February 2023 from the Panel of Experts on the Sudan addressed to the President of the Security Council; Final report of the Panel of Experts on the Sudan, UN Security Council, February 7, 2023, available at *https://www.ecoi.net/en/file/local/2087153/N2303752.pdf* (last visited Mar. 29, 2023).

civilian government remained unclear.[12] Moreover, the UN Security Council reported, in September 2022, that the lack of a political agreement and a fully functioning government contributed to insecurity in various parts of Sudan, as well as to the deterioration of the economic and humanitarian situation.[13]

In April 2023, tensions between General Burhan and General Hemedti led to armed conflict between the Sudanese Armed Forces (SAF) and the RSF.[14] The conflict was caused by a disagreement over how the RSF would be integrated into the SAF.[15] On April 16, 2023, the UN Office for the Coordination of Humanitarian Affairs (UNOCHA) further reported on security conditions in the country stating that clashes between the SAF and the RSF erupted in Khartoum just before 9:00 a.m. on April 15, 2023. Additionally, heavy gunfire and explosions were heard from several locations in Khartoum. The RSF released a statement claiming to have taken control of Khartoum International Airport, the Presidential Palace, state television, and other key locations in the city. News of clashes at the military base in Merowe in Northern State and heavy exchanges of fire at the Soba military base in the south of Khartoum were also reported around the same time. Shortly after, heavy fighting was heard at the airport and the Sudanese Air Force attacked RSF positions from the air. Several civilian planes were reportedly damaged, and unconfirmed reports have indicated that the damaged aircraft includes the only UN Humanitarian Air Service (UNHAS) fixed-wing plane still in service following a recent funding shortage.[16] The United States Agency for International Development (USAID) reports that at least 3,900 people have been killed since the conflict began, although the true toll is likely much higher.[17]

*Economic Situation*

Sudan's political stalemate has negatively impacted its economy.[18] In 2022, Sudan's government devalued its currency, causing the inflation rate to surpass 300 percent.[19] In 2022, Sudan's economy remained highly dependent on agriculture, which contributes to nearly a third of the country's gross domestic product (GDP), and provides livelihoods to approximately two-thirds of Sudan's population.[20] However, the rising prices of fuel, agricultural tools, and fertilizer has impeded local production costs further eroding the already limited purchasing power of the majority of the population.[21]

Moreover, continued insecurity, inter-communal violence and rising floods led to price hikes of basic services in Sudan.[22] Continued increases in the prices of food and transportation, and the local food basket are expected to continue impacting the purchasing power of poor households and likely drive an increase in the inflation rate. The Food and Agriculture Organization (FAO) estimate that 5.6 million people are affected by the dry spells in addition to the 9.8 million people that are food insecure due to the current economic crisis, as well as fuel and price hikes.[23] In April 2023, the Famine Early Warning System Network, reported that ''Sudan's economic conditions remain poor, as low foreign currency reserves and currency depreciation resulted in high inflation rates.'' [24]

*Numbers at a Glance*

- *Number of People in Need:* 24,700,000 (since December 14, 2022, as of May 17, 2023) [25]
- *Children in Need:* 8,500,000 (since December 14, 2021, as of December 5, 2022) [26]
- *People Internally Displaced:* 2,613,036(since July 11, 2023, as of July 18, 2023) [27]
- *People Affected by Floods:* 348,724 [28]
- *People in Food Crisis/Emergency:* 11,700,000 (since April 30, 2022, as of June 21, 2022) [29]

*Displacement*

As of March 2023, there were more than 3.8 million Internally Displaced Person(s) (IDPs) in Sudan, and this figure has increased since conflict began in April 2023.[30] In November 2022, UNOCHA reported that at least 2 million IDPs were under the age of 18 and had been displaced for most of their lives, and that 52 percent of IDPs were female.[31]

Moreover, the living conditions for IDPs in Sudan remains dire, as many IDPs have been displaced multiple times and have been traumatized, physically abused, injured, or have lost family members, personal belongings, shelters, villages and access to land, water points and firewood collection.[32]

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[12] *Id.*

[13] Situation in Sudan and the activities of the UNITAMS, UN Security Council, September 2, 2022, available at *https://www.ecoi.net/en/file/local/2078615/N2258000-1.pdf* (last visited Mar. 29, 2023).

[14] ''In January 2015, the RSF, which had been operating under the command of the National Intelligence Security Services, became part of the regular government forces through a constitutional amendment. In April 2015, the RSF were placed under the command of the Presidency. In January 2017, the Parliament passed the Rapid Support Forces Act, integrating those forces into the Sudan Armed Forces.'' Report of the Secretary-General on children and armed conflict in Sudan, UN Security Council, March 6, 2017, available at *http://www.un.org/ga/search/view_doc.asp?symbol=S/2017/191&referer=/english/&Lang=E* (last visited Apr. 17, 2023).

[15] Dozens of civilians are dead as rival military factions batter for control of Sudan, National Public Radio, April 17, 2023, available at *https://www.npr.org/2023/04/16/1170289462/sudans-army-and-rsf-are-doing-battle-leaving-56-civilians-dead* (last visited Apr. 17, 2023).

[16] Sudan Situation Report, UNOCHA, April 17, 2023, available at *https://reliefweb.int/report/sudan/sudan-clashes-between-sudanese-armed-forces-and-rapid-support-forces-flash-update-16-april-2023-enar* (last visited July 25, 2023).

[17] Sudan—Complex Emergency Fact Sheet #15, Fiscal Year (FY) 2023, USAID, available at *https://reliefweb.int/report/sudan/sudan-complex-emergency-fact-sheet-15-fiscal-year-fy-2023* (last visited August 4, 2023).

[18] Sudan: Overview Complex Crisis, Assessments Capacities Project (ACAPS) April 13, 2022, available at *https://www.acaps.org/country/sudan/crisis/violence-in-darfur-and-kordofan-regions* (last visited Apr. 11, 2023).

[19] *Id.*

[20] Humanitarian Needs Overview Sudan 2023, UNOCHA, November 2, 2022, available at *file:///C:/Users/RMoehri/AppData/Local/Temp/1/MicrosoftEdgeDownloads/1437637c-ce66–4ebe-9716-e86db118cf30/SDN_2023–HNO.pdf* (last visited July 26, 2023).

[21] *Id.*

[22] Sudan: Overview Complex Crisis, ACAPS April 13, 2022, available at *https://www.acaps.org/fileadmin/Data_Product/Main_media/20220324_acaps_global_risk_report_march_2022.pdf* (last visited July 25, 2023).

[23] Sudan: Situation Report, UNOCHA, available at *file://one.dhs/wpaas-ice/ten3-homedir/RMOEHRI/Downloads/Situation%20Report%20-%20Sudan%20-%2027%20Mar%202022.pdf* (last visited July 25, 2023).

[24] Sudan Key Message Update: Exceedingly high cost of living and conflict undermine benefits of harvest, March 2023, Famine Early Warning System Network, April 6, 2023, available at *https://reliefweb.int/report/sudan/sudan-key-message-update-exceedingly-high-cost-living-and-conflict-undermine-benefits-harvest-march-2023* (last visited May 17, 2023).

[25] Sudan Key Figures, UNOCHA, available at *https://m.reliefweb.int/country/220/sdn?figures-display=all* (last visited Apr. 17, 2023).

[26] *Id.*

[27] *Id.*

[28] Sudan: Floods: People & areas affected, UNOCHA, October 2, 2022, available at *https://reliefweb.int/map/sudan/sudan-floods-people-areas-affected-02-october-2022* (last visited Apr. 17, 2023).

[29] Sudan Key Figures, UNOCHA, available at *https://m.reliefweb.int/country/220/sdn?figures-display=all* (last visited Apr. 17, 2023).

[30] International Organization for Migration (IOM), DTM Sudan—Situation Report (16), Aug 8, 2023, *https://dtm.iom.int/reports/dtm-sudan-situation-report-16* (last visited Aug. 9, 2023)

[31] Humanitarian Needs Overview Sudan 2023, UNOCHA, November 2, 2022, available to download at *https://reliefweb.int/report/sudan/sudan-humanitarian-needs-overview-2023-november-2022?_gl=1*1a32v0y*_ga*MjA2NjI5MjkzOS4xNjkwMzcxNzYy*_ga_E60ZNX2F68*MTY5MDM3MTc2MS4xLjEuMTY5MDM3MTgwNS4xNi4wLjA.* (last visited July 25, 2023).

[32] *Id.*

UNOCHA reported in November 2022 that the majority of IDPs continue to reside in temporary sites and are unable to return to their homes or previous displacement sites due to security concerns.[33]

Forced displacement due to conflict is concentrated in Darfur's states, which host 85 percent of Sudan's total IDP population.[34] In July 2022, rising inter-communal violence in the Blue Nile region resulted in the forced displacement of some additional 12,800 people.[35] The UN Integrated Transition Assistance Mission in Sudan (UNITAMS) further reported that, in March 2023, local violence in Darfur, Blue Nile, and South and West Kordofan that mainly concerned access to and control of resources contributed to the displacement of civilians. Over 16,000 people were displaced due to violence between December 2022 and February 2023.[36]

*Food Security*

The number of food insecure people in Sudan continued to increase in 2022.[37] In September 2022, the UN reported that almost one quarter of the population was estimated to be facing acute hunger.[38] In addition, according to ACAPS, in 2022 at least three million children under the age of five suffered from malnutrition.[39]

*Vulnerable Populations*

Members of vulnerable groups, including women and children, continue to face a range of risks, including gender-based violence (GBV), as well as other human rights abuses.[40] In 2022, gender-based violence remained a grave concern across Sudan.[41] In February 2023, UNITAMS reported that the UN Joint Human Rights Office continued to receive reports of sexual violence against women from camps for IDPs who engage in livelihood activities outside the camps.[42] There have also been several reports of security forces engaging in sexual violence against women across the country, reportedly to discourage their participation in protests and demonstrations.[43]

As of August 8, 2023, approximately 351 F–1 nonimmigrant students from Sudan are enrolled at SEVP-certified academic institutions in the United States. Given the extent of the current crisis in Sudan, affected students whose primary means of financial support comes from Sudan may need to be exempt from the normal student employment requirements to continue their studies in the United States. The current crisis has made it unfeasible for many students to safely return to Sudan for the foreseeable future. Without employment authorization, these students may lack the means to meet basic living expenses.

**What is the minimum course load requirement to maintain valid F–1 nonimmigrant status under this notice?**

Undergraduate F–1 nonimmigrant students who receive on-campus or off-campus employment authorization under this notice must remain registered for a minimum of six semester or quarter hours of instruction per academic term. Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B) and (F). A graduate-level F–1 nonimmigrant student who receives on-campus or off-campus employment authorization under this notice must remain registered for a minimum of three semester or quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v). Nothing in this notice affects the applicability of other minimum course load requirements set by the academic institution.

In addition, an F–1 nonimmigrant student (either undergraduate or graduate) granted on-campus or off-campus employment authorization under this notice may count up to the equivalent of one class or three credits per session, term, semester, trimester, or quarter of online or distance education toward satisfying this minimum course load requirement, unless their course of study is in an English language study program. *See* 8 CFR 214.2(f)(6)(i)(G). An F–1 nonimmigrant student attending an approved private school in kindergarten through grade 12 or public school in grades 9 through 12 must maintain ''class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress toward graduation,'' as required under 8 CFR 214.2(f)(6)(i)(E). Nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors.

**May an eligible F–1 nonimmigrant student who already has on-campus or off-campus employment authorization benefit from the suspension of regulatory requirements under this notice?**

Yes. An F–1 nonimmigrant student who is a Sudanese citizen, regardless of country of birth (or an individual having no nationality who last habitually resided in Sudan), who already has on-campus or off-campus employment authorization and is otherwise eligible may benefit under this notice, which suspends certain regulatory requirements relating to the minimum course load requirement under 8 CFR 214.2(f)(6)(i) and certain employment eligibility requirements under 8 CFR 214.2(f)(9). Such an eligible F–1 nonimmigrant student may benefit without having to apply for a new Form I–766, Employment Authorization Document (EAD). To benefit from this notice, the F–1 nonimmigrant student must request that their designated school official (DSO) enter the following statement in the remarks field of the student's Student and Exchange Visitor Information System (SEVIS) record, which the student's Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status, will reflect:

Approved for more than 20 hours per week of [DSO must insert ''on-campus'' or ''off-campus,'' depending upon the type of employment authorization the student already has] employment authorization and reduced course load under the Special

[33] Sudan Flash Update: Conflict in Blue Nile State, Flash Update No. 07 (3 November 2023), UNOCHA, available at *https://reports.unocha.org/en/country/sudan/card/1LiGbNBeVA/* (last visited July 25, 2023).

[34] Clashes displace thousands in Darfur, UN News, available at *https://news.un.org/en/story/2021/12/1107292* (last visited July 25, 2023).

[35] Sudan: Displacement due to conflict in Blue Nile state, UNOCHA, available at *file:///C:/Users/RMoehri/AppData/Local/Temp/5/MicrosoftEdgeDownloads/6a6ada21–4fb3–4037–97c4-e30d13f460c6/20220728_acaps_briefing_note_sudan_displacement_in_blue_nile_state_0%20(1).pdf (last visited July 25, 2023).*

[36] *Id.*

[37] Humanitarian Needs Overview Sudan 2023, UNOCHA, November 2, 2022, available at *https://reliefweb.int/report/sudan/sudan-humanitarian-needs-overview-2023-november-2022* (last visited Apr. 7, 2023).

[38] Situation in Sudan and the activities of the UNITAMS, UN Security Council, September 2, 2022, available at *https://www.ecoi.net/en/file/local/2078615/N2258000-1.pdf* (last visited Mar. 29, 2023).

[39] Sudan Overview, ACAPS, January 1, 2023, available at *https://www.acaps.org/fileadmin/Data_Product/Main_media/20230419_acaps_briefing_note_sudan_conflict.pdf* (last visited July 25, 2023).

[40] Humanitarian Needs Overview Sudan 2023, UNOCHA, November 2, 2022, available at *file:///C:/Users/RMoehri/AppData/Local/Temp/5/MicrosoftEdgeDownloads/d53a1d63–7c1f-4270-a55b-486349498546/SDN_2023–HNO.pdf* (last visited July 25, 2023).

[41] *Id.*

[42] Sudan: Humanitarian Key Messages (February 2023), UNOCHA, February 26, 2023, *https://reliefweb.int/report/sudan/sudan-humanitarian-key-messages-february-2023* (last visited on July 25, 2023).

[43] 2022 Country Reports on Human Rights Practices: Sudan, U.S. Department of State, March 23, 2023, available at *https://www.state.gov/wp-content/uploads/2023/02/415610_SUDAN-2022-HUMAN-RIGHTS-REPORT.pdf* (last visited Apr. 7, 2023).

Student Relief authorization from [DSO must insert the beginning date of the notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert either the student's program end date, the current EAD expiration date (if the student is currently authorized for off-campus employment), or the end date of this notice, whichever date comes first].[44]

**Must the F–1 nonimmigrant student apply for reinstatement after expiration of this special employment authorization if the student reduces his or her ''full course of study''?**

No. DHS will deem an F–1 nonimmigrant student who receives and comports with the employment authorization permitted under this notice to be engaged in a ''full course of study'' [45] for the duration of the student's employment authorization, provided that a qualifying undergraduate level F–1 nonimmigrant student remains registered for a minimum of six semester or quarter hours of instruction per academic term, and a qualifying graduate level F–1 nonimmigrant student remains registered for a minimum of three semester or quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v) and (f)(6)(i)(F). Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B) and (F). DHS will not require such students to apply for reinstatement under 8 CFR 214.2(f)(16) if they are otherwise maintaining F–1 nonimmigrant status.

**Will an F–2 dependent (spouse or minor child) of an F–1 nonimmigrant student covered by this notice be eligible for employment authorization?**

No. An F–2 spouse or minor child of an F–1 nonimmigrant student is not authorized to work in the United States and, therefore, may not accept employment under the F–2 nonimmigrant status, consistent with 8CFR 214.2(f)(15)(i).

**Will the suspension of the applicability of the standard student employment requirements apply to an individual who receives an initial F–1 visa and makes an initial entry into the United States after the effective date of this notice in the Federal Register?**

No. The suspension of the applicability of the standard regulatory requirements only applies to certain F–1 nonimmigrant students who meet the following conditions:

(1) Are a citizen of Sudan regardless of country of birth (or an individual having no nationality who last habitually resided in Sudan);

(2) Were lawfully present in the United States on the date of publication of this notice in F–1 nonimmigrant status, under section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i);

(3) Are enrolled in an academic institution that is SEVP-certified for enrollment of F–1 nonimmigrant students;

(4) Are maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the current crisis in Sudan.

An F–1 nonimmigrant student who does not meet all these requirements is ineligible for the suspension of the applicability of the standard regulatory requirements (even if experiencing severe economic hardship as a direct result of the current crisis in Sudan).

**Does this notice apply to a continuing F–1 nonimmigrant student who departs the United States after the effective date of this notice in the Federal Register and who needs to obtain a new F–1 visa before returning to the United States to continue an educational program?**

Yes. This notice applies to such an F–1 nonimmigrant student, but only if the DSO has properly notated the student's SEVIS record, which will then appear on the student's Form I–20. The normal rules for visa issuance remain applicable to a nonimmigrant who needs to apply for a new F–1 visa to continue an educational program in the United States.

**Does this notice apply to elementary school, middle school, and high school students in F–1 status?**

Yes. However, this notice does not by itself reduce the required course load for F–1 nonimmigrant students from Sudan enrolled in kindergarten through grade 12 at a private school, or grades 9 through 12 at a public high school. Such students must maintain the minimum number of hours of class attendance per week prescribed by the academic institution for normal progress toward graduation, as required under 8CFR214.2(f)(6)(i)(E). The suspension of certain regulatory requirements related to employment through this notice is applicable to all eligible F–1 nonimmigrant students regardless of educational level. Eligible F–1 nonimmigrant students from Sudan enrolled in an elementary school, middle school, or high school may benefit from the suspension of the requirement in 8 CFR 214.2(f)(9)(i) that limits on-campus employment to 20 hours per week while school is in session.

**On-Campus Employment Authorization**

*Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice be authorized to work more than 20 hours per week while school is in session?*

Yes. For an F–1 nonimmigrant student covered in this notice, the Secretary is suspending the applicability of the requirement in 8 CFR 214.2(f)(9)(i) that limits an F–1 nonimmigrant student's on-campus employment to 20 hours per week while school is in session. An eligible F–1 nonimmigrant student has authorization to work more than 20 hours per week while school is in session if the DSO has entered the following statement in the remarks field of the student's SEVIS record, which will be reflected on the student's Form I–20:

Approved for more than 20 hours per week of on-campus employment and reduced course load, under the Special Student Relief authorization from [DSO must insert the beginning date of this notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert the student's program end date or the end date of this notice, whichever date comes first].[46]

To obtain on-campus employment authorization, the F–1 nonimmigrant student must demonstrate to the DSO that the employment is necessary to avoid severe economic hardship directly resulting from the current crisis in Sudan. An F–1 nonimmigrant student authorized by the DSO to engage in on-campus employment by means of this notice does not need to file any applications with U.S. Citizenship and

[44] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of April 19, 2025, provided the student satisfies the minimum course load requirements in this notice.

[45] *See* 8 CFR 214.2(f)(6).

[46] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' see 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of April 19, 2025, provided the student satisfies the minimum course load requirements in this notice.

Immigration Services (USCIS). The standard rules permitting full-time on-campus employment when school is not in session or during school vacations apply, as described in 8 CFR 214.2(f)(9)(i).

*Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain his or her F–1 nonimmigrant student status?*

Yes. DHS will deem an F–1 nonimmigrant student who receives on-campus employment authorization under this notice to be engaged in a ''full course of study'' [47] for the purpose of maintaining their F–1 nonimmigrant student status for the duration of the on-campus employment, if the student satisfies the minimum course load requirement described in this notice, consistent with 8 CFR 214.2(f)(6)(i)(F). However, the authorization to reduce the normal course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if the reduction would not meet the academic institution's minimum course load requirement for continued enrollment.[48]

**Off-Campus Employment Authorization**

*What regulatory requirements does this notice temporarily suspend relating to off-campus employment?*

For an F–1 nonimmigrant student covered by this notice, as provided under 8 CFR 214.2(f)(9)(ii)(A), the Secretary is suspending the following regulatory requirements relating to off-campus employment:

(a) The requirement that a student must have been in F–1 nonimmigrant student status for one full academic year to be eligible for off-campus employment;

(b) The requirement that an F–1 nonimmigrant student must demonstrate that acceptance of employment will not interfere with the student's carrying a full course of study;

(c) The requirement that limits an F–1 nonimmigrant student's employment authorization to no more than 20 hours per week of off-campus employment while the school is in session; and

(d) The requirement that the student demonstrate that employment under 8 CFR 214.2(f)(9)(i) is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.

*Will an F–1 nonimmigrant student who receives off-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain F–1 nonimmigrant status?*

Yes. DHS will deem an F–1 nonimmigrant student who receives off-campus employment authorization by means of this notice to be engaged in a ''full course of study'' [49] for the purpose of maintaining F–1 nonimmigrant student status for the duration of the student's employment authorization if the student satisfies the minimum course load requirement described in this notice, consistent with 8 CFR 214.2(f)(6)(i)(F). However, the authorization for a reduced course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if such reduced course load would not meet the school's minimum course load requirement.[50]

*How may an eligible F–1 nonimmigrant student obtain employment authorization for off-campus employment with a reduced course load under this notice?*

An F–1 nonimmigrant student must file a Form I–765, Application for Employment Authorization, with USCIS to apply for off-campus employment authorization based on severe economic hardship directly resulting from the current crisis in Sudan.[51] Filing instructions are located at *https://www.uscis.gov/i-765.*

*Fee considerations.* Submission of a Form I–765 currently requires payment of a $410 fee. An applicant who is unable to pay the fee may submit a completed Form I–912, Request for Fee Waiver, along with the Form I–765, Application for Employment Authorization. *See https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver.The* submission must include an explanation about why USCIS should grant the fee waiver and the reason(s) for the inability to pay, and any evidence to support the reason(s). *See* 8 CFR 103.7(c) (Oct. 1, 2020).

*Supporting documentation.* An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship must demonstrate the following to their DSO:

(1) This employment is necessary to avoid severe economic hardship; and

(2) The hardship is a direct result of the current crisis in Sudan.

If the DSO agrees that the F–1 nonimmigrant student is entitled to receive such employment authorization, the DSO must recommend application approval to USCIS by entering the following statement in the remarks field of the student's SEVIS record, which will then appear on that student's Form I–20:

Recommended for off-campus employment authorization in excess of 20 hours per week and reduced course load under the Special Student Relief authorization from the date of the USCIS authorization noted on Form I–766 until [DSO must insert the program end date or the end date of this notice, whichever date comes first].[52]

The F–1 nonimmigrant student must then file the properly endorsed Form I–20 and Form I–765 according to the instructions for the Form I–765. The F–1 nonimmigrant student may begin working off campus only upon receipt of the EAD from USCIS.

*DSO recommendation.* In making a recommendation that an F–1 nonimmigrant student be approved for Special Student Relief, the DSO certifies that:

(a) The F–1 nonimmigrant student is in good academic standing and is carrying a ''full course of study'' [53] at the time of the request for employment authorization;

(b) The F–1 nonimmigrant student is a citizen of Sudan, regardless of country of birth (or an individual having no nationality who last habitually resided in Sudan), and is experiencing severe economic hardship as a direct result of the current crisis in Sudan, as documented on the Form I–20;

(c) The F–1 nonimmigrant student has confirmed that the student will comply

[47] See 8 CFR 214.2(f)(6).

[48] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

[49] See 8 CFR 214.2(f)(6).

[50] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

[51] *See* 8 CFR 274a.12(c)(3)(iii).

[52] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of April 19, 2025, provided the student satisfies the minimum course load requirements in this notice.

[53] *See* 8 CFR 214.2(f)(6).

with the reduced course load requirements of this notice and register for the duration of the authorized employment for a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if the student is at the graduate level;[54] and

(d) The off-campus employment is necessary to alleviate severe economic hardship to the individual as a direct result of the current crisis in Sudan.

*Processing.* To facilitate prompt adjudication of the student's application for off-campus employment authorization under 8 CFR 214.2(f)(9)(ii)(C), the F–1 nonimmigrant student should do both of the following:

(a) Ensure that the application package includes the following documents:

(1) A completed Form I–765 with all applicable supporting evidence;

(2) The required fee or properly documented fee waiver request as defined in 8 CFR 103.7(c) (Oct. 1, 2020); and

(3) A signed and dated copy of the student's Form I–20 with the appropriate DSO recommendation, as previously described in this notice; and

(b) Send the application in an envelope which is clearly marked on the front of the envelope, bottom right-hand side, with the phrase ''SPECIAL STUDENT RELIEF.'' [55] Failure to include this notation may result in significant processing delays.

If USCIS approves the student's Form I–765, USCIS will send the student a Form I–766 EAD as evidence of employment authorization. The EAD will contain an expiration date that does not exceed the end of the granted temporary relief.

**Temporary Protected Status (TPS) Considerations**

*Can an F–1 nonimmigrant student apply for TPS and for benefits under this notice at the same time?*

Yes. An F–1 nonimmigrant student who has not yet applied for TPS or for other relief that reduces the student's course load per term and permits an increased number of work hours per week, such as Special Student Relief,[56] under this notice has two options.

Under the first option, the F–1 nonimmigrant student may apply for TPS according to the instructions in the USCIS notice designating Sudan for TPS elsewhere in this issue of the **Federal Register**. All TPS applicants must file a Form I–821, Application for Temporary Protected Status, with the appropriate fee (or request a fee waiver). Although not required to do so, if F–1 nonimmigrant students want to obtain a new TPS-related EAD that is valid through April 19, 2025, and to be eligible for automatic EAD extensions that may be available to certain EADs with an A–12 or C–19 category code, they must file Form I–765 and pay the Form I–765 fee (or request a fee waiver). After receiving the TPS-related EAD, an F–1 nonimmigrant student may request that their DSO make the required entry in SEVIS and issue an updated Form I–20, which notates that the nonimmigrant student has been authorized to carry a reduced course load, as described in this notice. As long as the F–1 nonimmigrant student maintains the minimum course load described in this notice, does not otherwise violate their nonimmigrant status, including as provided under 8 CFR 214.1(g), and maintains TPS, then the student maintains F–1 status and TPS concurrently.

Under the second option, the F–1 nonimmigrant student may apply for an EAD under Special Student Relief by filing Form I–765 with the location specified in the filing instructions. At the same time, the F–1 nonimmigrant student may file a separate TPS application, but must submit the Form I–821 according to the instructions provided in the **Federal Register** notice designating Sudan for TPS. If the F–1 nonimmigrant student has already applied for employment authorization under Special Student Relief, they are not required to submit the Form I–765 as part of the TPS application. However, some nonimmigrant students may wish to obtain a TPS-related EAD in light of certain extensions that may be available to EADs with an A–12 or C–19 category code that are not available to the C–3 category under which Special Student Relief falls. The F–1 nonimmigrant student should check the appropriate box when filling out Form I–821 to indicate whether a TPS-related EAD is being requested. Again, as long as the F–1 nonimmigrant student maintains the minimum course load described in this notice and does not otherwise violate the student's nonimmigrant status, included as provided under 8 CFR 214.1(g), the nonimmigrant will be able to maintain compliance requirements for F–1 nonimmigrant student status while having TPS.

*When a student applies simultaneously for TPS and benefits under this notice, what is the minimum course load requirement while an application for employment authorization is pending?*

The F–1 nonimmigrant student must maintain normal course load requirements for a ''full course of study'' [57] unless or until the nonimmigrant student receives employment authorization under this notice. TPS-related employment authorization, by itself, does not authorize a nonimmigrant student to drop below twelve credit hours, or otherwise applicable minimum requirements (*e.g.,* clock hours for non-traditional academic programs). Once approved for a TPS-related EAD and Special Student Relief employment authorization, as indicated by the DSO's required entry in SEVIS and issuance of an updated Form I–20, the F–1 nonimmigrant student may drop below twelve credit hours, or otherwise applicable minimum requirements (with a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if at the graduate level). *See* 8 CFR 214.2(f)(5)(v), (f)(6), and (f)(9)(i) and (ii).

*How does a student who has received a TPS-related EAD then apply for authorization to take a reduced course load under this notice?*

There is no further application process with USCIS if a student has been approved for a TPS-related EAD. The F–1 nonimmigrant student must demonstrate and provide documentation to the DSO of the direct economic hardship resulting from the current crisis in Sudan. The DSO will then verify and update the student's record in SEVIS to enable the F–1 nonimmigrant student with TPS to reduce the course load without any further action or application. No other EAD needs to be issued for the F–1 nonimmigrant student to have employment authorization.

*Can a noncitizen who has been granted TPS apply for reinstatement of F–1 nonimmigrant student status after the noncitizen's F–1 nonimmigrant student status has lapsed?*

Yes. Regulations permit certain students who fall out of F–1 nonimmigrant student status to apply for reinstatement. *See* 8 CFR 214.2(f)(16). This provision may apply to students who worked on a TPS-related EAD or dropped their course

[54] 8 CFR 214.2(f)(5)(v).

[55] Guidance for direct filing addresses can be found here: *https://www.uscis.gov/i-765-addresses.*

[56] *See* DHS Study in the States, Special Student Relief, *https://studyinthestates.dhs.gov/students/special-student-relief* (last visited May 10, 2023).

[57] *See* 8 CFR 214.2(f)(6).

load before publication of this notice, and therefore fell out of student status. These students must satisfy the criteria set forth in the F–1 nonimmigrant student status reinstatement regulations.

*How long will this notice remain in effect?*

This notice grants temporary relief until April 19, 2025,[58] to eligible F–1 nonimmigrant students. DHS will continue to monitor the situation in Sudan. Should the special provisions authorized by this notice need modification or extension, DHS will announce such changes in the **Federal Register**.

**Paperwork Reduction Act (PRA)**

An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship resulting from the current crisis in Sudan must demonstrate to the DSO that this employment is necessary to avoid severe economic hardship. A DSO who agrees that a nonimmigrant student should receive such employment authorization must recommend an application approval to USCIS by entering information in the remarks field of the student's SEVIS record. The authority to collect this information is in the SEVIS collection of information currently approved by the Office of Management and Budget (OMB) under OMB Control Number 1653–0038.

This notice also allows an eligible F–1 nonimmigrant student to request employment authorization, work an increased number of hours while the academic institution is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

To apply for employment authorization, certain F–1 nonimmigrant students must complete and submit a currently approved Form I–765 according to the instructions on the form. OMB has previously approved the collection of information contained on the current Form I–765 under OMB Control Number 1615–0040. Although there will be a slight increase in the number of Form I–765 filings because of this notice, the number of filings currently contained in the OMB annual inventory for Form I–765 is sufficient to cover the additional filings. Accordingly, there is no further action required under the PRA.

**Alejandro Mayorkas,**

*Secretary, U.S. Department of Homeland Security.*

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**BILLING CODE 9111–28–P**

[58] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of April 19, 2025, provided the student satisfies the minimum course load requirements in this notice.

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[CIS No. 2746–23; DHS Docket No. USCIS–2014–0003]**

**RIN 1615–ZB92**

## Extension and Redesignation of Sudan for Temporary Protected Status

**AGENCY:** U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

**ACTION:** Notice of Temporary Protected Status (TPS) extension and redesignation.

**SUMMARY:** Through this notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Sudan for Temporary Protected Status (TPS) for 18 months, beginning on October 20, 2023, and ending on April 19, 2025. This extension allows existing TPS beneficiaries to retain TPS through April 19, 2025, so long as they otherwise continue to meet the eligibility requirements for TPS. Existing TPS beneficiaries who wish to extend their status through April 19, 2025, must re-register during the 60-day re-registration period described in this notice. The Secretary is also redesignating Sudan for TPS. The redesignation of Sudan allows additional Sudanese nationals (and individuals having no nationality who last habitually resided in Sudan) who have been continuously residing in the United States since August 16, 2023 to apply for TPS for the first time during the initial registration period described under the redesignation information in this notice. In addition to demonstrating continuous residence in the United States since August 16, 2023 and meeting other eligibility criteria, initial applicants for TPS under this designation must demonstrate that they have been continuously physically present in the United States since October 20, 2023, the effective date of this redesignation of Sudan for TPS.

**DATES:**

*Extension of Designation of Sudan for TPS:* The 18-month designation of Sudan for TPS begins on October 20, 2023, and will remain in effect for 18 months, ending on April 19, 2025. The extension impacts existing beneficiaries of TPS.

*Re-registration:* The 60-day re-registration period for existing beneficiaries runs from August 21, 2023 through October 20, 2023. (Note: It is important for re-registrants to timely re-register during the registration period and not to wait until their Employment Authorization Documents (EADs) expire, as delaying reregistration could result in gaps in their employment authorization documentation.)

*Redesignation of Sudan for TPS:* The 18-month redesignation of Sudan for TPS begins on October 20, 2023, and will remain in effect for 18 months, ending on April 19, 2025. The redesignation impacts potential first-time applicants and others who do not currently have TPS.

*First-time Registration:* The initial registration period for new applicants under the Sudan TPS redesignation begins on August 21, 2023 and will remain in effect through April 19, 2025.

**FOR FURTHER INFORMATION CONTACT:**

- You may contact Rená Cutlip-Mason, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Drive, Camp Springs, MD 20746, or by phone at 800–375–5283.
- For further information on TPS, including guidance on the registration process and additional information on eligibility, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.* You can find specific information about Sudan's TPS designation by selecting ''Sudan'' from the menu on the left side of the TPS web page.
- If you have additional questions about TPS, please visit *uscis.gov/tools.* Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you are unable to find your answers there, you may also call our USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).
- Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at *uscis.gov*, or visit the USCIS Contact Center at *https://www.uscis.gov/contactcenter.*

• Further information will also be available at local USCIS offices upon publication of this notice.

**SUPPLEMENTARY INFORMATION:**

**Table of Abbreviations**

BIA—Board of Immigration Appeals
CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security
DOS—U.S. Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Form I–131—Application for Travel Document
Form I–765—Application for Employment Authorization
Form I–797—Notice of Action
Form I–821—Application for Temporary Protected Status
Form I–9—Employment Eligibility Verification
Form I–912—Request for Fee Waiver
Form I–94—Arrival/Departure Record
FR—Federal Register
Government—U.S. Government
IER—U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section
IJ—Immigration Judge
INA—Immigration and Nationality Act
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services
U.S.C.—United States Code

**Purpose of This Action (TPS)**

Through this notice, DHS sets forth procedures necessary for nationals of Sudan (or individuals having no nationality who last habitually resided in Sudan) to (1) re-register for TPS and to apply for renewal of their EADs with USCIS or (2) submit an initial registration application under the redesignation and apply for an EAD.

Re-registration is limited to individuals who have previously registered for TPS under the prior designation of Sudan and whose applications have been granted. Failure to re-register properly within the 60-day re-registration period may result in the withdrawal of your TPS following appropriate procedures. *See* 8 CFR 244.14.

For individuals who have already been granted TPS under Sudan's designation, the 60-day re-registration period runs from August 21, 2023 through October 20, 2023. USCIS will issue new EADs with an April 19, 2025, expiration date to eligible Sudanese TPS beneficiaries who timely re-register and apply for EADs. Given the time frames involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants may receive new EADs before their current EADs expire. Accordingly, through this **Federal Register** notice, DHS automatically extends the validity of certain EADs previously issued under the TPS designation of Sudan through October 19, 2024. Therefore, as proof of continued employment authorization through October 19, 2024, TPS beneficiaries can show their EADs that have the notation A–12 or C–19 under Category and a ''Card Expires'' date of October 19, 2023. This notice explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and how this affects the Form I–9, Employment Eligibility Verification, E-Verify, and USCIS Systematic Alien Verification for Entitlements (SAVE) processes.

Individuals who have a Sudan TPS application (Form I–821) and/or Application for Employment Authorization (Form I–765) that was still pending as of August 21, 2023 do not need to file either application again. If USCIS approves an individual's pending Form I–821, USCIS will grant the individual TPS through April 19, 2025. Similarly, if USCIS approves a pending TPS-related Form I–765, USCIS will issue the individual a new EAD that will be valid through the same date. There are currently approximately 1,200 beneficiaries under Sudan's TPS designation.

Under the redesignation, individuals who currently do not have TPS may submit an initial application during the initial registration period that runs from August 21, 2023 and runs through the full length of the redesignation period ending April 19, 2025. In addition to demonstrating continuous residence in the United States since August 16, 2023 and meeting other eligibility criteria, initial applicants for TPS under this redesignation must demonstrate that they have been continuously physically present in the United States since October 20, 2023,[1] the effective date of this redesignation of Sudan, before USCIS may grant them TPS. DHS estimates that approximately 2,750 individuals may become newly eligible for TPS under the redesignation of Sudan.

**What is Temporary Protected Status (TPS)?**

• TPS is a temporary immigration status granted to eligible nationals of a foreign state designated for TPS under the INA, or to eligible individuals without nationality who last habitually resided in the designated foreign state, regardless of their country of birth.

• During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to obtain EADs so long as they continue to meet the requirements of TPS.

• TPS beneficiaries may also apply for and be granted travel authorization as a matter of DHS discretion.

• To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(1)–(2), 8 U.S.C. 1254a(c)(1)–(2).

• When the Secretary terminates a foreign state's TPS designation, beneficiaries return to one of the following:

○ The same immigration status or category that they maintained before TPS, if any (unless that status or category has since expired or terminated); or

○ Any other lawfully obtained immigration status or category they received while registered for TPS, as long as it is still valid beyond the date TPS terminates.

**When was Sudan designated for TPS?**

Sudan was initially designated for TPS on November 4, 1997, on the dual bases of ongoing armed conflict and extraordinary and temporary conditions in Sudan that prevented nationals of Sudan from safely returning.[2] Sudan's designation was extended and/or it was redesignated numerous times from its initial designation in 1997 until former Acting Secretary of Homeland Security Elaine Duke provided notice in the **Federal Register** on October 11, 2017, that she was terminating Sudan's TPS designation, effective November 2, 2018.[3]

The termination of Sudan's TPS designation has been challenged in several lawsuits, and court orders require DHS to continue TPS for Sudan temporarily pending further court order.[4] In April 2022, Secretary

[1] The ''continuous physical presence date'' (CPP) is the effective date of the most recent TPS designation of the country, which is either the publication date of the designation announcement in the **Federal Register** or such later date as the Secretary may establish. The ''continuous residence date'' (CR) is any date established by the Secretary when a country is designated (or sometimes redesignated) for TPS. *See* INA secs. 244(b)(2)(A) (effective date of designation); 244(c)(1)(A)(i–ii) (CR and CPP date requirements); 8 U.S.C. 1254a(b)(2)(A); 1254a(c)(1)(A)(i–ii).

[2] *Designation of Sudan Under Temporary Protected Status,* 62 FR 59737 (Nov. 4, 1997).

[3] *Termination of the Designation of Sudan for Temporary Protected Status,* 82 FR 47228 (Oct. 11, 2017).

[4] On June 29, 2023, the Ninth Circuit granted the Secretary's motion for voluntary dismissal of the appeal of the injunction. See *Ramos* v. *Wolf,* 2023 WL 4363667 (June 29, 2023) (No. 18–16981). The

Continued

Mayorkas newly designated Sudan on the basis of extraordinary and temporary conditions effective April 19, 2022, through October 19, 2023.[5]

**What authority does the Secretary have to extend the designation of Sudan for TPS?**

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government, to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.[6] The decision to designate any foreign state (or part thereof) is a discretionary decision, and there is no judicial review of any determination with respect to the designation, termination, or extension of a designation. *See* INA section 244(b)(5)(A); 8 U.S.C. 1254a(b)(5)(A). The Secretary, in his or her discretion, may then grant TPS to eligible nationals of that foreign state (or individuals having no nationality who last habitually resided in the designated foreign state). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a foreign state's TPS designation or extension, the Secretary, after consultation with appropriate U.S. Government agencies, must review the conditions in the foreign state designated for TPS to determine whether they continue to meet the conditions for the TPS designation. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the foreign state continues to meet the conditions for TPS designation, the designation will be extended for an additional period of 6 months or, in the Secretary's discretion, 12 or 18 months. *See* INA section 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

**What is the Secretary's authority to redesignate Sudan for TPS?**

In addition to extending an existing TPS designation, the Secretary, after consultation with appropriate Government agencies, may redesignate a country (or part thereof) for TPS. *See* INA section 244(b)(1), 8 U.S.C. 1254a(b)(1); *see also* INA section 244(c)(1)(A)(i), 8 U.S.C. 1254a(c)(1)(A)(i) (requiring that ''the alien has been continuously physically present since the effective date of *the most recent designation of the state*'') (emphasis added).[7]

When the Secretary designates or redesignates a country for TPS, the Secretary also has the discretion to establish the date from which TPS applicants must demonstrate that they have been ''continuously resid[ing]'' in the United States. *See* INA section 244(c)(1)(A)(ii), 8 U.S.C. 1254a(c)(1)(A)(ii). The Secretary has determined that the ''continuous residence'' date for applicants for TPS under the redesignation of Sudan shall be August 16, 2023. Initial applicants for TPS under this redesignation must also show they have been ''continuously physically present'' in the United States since October 20, 2023, which is the effective date of the Secretary's redesignation, of Sudan. *See* INA section 244(c)(1)(A)(i), 8 U.S.C. 1254a(c)(1)(A)(i). For each initial TPS application filed under the redesignation, the final determination of whether the applicant has met the ''continuous physical presence'' requirement cannot be made until October 20, 2023, the effective date of this redesignation for Sudan. USCIS, however, will issue employment authorization documentation, as appropriate, during the registration period in accordance with 8 CFR 244.5(b).

**Why is the Secretary extending the TPS designation for Sudan and simultaneously redesignating Sudan for TPS through April 19, 2025?**

DHS has reviewed country conditions in Sudan. Based on the review, including input received from DOS and other U.S. Government agencies, the Secretary has determined that an 18-month TPS extension is warranted because extraordinary and temporary conditions supporting Sudan's TPS designation remain. The Secretary has further determined that redesignating Sudan for TPS under INA section 244(b)(1)(A), 8 U.S.C. 1254a(b)(1)(A) and INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(3)(C) due to the ongoing armed conflict and continuing extraordinary and temporary conditions is warranted. The Secretary is accordingly updating the ''continuous residence'' and ''continuous physical presence'' dates that applicants must meet to be eligible for TPS.

**Overview**

Sudan is enduring an ongoing armed conflict and a humanitarian crisis in which millions of individuals are exposed to violence, illness, and forced displacement. On April 15, 2023, violent armed conflict between the Sudanese Armed Forces (SAF) and the Rapid Support Forces (RSF)[8] erupted in Sudan killing hundreds of people, driving more than 700,000 persons to flee to other countries.[9]

Department of Homeland Security (DHS) is continuing its compliance with the preliminary injunction order of the U.S. District Court for the Northern District of California in *Ramos* v. *Nielsen,* No. 18–cv–01554 (N.D. Cal. Oct. 3, 2018).

[5] *Designation of Sudan for Temporary Protected Status,* 87 FR 23202 (Apr. 19, 2022).

[6] INA section 244(b)(1) ascribes this power to the Attorney General. Congress transferred this authority from the Attorney General to the Secretary of Homeland Security. *See* Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135 (2002). The Secretary may designate a country (or part of a country) for TPS on the basis of ongoing armed conflict such that returning would pose a serious threat to the personal safety of the country's nationals and habitual residents, environmental disaster (including an epidemic), or extraordinary and temporary conditions in the country that prevent the safe return of the country's nationals. For environmental disaster-based designations, certain other statutory requirements must be met, including that the foreign government must request TPS. A designation based on extraordinary and temporary conditions cannot be made if the Secretary finds that allowing the country's nationals to remain temporarily in the United States is contrary to the U.S. national interest. INA sec. 244(b)(1); 8 U.S.C. 1254a(b)(1).

[7] The extension and redesignation of TPS for Sudan is one of several instances in which the Secretary and, prior to the establishment of DHS, the Attorney General, have simultaneously extended a country's TPS designation and redesignated the country for TPS. *See, e.g., Extension and Redesignation of Haiti for Temporary Protected Status,* 76 FR 29000 (May 19, 2011); *Extension and Redesignation of Temporary Protected Status for Sudan,* 69 FR 60168 (Oct. 7, 2004); *Extension of Designation and Redesignation of Liberia Under Temporary Protected Status Program,* 62 FR 16608 (Apr. 7, 1997).

[8] Rapid Support Forces (RSF) is a paramilitary force established in 2013 by former President al-Bashir. It was ''fashioned out of Janjaweed militias and was assembled in response to anti-government rebel movements in Darfur.'' It has also been accused of ''a myriad of human rights abuses in Darfur and elsewhere.'' The Rapid Support Forces and the Escalation of Violence in Sudan, ACLED, July 2, 2019, *acleddata.com/2019/07/02/the-rapid-support-forces-and-the-escalation-of-violence-in-sudan/* (last visited May 10, 2023). ''In January 2015, the Rapid Support Forces, which had been operating under the command of the National Intelligence Security Services, became part of the regular government forces through a constitutional amendment. In April 2015, the RSF were placed under the command of the Presidency. In January 2017, the Parliament passed the Rapid Support Forces Act, integrating those forces into the Sudan Armed Forces.'' Report of the Secretary—General on children and armed conflict in Sudan, UN Security Council, March 6, 2017, pg. 3, *https://reliefweb.int/report/sudan/report-secretary-general-children-and-armed-conflict-sudan-s2017191-enar* (last visited July 24, 2023).

[9] Aidan Lewis, *What is happening in Sudan? Fighting in Khartoum explained,* updated July 13, 2023, *https://www.reuters.com/world/africa/whats-behind-sudans-crisis-2023-04-17/* (last visited July 24, 2023); Dozens of civilians are dead as rival military factions batter for control of Sudan, National Public Radio, April 17, 2023, *https://www.npr.org/2023/04/16/1170289462/sudans-*

This recent armed conflict stems from events occurring in April 2019 when, after 30 years in power, Sudan's then-President Omar al-Bashir was removed from office.[10] In August 2019, a transitional government [11] comprised of military and civilian members was established in Sudan, that was eventually dissolved in October 2021.[12] Since that time, Sudan has continued to face political instability and power struggles.[13] In February 2023, the United Nations (UN) Panel of Experts on the Sudan reported that Sudan continued to face a ''political crisis at the national level, with regular demonstrations against the rule of the military.'' [14]

**Recent Armed Conflict**

The armed conflict that erupted on April 15, 2023, started in the capital, Khartoum, but has spread across Sudan.[15] Fighting between the SAF and the RSF has included the use of tanks, artillery, rockets, and, in the case of the SAF, air-delivered munitions, which has resulted to harm to civilians in Khartoum and elsewhere.[16] The UN Assistant Secretary for Humanitarian Affairs reported that the humanitarian crisis in Sudan was ''quickly turning into a catastrophe.'' [17] As of April 25, 2023, more than 450 people had been killed, more than 4,000 had been injured, at least 20 hospitals had been forced to close due to damage, military use, or lack of resources, power cuts and fuel shortages risked damaging vaccine stocks and water supplies, a precursor for the spread of disease, and there had been numerous reports of gender-based violence, including sexual violence.[18] Additionally, reports indicate that the most recent fighting has resulted in tens of thousands of people fleeing from their homes, for neighboring cities and countries, including Chad, Egypt, and South Sudan.[19] Insecurity and criminality in Sudan is on the rise, and reports indicate that thousands of inmates were freed outright from prison.[20] This has resulted in a growing sense of lawlessness in the capital of Khartoum, and residents have reported widespread looting and gangs roaming the streets.[21]

Due to the outbreak of fighting, foreign governments evacuated thousands of diplomats and private citizens.[22] The U.S. government assisted U.S. citizens, locally employed staff, and nationals from allied and partner countries to evacuate Sudan and has taken extensive efforts to contact U.S. citizens in Sudan and enable the departure of those who wished to leave.[23] Additionally, the U.S. government has issued a ''Level 4: Do Not Travel'' advisory for Sudan due to armed conflict, civil unrest, crime, terrorism, and kidnapping.[24]

**Humanitarian Concerns**

''Even before the current fighting began, humanitarian needs across Sudan had reached record levels, with 15.8 million people—about a third of the total population—requiring humanitarian assistance this year [2023].[25] The latest violence has led to acute shortages of food, water, medicines and fuel, while the price of essential items, including transport, have skyrocketed.'' [26] The United Nations Integrated Transition Assistance Mission in Sudan (UNITAMS) reported in September 2022 that ''[h]umanitarian needs have grown exponentially in the Sudan because of conflict, the political and economic crisis, increased insecurity and localized violence, and protracted internal displacement still lacking durable solutions, coupled with dry spells, floods and disease outbreaks.'' [27] Additionally, according to the World Food Program (WFP), over 15 million people were food insecure in 2022.[28] In September 2022, the UN

*army-and-rsf-are-doing-battle-leaving-56-civilians-dead* (last visited April 17, 2023).

[10] Susan Stigant; Elizabeth Murray, *After Bashir, A New Dawn in Sudan?* U.S. Institute of Peace, April 17, 2019, *https://www.usip.org/publications/2019/04/after-bashir-new-dawn-sudan-part-1* (last visited April 17, 2023).

[11] Susan Stigant; Elizabeth Murray, *After Bashir, A New Dawn in Sudan?* U.S. Institute of Peace, April 17, 2019, *https://www.usip.org/publications/2019/04/after-bashir-new-dawn-sudan-part-1* (last visited April 17, 2023).

[12] 2022 Country Reports on Human Rights Practices: Sudan, U.S. Department of State, March 20, 2023, pg. 1, *https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/sudan/* (last visited July 24, 2023).

[13] *See* 2022 Country Reports on Human Rights Practices: Sudan, U.S. Department of State, March 20, 2023, *https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/sudan/* (last visited July 24, 2023); *see also* Sudan strongman is seen as an insider with powerful allies, AP News, October 27, 2021, *https://apnews.com/article/sudan-who-is-abdel-fattah-burhan-3f2d4d660fabf1b526f09f04808af7c8* (last visited April 17, 2023); *see also* 2019 Country Reports on Human Rights Practices: Sudan, U.S. Department of State, March 30, 2020, pg. 2, *https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/sudan/* (last visited April 17, 2023); *see also* Appetite for Destruction: The Military Counterrevolution in Sudan, ACLED, October 29, 2021, *https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/sudan/* (last visited April 7, 2023); *see also* Watch List 2022; Sudan: Toward a Reset for the Transition, International Crisis Group, January 27, 2022, *https://www.ecoi.net/en/document/2069005.html* (last visited March 29, 2023).

[14] Letter dated 7 February 2023 from the Panel of Experts on the Sudan addressed to the President of the Security Council; Final report of the Panel of Experts on the Sudan, UN Security Council, February 7, 2023, pg. 8, available at *https://www.ecoi.net/en/file/local/2087153/N2303752.pdf* (last visited March 29, 2023).

[15] Human Rights Watch, Sudan: Explosive Weapons Harming Civilians, May 4, 2023, *https://www.hrw.org/news/2023/05/04/sudan-explosive-weapons-harming-civilians* (last visited May 10, 2023).

[16] Human Rights Watch, Sudan: Explosive Weapons Harming Civilians, May 4, 2023, *https://www.hrw.org/news/2023/05/04/sudan-explosive-weapons-harming-civilians* (last visited May 10, 2023).

[17] Assistant Secretary-General for Humanitarian Affairs and Deputy Emergency Relief Coordinator Ms. Joyce Msuya: Briefing to the Security Council on the Humanitarian Situation in Sudan, UNOCHA, April 25, 2023, *https://reliefweb.int/report/sudan/assistant-secretary-general-humanitarian-affairs-and-deputy-emergency-relief-coordinator-ms-joyce-msuya-briefing-security-council-humanitarian-situation-sudan-new-york-25-april-2023* (last visited April 26, 2023).

[18] Assistant Secretary-General for Humanitarian Affairs and Deputy Emergency Relief Coordinator Ms. Joyce Msuya: Briefing to the Security Council on the Humanitarian Situation in Sudan, UNOCHA, April 25, 2023, *https://reliefweb.int/report/sudan/assistant-secretary-general-humanitarian-affairs-and-deputy-emergency-relief-coordinator-ms-joyce-msuya-briefing-security-council-humanitarian-situation-sudan-new-york-25-april-2023* (last visited April 26, 2023).

[19] Abdi Latif Dahir, Violence in Sudan Cuts Through Shaky U.S.-Brokered Cease-Fire, The New York Times, April 25, 2023, *https://www.nytimes.com/2023/04/25/world/africa/sudan-fighting-cease-fire.html* (last visited April 26, 2023).

[20] Reuters, Factbox: Sudan's Bashir and allies out of jail, fighting flares, April 26, 2023, *https://www.reuters.com/world/africa/sudans-bashir-whereabouts-unknown-after-associates-prison-escape-2023-04-26* (last visited April 27, 2023).

[21] VOA Africa, Al-Bashir Crew Breakout Bodes Ill for Sudan, Voice of America, April 26, 2023, *https://www.voaafrica.com/a/al-bashir-crew-breakout-bodes-ill-for-sudan/7066645.html* (last visited April 26, 2023).

[22] Reuters, Factbox: Countries rush to evacuate foreign citizens from Sudan, April 25, 2023, *https://www.reuters.com/world/africa/countries-scramble-evacuate-foreign-citizens-sudan-2023-04-25* (last visited April 26, 2023).

[23] U.S. Dep't of State, Press Statement, Evacuation Efforts of U.S. Citizens From Sudan, April 29, 2023, *https://www.state.gov/evacuation-efforts-of-u-s-citizens-from-sudan/*.

[24] U.S. Dep't of State, Sudan Travel Advisory, April 22, 2023, *https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/sudan-travel-advisory.html.*

[25] UN News, *Background to a crisis: In Sudan, the stakes are high for the whole of Africa,* Apr. 28, 2023, *https://news.un.org/en/story/2023/04/1136187?gclid=CjwKCAjwge2iBhBBEiwAfXDBR2pyoM7HB8ImtmbdANXbBou4gGeMYaruPqrxoL9aal25EC8sI52TpRoCnwwQAvD_BwE* (last visited May 10, 2023).

[26] UN News, Background to a crisis: In Sudan, the stakes are high for the whole of Africa, April 28, 2023, *https://news.un.org/en/story/2023/04/1136187?gclid=CjwKCAjwge2iBhBBEiwAfXDBR2pyoM7HB8ImtmbdANXbBou4gGeMYaruPqrxoL9aal25EC8sI52TpRoCnwwQAvD_BwE* (last visited May 10, 2023).

[27] Situation in Sudan and the activities of the UNITAMS, UN Security Council, September 2, 2022, pg. 15, *https://www.ecoi.net/en/file/local/2078615/N2258000-1.pdf* (last visited July 24, 2023).

[28] Sudan Annual Report 2022: Country Strategic Plan 2019–2023, World Food Programme, Pg. 3,

Continued

reported that ''[a]lmost one quarter of the population is estimated to be facing acute hunger during the lean season from June to September.'' [29] In addition, flooding and dry spells in successive years have affected property, infrastructure, and crops, resulting in forced displacement and livestock losses.[30] Flash floods have also led to contamination of water supplies and increased cases of diarrhea and cholera.[31] Sudan's health system remains exceptionally fragile and faces difficulties over inadequate supplies of medicines and medical items.[32] According to the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), the current level of health personnel staffing (doctors, nurses, and midwives) can only cater to 17 percent of Sudan's population.[33]

Prior to the recent conflict, there were 3.8 million internally displaced persons (IDPs) in Sudan, and this figure has increased since the conflict began in April 2023.[34] Living conditions for IDPs remain dire, as ''IDPs and [vulnerable] residents were displaced multiple times; they were traumatized, physically abused, injured; or lost family members, personal belongings, shelters, villages and access to land, water points and firewood collection.'' [35] UNOCHA reported in November 2022 that the majority of IDPs continue to reside in temporary sites, and are unable to return to their homes or previous displacement sites due to security concerns.[36]

Based upon this review and after consultation with appropriate U.S. Government agencies, the Secretary has determined that:

- The conditions supporting Sudan's designation for TPS continue to be met. *See* INA sec. 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continue to be extraordinary and temporary conditions in Sudan that prevent Sudanese nationals (or individuals having no nationality who last habitually resided in Sudan) from returning to Sudan in safety, and it is not contrary to the national interest of the United States to permit Sudanese TPS beneficiaries to remain in the United States temporarily. *See* INA sec. 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- There is an ongoing armed conflict in Sudan and, due to such conflict, requiring the return to Sudan of Sudanese nationals (or individuals having no nationality who last habitually resided in Sudan) would pose a serious threat to their personal safety. *See* INA sec. 244(b)(1)(A), 8 U.S.C. 1254a(b)(1)(A).
- The designation of Sudan for TPS should be extended for an 18-month period, beginning on October 20, 2023, and ending on April 19, 2025. *See* INA sec. 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).
- Due to the conditions described above, Sudan should be simultaneously extended and redesignated for TPS beginning on October 20, 2023, and ending on April 19, 2025. *See* INA sec. 244(b)(1)(A) and (C) and (b)(2), 8 U.S.C. 1254a(b)(1)(A) and (C) and (b)(2).
- For the redesignation, the Secretary has determined that TPS applicants must demonstrate that they have continuously resided in the United States since August 16, 2023.
- Initial TPS applicants under the redesignation must demonstrate that they have been continuously physically present in the United States since October 20, 2023, the effective date of the redesignation of Sudan for TPS.
- There are approximately 1,200 current Sudan TPS beneficiaries who are eligible to re-register for TPS under the extension.
- It is estimated that approximately 2,750 additional individuals may be eligible for TPS under the redesignation of Sudan. This population includes Sudanese nationals in the United States in nonimmigrant status or without immigration status.

## Notice of the Designation of Sudan for TPS

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate U.S. Government agencies, the statutory conditions supporting Sudan's designation for TPS on the dual bases of ongoing armed conflict and extraordinary and temporary conditions are met and it is not contrary to the national interest of the United States to permit Sudanese TPS beneficiaries to remain in the United States temporarily. *See* INA sec. 244(b)(1)(A) and (C), 8 U.S.C. 1254a(b)(1)(A) and (C). On the basis of this determination, I am simultaneously extending the existing designation of Sudan for TPS for 18 months, beginning on October 20, 2023, and ending on April 19, 2025, and redesignating Sudan for TPS for the same 18-month period. *See* INA sec. 244(b)(1)(A) and (C) and (b)(2); 8 U.S.C. 1254a(b)(1)(A) and (C), and (b)(2).

**Alejandro N. Mayorkas,**

*Secretary, U.S. Department of Homeland Security.*

## Eligibility and Employment Authorization for TPS

### Required Application Forms and Application Fees To Register or Re-Register for TPS

To register for TPS based on the designation of Sudan, you must submit a Form I–821, Application for Temporary Protected Status, and pay the filing fee (or request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver). You may be required to pay the biometric services fee. If you can demonstrate an inability to pay the biometric services fee, you may request to have the fee waived. Please see additional information under the ''Biometric Services Fee'' section of this notice.

TPS beneficiaries are eligible for an Employment Authorization Document (EAD), which proves their authorization to work in the United States. You are not required to submit Form I–765, Application for Employment Authorization, or have an EAD to be granted TPS, but see below for more information if you want an EAD to use as proof that you can work in the United States.

Individuals who have a Sudan TPS application (Form I–821) that was still pending as of August 21, 2023 do not need to file the application again. If USCIS approves an individual's Form I–

*https://reliefweb.int/report/sudan/sudan-annual-country-report-2022-country-strategic-plan-2019-2023* (last visited March 23, 2023).

[29] Situation in Sudan and the activities of the UNITAMS, UN Security Council, September 2, 2022, pg. 7 *https://www.ecoi.net/en/file/local/2078615/N2258000-1.pdf* (last visited March 29, 2023).

[30] Humanitarian Needs Overview Sudan 2023, UNOCHA, November 2, 2022, pg. 27, *https://reliefweb.int/report/sudan/sudan-humanitarian-needs-overview-2023-november-2022* (last visited April 7, 2023).

[31] Sudan: Humanitarian Key Messages (February 2023), UNOCHA, February 26, 2023, *https://reliefweb.int/report/sudan/sudan-humanitarian-key-messages-february-2023* (last visited April 11, 2023).

[32] Humanitarian Needs Overview Sudan 2023, UNOCHA, November 2, 2022, pg. 20, *https://reliefweb.int/report/sudan/sudan-humanitarian-needs-overview-2023-november-2022* (last visited April 7, 2023).

[33] Humanitarian Needs Overview Sudan 2023, UNOCHA, November 2, 2022, pg. 22, *https://reliefweb.int/report/sudan/sudan-humanitarian-needs-overview-2023-november-2022* (last visited April 7, 2023).

[34] International Organization for Migration (IOM), DTM Sudan—Situation Report (16), Aug 8, 2023, *https://dtm.iom.int/reports/dtm-sudan-situation-report-16* (last visited Aug. 9, 2023).

[35] Humanitarian Needs Overview Sudan 2023, UNOCHA, November 2, 2022, Pg. 31, *https://reliefweb.int/report/sudan/sudan-humanitarian-needs-overview-2023-november-2022* (last visited April 7, 2023).

[36] Humanitarian Needs Overview Sudan 2023, UNOCHA, November 2, 2022, Pg. 31, *https://reliefweb.int/report/sudan/sudan-humanitarian-needs-overview-2023-november-2022* (last visited April 7, 2023).

821, USCIS will grant the individual TPS through April 19, 2025.

For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.* Fees for the Form I–821, the Form I–765, and biometric services are also described in 8 CFR 103.7(b)(1) (Oct. 1, 2020). In addition, the form instructions for the Form I–821 and Form I–765 provide further information on requirements and fees for both initial TPS applicants and existing TPS beneficiaries who are re-registering.

**How can TPS beneficiaries obtain an employment authorization document (EAD)?**

Everyone must provide their employer with documentation showing that they have the legal right to work in the United States. TPS beneficiaries are eligible to obtain an EAD, which proves their legal right to work. Those who want to obtain an EAD must file a Form I–765 and pay the Form I–765 fee (or request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver). TPS applicants may file this form along with their TPS application, or at a later date, provided their TPS application is still pending or has been approved. Beneficiaries with a Sudanese TPS-related Form I–765 that was still pending as of August 21, 2023 do not need to file the application again. If USCIS approves a pending TPS-related Form I–765, USCIS will issue the individual a new EAD that will be valid through April 19, 2025.

**Refiling an Initial TPS Registration Application After Receiving a Denial of a Fee Waiver Request**

If USCIS denies your fee waiver request, you can resubmit your TPS application. The fee waiver denial notice will contain specific instructions about resubmitting your application.

**Filing Information**

USCIS offers the option to applicants for TPS under Sudan's designation to file Form I–821 and related requests for EADs online or by mail. However, if you request a fee waiver, you must submit your application by mail. When filing a TPS application, applicants can also request an EAD by submitting a completed Form I–765, with their Form I–821.

*Online filing:* Forms I–821 and I–765 are available for concurrent filing online.[37] To file these forms online, you must first create a USCIS online account.[38]

*Mail filing:* Mail your application for TPS to the proper address in Table 1.

*Table 1—Mailing Addresses*

Mail your completed Form I–821, Application for Temporary Protected Status; Form I–765, Application for Employment Authorization, if applicable; Form I–912, Request for Fee Waiver (if applicable); and supporting documentation to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

| All states | Mail your application to: |
|---|---|
| U.S. Postal Service USPS: | USCIS, Attn: TPS Sudan, P.O. Box 6943, Chicago, IL 60680–6943. |
| FedEx, UPS, and DHL deliveries: | USCIS, Attn: TPS Sudan (Box 6943), 131 S. Dearborn 3rd Floor, Chicago, IL 60603–5517. |

If you were granted TPS by an immigration judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD, please file online or mail your Form I–765 application to the appropriate mailing address in Table 1. If filing online, please include the fee. If filing by mail, please include the fee or fee waiver request. When you are requesting an EAD based on an IJ/BIA grant of TPS, please include a copy of the IJ or BIA order granting you TPS with your application. This will help us verify your grant of TPS and process your application.

**Supporting Documents**

The filing instructions on the Form I–821 list all the documents needed to establish eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying (*i.e.,* registering) for TPS on the USCIS website at *https://www.uscis.gov/tps* under ''Sudan.''

**Travel**

TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion. You must file for travel authorization if you wish to travel outside of the United States. If granted, travel authorization gives you permission to leave the United States and return during a specific period. To request travel authorization, you must file Form I–131, Application for Travel Document, available at *https://www.uscis.gov/i-131.* You may file Form I–131 together with your Form I–821 or separately. When filing Form, I–131, you must:

- Select Item Number 1.d. in Part 2 on the Form I–131; and
- Submit the fee for Form I–131, or request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver.

If you are filing Form I–131 together with Form I–821, send your forms to the address listed in Table 1. If you are filing Form I–131 separately based on a pending or approved Form I–821, send your form to the address listed in Table 2 and include a copy of Form I–797 for the approved or pending Form I–821.

TABLE 2—MAILING ADDRESSES

| If you are | Mail to |
|---|---|
| Filing Form I–131 together with a Form I–821, Application for Temporary Protected Status. | The address provided in Table 1. |
| Filing Form I–131 based on a pending or approved Form I–821, and you are using the U.S. Postal Service (USPS):<br>You must include a copy of the receipt notice (Form I–797 or I–797C) showing we accepted or approved your Form I–821. | USCIS, Attn: I–131 TPS, P.O. Box 660167, Dallas, TX 75266–0867. |
| Filing Form I–131 based on a pending or approved Form I–821, and you are using FedEx, UPS, or DHL:<br>You must include a copy of the receipt notice (Form I–797 or I–797C) showing we accepted or approved your Form I–821. | USCIS, Attn: I–131 TPS, 2501 S. State Hwy. 121 Business, Ste. 400, Lewisville, TX 75067. |

**Biometric Services Fee for TPS**

Biometrics (such as fingerprints) are required for all applicants 14 years of age and older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay the biometric services fee, you may request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver. For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.* If necessary,

[37] Find information about online filing at ''Forms Available to File Online,'' *https://www.uscis.gov/file-online/forms-available-to-file-online.*

[38] *https://myaccount.uscis.gov/users/sign_up.*

you may be required to visit an Application Support Center to have your biometrics captured. For additional information on the USCIS biometric screening process, please see the USCIS Customer Profile Management Service Privacy Impact Assessment, available at *https://www.dhs.gov/publication/dhsuscispia-060-customer-profile-management-service-cpms.*

**General Employment-Related Information for TPS Applicants and Their Employers**

*How can I obtain information on the status of my TPS application and EAD request?*

To get case status information about your TPS application, as well as the status of your TPS-based EAD request, you can check Case Status Online at *uscis.gov*, or visit the USCIS Contact Center at *https://www.uscis.gov/contactcenter.* If your Form I–765 has been pending for more than 90 days, and you still need assistance, you may ask a question about your case online at *https://egov.uscis.gov/e-request/Intro.do* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

*Am I eligible to receive an automatic extension of my current EAD through October 19, 2024, through this* ***Federal Register*** *notice?*

Yes. Regardless of your country of birth, provided that you currently have a Sudan TPS-based EAD that has the notation A–12 or C–19 under Category and a ''Card Expires'' date of October 19, 2023, this **Federal Register** notice automatically extends your EAD through October 19, 2024. Although this **Federal Register** notice automatically extends your EAD through October 19, 2024, you must re-register timely for TPS in accordance with the procedures described in this **Federal Register** notice to maintain your TPS and employment authorization.

*When hired, what documentation may I show to my employer as evidence of identity and employment authorization when completing Form I–9?*

You can find the Lists of Acceptable Documents on Form I–9, Employment Eligibility Verification, as well as the Acceptable Documents web page at *https://www.uscis.gov/i-9-central/acceptable-documents.* Employers must complete Form I–9 to verify the identity and employment authorization of all new employees. Within three days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I–9 requirements.

You may present any document from List A (which provides evidence of both identity and employment authorization) or one document from List B (which provides evidence of your identity) together with one document from List C (which provides evidence of employment authorization), or you may present an acceptable receipt as described in the Form I–9 Instructions. Employers may not reject a document based on a future expiration date. You can find additional information about Form I–9 on the I–9 Central web page at *https://www.uscis.gov/I-9Central.* An EAD is an acceptable document under List A. See the section ''How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?'' of this **Federal Register** notice for further information. If your EAD states A–12 or C–19 under Category and has a ''Card Expires'' date of October 19, 2023, it has been extended automatically by virtue of this **Federal Register** notice and you may choose to present your EAD to your employer as proof of identity and employment eligibility for Form I–9 through October 19, 2024, unless your TPS has been withdrawn or your request for TPS has been denied. Your country of birth notated on the EAD does not have to reflect the TPS designated country of Sudan for you to be eligible for this extension.

*What documentation may I present to my employer for Form I–9 if I am already employed but my current TPS-related EAD is set to expire?*

Even though we have automatically extended your EAD, your employer is required by law to ask you about your continued employment authorization. Your employer may need to re-examine your automatically extended EAD to check the ''Card Expires'' date and Category code if your employer did not keep a copy of your EAD when you initially presented it. Once your employer has reviewed the Card Expiration date and Category code, your employer should update the EAD expiration date in Section 2 of Form I–9. See the section ''What updates should my current employer make to Form I–9 if my EAD has been automatically extended?'' of this **Federal Register** notice for further information. You may show this **Federal Register** notice to your employer to explain what to do for Form I–9 and to show that USCIS has automatically extended your EAD through October 19, 2024, but you are not required to do so. The last day of the automatic EAD extension is October 19, 2024. Before you start work on October 20, 2024, your employer is required by law to reverify your employment authorization on Form I–9. By that time, you must present any document from List A or any document from List C on Form I–9 Lists of Acceptable Documents, or an acceptable List A or List C receipt described in the Form I–9 instructions to reverify employment authorization.

Your employer may not specify which List A or List C document you must present and cannot reject an acceptable receipt.

*If I have an EAD based on another immigration status, can I obtain a new TPS-based EAD?*

Yes, if you are eligible for TPS, you can obtain a new TPS-based EAD, regardless of whether you have an EAD or work authorization based on another immigration status. If you want to obtain a new TPS-based EAD valid through April 19, 2025, then you must file Form I–765, Application for Employment Authorization, and pay the associated fee (unless USCIS grants your fee waiver request).

*Can my employer require that I provide any other documentation such as evidence of my status, proof of my Sudanese citizenship, or a Form I–797C showing that I registered for TPS for Form I–9 completion?*

No. When completing Form I–9, employers must accept any documentation you choose to present from the Form I–9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers may not request proof of Sudanese citizenship or proof of registration for TPS when completing Form I–9 for new hires or reverifying the employment authorization of current employees. If you present an EAD that USCIS has automatically extended, employers should accept it as a valid List A document so long as the EAD reasonably appears to be genuine and to relate to you. Refer to the ''Note to Employees'' section of this **Federal Register** notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

*How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?*

When using an automatically extended EAD to complete Form I–9 for a new job before October 20, 2024:

1. For Section 1, you should:

a. Check ''A noncitizen authorized to work until'' and enter October 19, 2024, as the ''expiration date''; and

b. Enter your USCIS number or A-Number where indicated. (Your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix.)

2. For Section 2, employers should:

a. Determine if the EAD is auto-extended by ensuring it is in category A–12 or C–19 and has a ''Card Expires'' date of October 19, 2023;

b. Write in the document title;

c. Enter the issuing authority;

d. Provide the document number; and

e. Write October 19, 2024, as the expiration date.

Before the start of work on October 20, 2024, employers must reverify the employee's employment authorization on Form I–9.

*What updates should my current employer make to Form I–9 if my EAD has been automatically extended?*

If you presented a TPS-related EAD that was valid when you first started your job and USCIS has now automatically extended your EAD, your employer may need to re-examine your current EAD if they do not have a copy of the EAD on file. Your employer should determine if your EAD is automatically extended by ensuring that it contains Category A–12 or C–19 and has a ''Card Expires'' date of October 19, 2023. Your employer may not rely on the country of birth listed on the card to determine whether you are eligible for this extension.

If your employer determines that USCIS has automatically extended your EAD, your employer should update Section 2 of your previously completed Form I–9 as follows:

1. Write EAD EXT and October 19, 2024, as the last day of the automatic extension in the Additional Information field; and

2. Initial and date the correction.

**Note:** This is not considered a reverification. Employers do not reverify the employee until either the automatic extension has ended, or the employee presents a new document to show continued employment authorization, whichever is sooner. By October 20, 2024, when the employee's automatically extended EAD has expired, employers are required by law to reverify the employee's employment authorization on Form I–9.

*If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?*

Employers may create a case in E-Verify for a new employee by entering the number from the Document Number field on Form I–9 into the document number field in E-Verify. Employers should enter October 19, 2024, as the expiration date for an EAD that has been extended under this **Federal Register** notice.

*If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiring'' alert for an automatically extended EAD?*

E-Verify automated the verification process for TPS-related EADs that are automatically extended. If you have employees who provided a TPS-related EAD when they first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when the auto-extension period for this EAD is about to expire. Before this employee starts work on October 20, 2024, you must reverify their employment authorization on Form I–9. Employers may not use E-Verify for reverification.

**Note to All Employers**

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls and emails in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800–255–8155 (TTY 800–237–2515). IER offers language interpretation in numerous languages. Employers may also email IER at *IER@usdoj.gov* or get more information online at *www.justice.gov/ier.*

**Note to Employees**

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls in English, Spanish and many other languages. Employees or job applicants may also call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Worker Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based on citizenship, immigration status, or national origin, including discrimination related to Form I–9 and E-Verify. The IER Worker Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the Form I–9 Instructions. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (mismatch) must promptly inform employees of the mismatch and give such employees an opportunity to take action to resolve the mismatch. A mismatch means that the information entered into E-Verify from Form I–9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold or lower pay, or take any adverse action against an employee because of a mismatch while the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot confirm an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Form I–9 and E-Verify procedures is available on the IER website at *https://www.justice.gov/*

*ier* and the USCIS and E-Verify websites at *https://www.uscis.gov/i-9-central* and *https://www.e-verify.gov.*

**Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)**

For Federal purposes, if you present an automatically extended EAD referenced in this **Federal Register** notice, you do not need to show any other document, such as a Form I–797C, Notice of Action reflecting receipt of a Form I–765 EAD renewal application or this **Federal Register** notice, to prove that you qualify for this extension. While Federal Government agencies must follow the guidelines laid out by the Federal Government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary, show you are authorized to work based on TPS or other status, or that may be used by DHS to determine if you have TPS or another immigration status. Examples of such documents are:

- Your current EAD with a TPS category code of A–12 or C–19, even if your country of birth noted on the EAD does not reflect the TPS designated country of Sudan;
- Your Form I–94, Arrival/Departure Record;
- Your Form I–797, Notice of Action, reflecting approval of your Form I–765; or
- Form I–797 or Form I–797C, Notice of Action, reflecting approval or receipt of a past or current Form I–821, if you received one from USCIS.

Check with the government agency requesting documentation regarding which document(s) the agency will accept. Some state and local government agencies use the SAVE program to confirm the current immigration status of applicants for public benefits.

While SAVE can verify that an individual has TPS, each agency's procedures govern whether they will accept an unexpired EAD, Form I–797, Form I–797C, or Form I–94, Arrival/Departure Record. If an agency accepts the type of TPS-related document you present, such as an EAD, the agency should accept your automatically extended EAD, regardless of the country of birth listed on the EAD. It may assist the agency if you:

a. Give the agency a copy of the relevant **Federal Register** notice showing the extension of TPS-related documentation in addition to your recent TPS-related document with your A-number, USCIS number, or Form I–94 number;

b. Explain that SAVE will be able to verify the continuation of your TPS using this information; and

c. Ask the agency to initiate a SAVE query with your information and follow through with additional verification steps, if necessary, to get a final SAVE response verifying your TPS.

You can also ask the agency to look for SAVE notices or contact SAVE if they have any questions about your immigration status or automatic extension of TPS-related documentation. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but occasionally verification can be delayed.

You can check the status of your SAVE verification by using CaseCheck at *https://save.uscis.gov/casecheck/.* CaseCheck is a free service that lets you follow the progress of your SAVE verification case using your date of birth and one immigration identifier number (such as A-number, USCIS number, or Form I–94 number) or Verification Case Number. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted on or will act on a SAVE verification and you do not believe the SAVE response is correct, the SAVE website, *https://www.uscis.gov/save,* has detailed information on how to make corrections or update your immigration record, make an appointment, or submit a written request to correct records.

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**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[CIS No. 2747–23; DHS Docket No. USCIS–2022–0003]**

**RIN 1615–ZB91**

### Extension and Redesignation of Ukraine for Temporary Protected Status

**AGENCY:** U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

**ACTION:** Notice of Temporary Protected Status (TPS) extension and redesignation.

**SUMMARY:** Through this notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Ukraine for Temporary Protected Status (TPS) for 18 months, beginning on October 20, 2023, and ending on April 19, 2025. This extension allows existing TPS beneficiaries to retain TPS through April 19, 2025, so long as they otherwise continue to meet the eligibility requirements for TPS. Existing TPS beneficiaries who wish to extend their status through April 19, 2025, must re-register during the 60-day re-registration period described in this notice. The Secretary is also redesignating Ukraine for TPS. The redesignation of Ukraine allows additional Ukrainian nationals (and individuals having no nationality who last habitually resided in Ukraine) who have been continuously residing in the United States since August 16, 2023, to apply for TPS for the first time during the initial registration period described under the redesignation information in this notice. In addition to demonstrating continuous residence in the United States since August 16, 2023, and meeting other eligibility criteria, initial applicants for TPS under this designation must demonstrate that they have been continuously physically present in the United States since October 20, 2023, the effective date of this redesignation of Ukraine for TPS.

**DATES:** *Extension of Designation of Ukraine for TPS:* The 18-month designation of Ukraine for TPS begins on October 20, 2023, and will remain in effect for 18 months, ending on April 19, 2025. The extension impacts existing beneficiaries of TPS.

*Re-registration:* The 60-day re-registration period for existing beneficiaries runs from August 21, 2023 through October 20, 2023. (Note: It is important for re-registrants to timely re-register during the registration period and not to wait until their Employment Authorization Documents (EADs) expire, as delaying reregistration could result in gaps in their employment authorization documentation.)

*Redesignation of Ukraine for TPS:* The 18-month redesignation of Ukraine for TPS begins on October 20, 2023, and will remain in effect for 18 months, ending on April 19, 2025. The redesignation impacts potential first-

time applicants and others who do not currently have TPS.

*First-time Registration:* The initial registration period for new applicants under the Ukraine TPS redesignation begins on August 21, 2023 and will remain in effect through April 19, 2025.

**FOR FURTHER INFORMATION CONTACT:**

- You may contact Renáa Cutlip-Mason, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Drive, Camp Springs, MD 20746, or by phone at 800–375–5283.
- For further information on TPS, including guidance on the registration process and additional information on eligibility, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.* You can find specific information about Ukraine's TPS designation by selecting ''Ukraine'' from the menu on the left side of the TPS web page.
- If you have additional questions about TPS, please visit *uscis.gov/tools.* Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you are unable to find your answers there, you may also call our USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).
- Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at *uscis.gov*, or visit the USCIS Contact Center at *https://www.uscis.gov/contactcenter.*
- Further information will also be available at local USCIS offices upon publication of this notice.

**SUPPLEMENTARY INFORMATION:**

**Table of Abbreviations**

BIA—Board of Immigration Appeals
CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security
DOS—U.S. Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Form I–131—Application for Travel Document
Form I–765—Application for Employment Authorization
Form I–797—Notice of Action
Form I–821—Application for Temporary Protected Status
Form I–9—Employment Eligibility Verification
Form I–912—Request for Fee Waiver
Form I–94—Arrival/Departure Record
FR—Federal Register
Government—U.S. Government
IER—U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section
IJ—Immigration Judge
INA—Immigration and Nationality Act
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services
U.S.C.—United States Code

**Purpose of This Action (TPS)**

Through this notice, DHS sets forth procedures necessary for nationals of Ukraine (or individuals having no nationality who last habitually resided in Ukraine) to (1) re-register for TPS and to apply for renewal of their EADs with USCIS or (2) submit an initial registration application under the redesignation and apply for an EAD.

Re-registration is limited to individuals who have previously registered for TPS under the prior designation of Ukraine and whose applications have been granted. Failure to re-register properly within the 60-day re-registration period may result in the withdrawal of your TPS following appropriate procedures. *See* 8 CFR 244.14.

For individuals who have already been granted TPS under Ukraine's designation, the 60-day re-registration period runs from August 21, 2023 through October 20, 2023. USCIS will issue new EADs with an April 19, 2025, expiration date to eligible Ukrainian TPS beneficiaries who timely re-register and apply for EADs. Given the time frames involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants may receive new EADs before their current EADs expire. Accordingly, through this **Federal Register** notice, DHS automatically extends the validity of certain EADs previously issued under the TPS designation of Ukraine through October 19, 2024. Therefore, as proof of continued employment authorization through October 19, 2024, TPS beneficiaries can show their EADs that have the notation A–12 or C–19 under Category and a ''Card Expires'' date of October 19, 2023. This notice explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and how this affects the Form I–9, Employment Eligibility Verification, E-Verify, and USCIS Systematic Alien Verification for Entitlements (SAVE) processes.

Individuals who have a Ukraine TPS application (Form I–821) and/or Application for Employment Authorization (Form I–765) that was still pending as of August 21, 2023 do not need to file either application again. If USCIS approves an individual's pending Form I–821, USCIS will grant the individual TPS through April 19, 2025. Similarly, if USCIS approves a pending TPS-related Form I–765, USCIS will issue the individual a new EAD that will be valid through the same date. There are currently approximately 26,000 beneficiaries under Ukraine's TPS designation.

Under the redesignation, individuals who currently do not have TPS may submit an initial application during the initial registration period that runs from August 21, 2023 and runs through the full length of the redesignation period ending April 19, 2025. In addition to demonstrating continuous residence in the United States since August 16, 2023, and meeting other eligibility criteria, initial applicants for TPS under this redesignation must demonstrate that they have been continuously physically present in the United States since October 20, 2023,[1] the effective date of this redesignation of Ukraine, before USCIS may grant them TPS. DHS estimates that approximately 166,700 individuals may become newly eligible for TPS under the redesignation of Ukraine.

**What is temporary protected status (TPS)?**

- TPS is a temporary immigration status granted to eligible nationals of a foreign state designated for TPS under the INA, or to eligible individuals without nationality who last habitually resided in the designated foreign state, regardless of their country of birth.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to obtain EADs so long as they continue to meet the requirements of TPS.
- TPS beneficiaries may also apply for and be granted travel authorization as a matter of DHS discretion.
- To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(1)–(2), 8 U.S.C. 1254a(c)(1)–(2).
- When the Secretary terminates a foreign state's TPS designation, beneficiaries return to one of the following:
  - The same immigration status or category that they maintained before

[1] The ''continuous physical presence date'' (CPP) is the effective date of the most recent TPS designation of the country, which is either the publication date of the designation announcement in the **Federal Register** or such later date as the Secretary may establish. The ''continuous residence date'' (CR) is any date established by the Secretary when a country is designated (or sometimes redesignated) for TPS. *See* INA secs. 244(b)(2)(A) (effective date of designation); 244(c)(1)(A)(i–ii) (CR and CPP date requirements); 8 U.S.C. 1254a(b)(2)(A); 1254a(c)(1)(A)(i–ii).

TPS, if any (unless that status or category has since expired or terminated); or

○ Any other lawfully obtained immigration status or category they received while registered for TPS, as long as it is still valid beyond the date TPS terminates.

**When was Ukraine designated for TPS?**

Ukraine was initially designated on the basis of an ongoing armed conflict and extraordinary and temporary conditions in Ukraine that prevented nationals of Ukraine from returning in safety. *See Designation of Nationals of Ukraine for Temporary Protected Status,* 87 FR 23211 (April 19, 2022).

**What authority does the Secretary have to extend the designation Ukraine for TPS?**

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government, to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.[2] The decision to designate any foreign state (or part thereof) is a discretionary decision, and there is no judicial review of any determination with respect to the designation, termination, or extension of a designation. *See* INA sec. 244(b)(5)(A), 8 U.S.C. 1254a(b)(5)(A).[3] The Secretary, in his or her discretion, may then grant TPS to eligible nationals of that foreign state (or individuals having no nationality who last habitually resided in the designated foreign state). *See* INA sec. 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a foreign state's TPS designation or extension, the Secretary, after consultation with appropriate U.S. Government agencies, must review the conditions in the foreign state designated for TPS to determine whether they continue to meet the conditions for the TPS designation. *See* INA sec. 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the foreign state continues to meet the conditions for TPS designation, the designation will be extended for an additional period of 6 months or, in the Secretary's discretion, 12 or 18 months. *See* INA sec. 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA sec. 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

**What is the Secretary's authority to redesignate Ukraine for TPS?**

In addition to extending an existing TPS designation, the Secretary, after consultation with appropriate Government agencies, may redesignate a country (or part thereof) for TPS. *See* INA sec. 244(b)(1), 8 U.S.C. 1254a(b)(1); *see also* INA sec. 244(c)(1)(A)(i), 8 U.S.C. 1254a(c)(1)(A)(i) (requiring that ''the alien has been continuously physically present since the effective date of *the most recent designation of the state*'') (emphasis added).[4]

When the Secretary designates or redesignates a country for TPS, the Secretary also has the discretion to establish the date from which TPS applicants must demonstrate that they have been ''continuously resid[ing]'' in the United States. *See* INA sec. 244(c)(1)(A)(ii), 8 U.S.C. 1254a(c)(1)(A)(ii). The Secretary has determined that the ''continuous residence'' date for applicants for TPS under the redesignation of Ukraine shall be August 16, 2023. Initial applicants for TPS under this redesignation must also show they have been ''continuously physically present'' in the United States since October 20, 2023, which is the effective date of the Secretary's redesignation, of Ukraine. *See* INA sec. 244(c)(1)(A)(i), 8 U.S.C. 1254a(c)(1)(A)(i). For each initial TPS application filed under the redesignation, the final determination of whether the applicant has met the ''continuous physical presence'' requirement cannot be made until October 20, 2023, the effective date of this redesignation for Ukraine. USCIS, however, will issue employment authorization documentation, as appropriate, during the registration period in accordance with 8 CFR 244.5(b).

**Why is the Secretary extending the TPS designation for Ukraine and simultaneously redesignating Ukraine for TPS through April 19, 2025?**

DHS has reviewed country conditions in Ukraine. Based on the review, including input received from DOS and other U.S. Government agencies, the Secretary has determined that an 18-month TPS extension is warranted because ongoing armed conflict and extraordinary and temporary conditions supporting Ukraine's TPS designation remain. The Secretary has further determined that redesignating Ukraine for TPS under INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C) is warranted and is changing the ''continuous residence'' and ''continuous physical presence'' dates that applicants must meet to be eligible for TPS.

*Overview*

On February 24, 2022, Russia massively expanded its unprovoked military invasion of Ukraine, marking the largest conventional military action in Europe since World War II.[5] There is widespread fear and flight of Ukrainian nationals as Russia's forces have continued to engage in significant, sustained bombardment of major cities across the country, including attacks on Ukraine's capital, Kyiv.[6] Members of Russia's forces have also committed war crimes and the crimes against humanity of murder, torture, rape, and, alongside other Russian officials, deportation of

[2] INA section 244(b)(1) ascribes this power to the Attorney General. Congress transferred this authority from the Attorney General to the Secretary of Homeland Security. *See* Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2135 (2002). The Secretary may designate a country (or part of a country) for TPS on the basis of ongoing armed conflict such that returning would pose a serious threat to the personal safety of the country's nationals and habitual residents, environmental disaster (including an epidemic), or extraordinary and temporary conditions in the country that prevent the safe return of the country's nationals. For environmental disaster-based designations, certain other statutory requirements must be met, including that the foreign government must request TPS. A designation based on extraordinary and temporary conditions cannot be made if the Secretary finds that allowing the country's nationals to remain temporarily in the United States is contrary to the U.S. national interest. INA sec. 244(b)(1); 8 U.S.C. 1254a(b)(1).

[3] This issue of judicial review is the subject of litigation. *See, e.g., Ramos* v. *Wolf,* 975 F.3d 872 (9th Cir. 2020), *petition for en banc rehearing* granted Feb. 10, 2023(No. 18–16981); *Saget* v. *Trump,* 375 F. Supp. 3d 280 (E.D.N.Y. 2019).

[4] The extension and redesignation of TPS for Ukraine is one of several instances in which the Secretary and, prior to the establishment of DHS, the Attorney General, have simultaneously extended a country's TPS designation and redesignated the country for TPS. *See, e.g.,* ''Extension and Redesignation of Haiti for Temporary Protected Status'' 76 FR 29000 (May 19, 2011); ''Extension and Re-designation of Temporary Protected Status for Sudan'' 69 FR 60168 (Oct. 7, 2004); ''Extension of Designation and Redesignation of Liberia Under Temporary Protected Status Program'' 62 FR 16608 (Apr. 7, 1997).

[5] ''Russia invades Ukraine on multiple fronts in 'brutal act of war','' *PBS,* Feb. 24, 2022, available at *https://www.pbs.org/newshour/world/russia-invades-ukraine-on-multiple-fronts-in-brutal-act-of-war* (last visited Mar. 1, 2022); Natalia Zinets and Aleksandar Vasovic, ''Missiles rain down around Ukraine,'' *Reuters,* Feb. 24, 2022, available at *https://www.reuters.com/world/europe/putin-orders-military-operations-ukraine-demands-kyiv-forces-surrender-2022-02-24/* (last visited Mar. 1, 2022).

[6] Amnesty Int'l, Amnesty International Report 2022/23: The State of the World's Human Rights, Ukraine, 2022, Mar. 27, 2023, available at *https://www.ecoi.net/en/document/2089403.html* (last visited May 8, 2023); ACLED—Armed Conflict Location & Event Data Project, War in Ukraine: One Year On, Nowhere Safe, Mar. 1, 2023, available at *https://acleddata.com/2023/03/01/war-in-ukraine-one-year-on-nowhere-safe/* (last visited May 8, 2023).

population.[7] This ongoing armed conflict poses a serious threat to the safety of nationals returning to Ukraine. Extraordinary and temporary conditions, including destroyed infrastructure, lack of access to healthcare, and displacement continue to prevent Ukrainian nationals from returning to their homes in safety.

*Armed Conflict and Violence*

Russia's expanded military invasion of Ukraine has placed civilians at significant risk of physical harm throughout the country and caused vast harm to infrastructure.[8] By April 2023, the Office of the UN High Commissioner for Human Rights (OHCHR) recorded 22,734 civilian casualties in Ukraine, including 8,490 killed and 14,244 injured.[9] OHCHR further found that most of the recorded civilian casualties were caused by explosive weapons, including shelling from heavy artillery, multiple launch rocket systems, missiles, and air strikes.[10] Russian forces continue to launch aerial attacks across Ukraine, resulting in immense damage to civilian infrastructure. In Kyiv, damage to a thermal power plant led to loss of electricity and heating in parts of the city, while aerial attacks in oblasts including Kharkiv, Lviv, Zhytomyr, and others, resulted in numerous power outages.[11] Damage to buildings, infrastructure, energy, and agricultural sectors will cost roughly $411 billion to repair.[12]

*Humanitarian Situation and Human Rights Abuses*

Loss of life, injuries, lack of access to healthcare, displacement, and damaged infrastructure as a result of the ongoing war in Ukraine have created a humanitarian crisis and has had a severe impact, with millions of Ukrainians requiring humanitarian assistance.[13] According to the 2023 Humanitarian Needs Overview (HNO) for Ukraine, an estimated 17.6 million Ukrainian people require humanitarian assistance in 2023, of which 52% are assessed to have ''severe'' humanitarian needs and 28% have ''catastrophic'' (*i.e.,* the most severe) humanitarian needs.[14] Heavy fighting in eastern regions of Ukraine has led to large influxes of internally displaced persons (IDPs) from those areas into neighboring regions.[15] There continues to be significant humanitarian concerns including lack of infrastructure, healthcare, and displacement. This ongoing humanitarian crisis constitutes extraordinary and temporary conditions that make it difficult for Ukrainian nationals and stateless habitual residents of Ukraine to safely return to their country.

In March 2022, the U.S. government assessed that members of Russia's forces committed war crimes in Ukraine. In February 2023, the Secretary of State determined that members of Russia's forces and other Russian officials had committed crimes against humanity in Ukraine.[16] Widely reported atrocities and other abuses include torture, unlawful killings, sexual violence, disappearances, and attacks on hospitals and schools.[17] Members of Russia's forces have unlawfully transferred or deported Ukrainian civilians, including children, within occupied areas of Ukraine and from occupied areas of Ukraine to the Russian Federation, which is a grave breach of the Fourth Geneva Convention and a war crime.[18] The U.S. Department of State reported alarming findings from the Office of the UN High Commissioner for Human Rights Monitoring Mission in Ukraine (HRMMU) that, since February 24, 2022, there have been 86 documented cases of conflict-related sexual violence, including ''rape, gang rape, forced nudity and forced public stripping, sexual torture, and sexual abuse.'' [19]

Loss of life, injuries, lack of access to healthcare, displacement, and damaged infrastructure as a result of the ongoing war in Ukraine have created a humanitarian crisis and have had a severe impact, with millions of Ukrainians requiring humanitarian assistance.[20] In June 2023, the Kakhovka dam collapsed causing serious environmental destruction including flooding of homes and farms, drying of irrigation canals, and the loss of countless trees, plants, and crops.[21] The dam collapse has led to increased pollution in the region, as flooding through industrial areas carried over 150 tons of machine oil into the Black Sea and caused oil slicks across

[7] Antony J. Blinken, U.S. Sec'y of State, Virtual Remarks on Russia's Accountability for the Crimes in Ukraine, U.S. Dept. of State (Mar. 31, 2023) available at: *https://ua.usembassy.gov/secretary-antony-j-blinken-virtual-remarks-on-russias-accountability-for-the-crimes-in-ukraine/* (last visited May 4, 2023); Amnesty Int'l, Amnesty International Report 2022/23: The State of the World's Human Rights, Ukraine, at 377–82, available at *https://www.ecoi.net/en/document/2089403.html* (last visited May 4, 2023); *https://ua.usembassy.gov/crimes-against-humanity-in-ukraine/; https://www.state.gov/war-crimes-by-russias-forces-in-ukraine/.*

[8] *Press briefing notes on Ukraine,* United Nations Office of the High Commissioner Human Rights, Mar. 1, 2022, available at *https://reliefweb.int/report/ukraine/press-briefing-notes-ukraine-01-march-2022-enru* (last visited May 15, 2022).

[9] U. N. Human Rights Office of High Comm'r (OHCHR), Ukraine: civilian casualty update, Apr. 10, 2023, available at *https://www.ohchr.org/en/news/2023/04/ukraine-civilian-casualty-update-10-april-2023* (last visited May 4, 2023).

[10] U. N. Human Rights Office of High Comm'r (OHCHR), Ukraine: civilian casualty update, Apr. 10, 2023, available at *https://www.ohchr.org/en/news/2023/04/ukraine-civilian-casualty-update-10-april-2023* (last visited May 4, 2023).

[11] USAID, Ukraine—Complex Emergency, Mar. 10, 2023, available at *https://www.usaid.gov/sites/default/files/2023-03/2023-03-10_Ukraine_Complex_Emergency_Fact_Sheet_10.pdf* (last visited May 5, 2023).

[12] The World Bank, Updated Ukraine Recovery and Reconstruction Needs Assessment, Mar. 23, 2023, available at: *https://www.worldbank.org/en/news/press-release/2023/03/23/updated-ukraine-recovery-and-reconstruction-needs-assessment* (last visited May 5, 2023).

[13] Ukraine one year on: IRC survey reveals war has near universal impact, IRC, Feb. 22, 2023, available at *https://www.rescue.org/press-release/ukraine-one-year-irc-survey-reveals-war-has-near-universal-impact* (last visited Apr. 10, 2023).

[14] U.N. Office for the Coordination of Humanitarian Affairs, Ukraine: Humanitarian Response Plan,, Feb. 15, 2023, available at *https://reliefweb.int/report/ukraine/ukraine-humanitarian-response-plan-february-2023-enuk* (last visited Mar. 24, 2023).

[15] USAID, Ukraine—Complex Emergency, Mar. 10, 2023, available at *https://www.usaid.gov/sites/default/files/2023-03/2023-03-10_Ukraine_Complex_Emergency_Fact_Sheet_10.pdf* (last visited May 5, 2023).

[16] Antony J. Blinken, U.S. Sec'y of State, Virtual Remarks on Russia's Accountability for the Crimes in Ukraine, U.S. Dept. of State, Mar. 31, 2023, available at: *https://ua.usembassy.gov/secretary-antony-j-blinken-virtual-remarks-on-russias-accountability-for-the-crimes-in-ukraine/* (last visited May 4, 2023).

[17] Antony J. Blinken, U.S. Sec'y of State, Virtual Remarks on Russia's Accountability for the Crimes in Ukraine, U.S. Dept. of State, Mar. 31, 2023, available at: *https://ua.usembassy.gov/secretary-antony-j-blinken-virtual-remarks-on-russias-accountability-for-the-crimes-in-ukraine/* (last visited May 4, 2023); Amnesty Int'l, Amnesty International Report 2022/23: The State of the World's Human Rights, Ukraine, at 377—82, available at *https://www.ecoi.net/en/document/2089403.html* (last visited May 4, 2023).

[18] Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova, International Criminal Court (ICC), Mar. 17, 2023, available at *https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and* (last visited May 5, 2023).

[19] U.S. Dept. of State, 2022 Country Report on Human Rights Practices: Ukraine, Mar. 20, 2023, available at *https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/ukraine/* (last visited May 5, 2023).

[20] Ukraine one year on: IRC survey reveals war has near universal impact, IRC, Feb. 22, 2023, available at *https://www.rescue.org/press-release/ukraine-one-year-irc-survey-reveals-war-has-near-universal-impact* (last visited Apr. 10, 2023).

[21] Lori Hinnant, Sam McNeil, and Illia Novikov, *Ukraine's dam collapse is both a fast-moving disaster and a slow-moving ecological catastrophe,* Associated Press, June 11, 2023, available at: *https://apnews.com/article/ukraine-dam-environment-disaster-753d1e03810e6bd2e4a26cf2dd3aa97b* (last visited: July 19, 2023); Jamey Keaten, *Ukrainian dam breach: What's happening and what's at stake,* Associated Press, June 7, 2023, available at: *https://apnews.com/article/kakhovka-dam-ukraine-russia-war-whats-at-stake-a417dafefa79462bef5e4e63c0a94c8c* (last visited: July 19, 2023).

Kherson.[22] As a result of the dam's destruction, approximately 70 percent of the Kakhovka Reservoir, one of the largest in Europe, emptied and is currently below its operational threshold.[23] This has cut off or threatened clean water supplies for at least 200,000 people, a number that could increase to 700,000, across southern Ukraine.[24] Additionally, attacks on electrical grids pose a serious humanitarian concern, particularly in winter as frigid winter temperatures set in and Ukrainians were without heat.[25] Hundreds of schools have also been damaged or destroyed, resulting in severe disruption in the education of millions of students.[26] The WHO Surveillance System reported 763 attacks on healthcare facilities in 2022, leaving up to 50 percent of medical facilities non-functional in eastern and southern parts of Ukraine.[27] As a result of the ongoing attacks, health care workers were forced to flee, leaving few present to attend to growing needs.[28] More than 6.2 million Ukrainians are now refugees and an estimated 5.1 million Ukrainians are Internally Displaced Persons (IDP).[29] Large-scale displacement of this nature drives other protection concerns, including gender-based violence, separation of children from their families, and restrictions on movement.[30] In summary, Russia's invasion of Ukraine has led to large numbers of civilian casualties and a mounting record of serious human rights abuses by Russian forces against civilians. The war has created a deepening humanitarian crisis, including mass displacement, destruction of civilian infrastructure that is causing both economic and social harm, and limitations on access to vital healthcare.

Based upon this review and after consultation with appropriate U.S. Government agencies, the Secretary has determined that:

- The conditions supporting Ukraine's designation for TPS continue to be met. *See* INA sec. 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continues to be an ongoing armed conflict in Ukraine and, due to such conflict, requiring the return to Ukraine of Ukrainian nationals (or individuals having no nationality who last habitually resided in Ukraine) would pose a serious threat to their personal safety. *See* INA sec. 244(b)(1)(A), 8 U.S.C. 1254a(b)(1)(A).
- There continue to be extraordinary and temporary conditions in Ukraine that prevent Ukrainian nationals (or individuals having no nationality who last habitually resided in Ukraine) from returning to Ukraine in safety, and it is not contrary to the national interest of the United States to permit Ukrainian TPS beneficiaries to remain in the United States temporarily. *See* INA sec. 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- The designation of Ukraine for TPS should be extended for an 18-month period, beginning on October 20, 2023 and ending on April 19, 2025. *See* INA sec. 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).
- Due to the conditions described above, Ukraine should be simultaneously extended and redesignated for TPS beginning on October 20, 2023 and ending on April 19, 2025. *See* INA 244(b)(1)(A) and (C) and (b)(2), 8 U.S.C. 1254a(b)(1)(A) and (C) and (b)(2).
- For the redesignation, the Secretary has determined that TPS applicants must demonstrate that they have continuously resided in the United States since August 16, 2023.
- Initial TPS applicants under the redesignation must demonstrate that they have been continuously physically present in the United States since October 20, 2023, the effective date of the redesignation of Ukraine for TPS.
- There are approximately 26,000 current Ukraine TPS beneficiaries who are eligible to re-register for TPS under the extension.
- It is estimated that approximately 166,700 additional individuals may be eligible for TPS under the redesignation of Ukraine. This population includes Ukrainian nationals in the United States in nonimmigrant status or without immigration status.

## Notice of the Designation of Ukraine for TPS

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate U.S. Government agencies, the statutory conditions supporting Ukraine's designation for TPS on the basis of an ongoing armed conflict and extraordinary and temporary conditions are met and that designating Ukraine for TPS is not contrary to the national interest of the United States. *See* INA sec. 244(b)(1)(A) and (C), 8 U.S.C. 1254a(b)(1)(A) and (C). On the basis of this determination, I am simultaneously extending the existing designation of Ukraine for TPS for 18 months, beginning on October 20, 2023 and ending on April 19, 2025, and redesignating Ukraine for TPS for the same 18-month period. *See* INA sec. 244(b)(1)(A) and (C) and (b)(2); 8 U.S.C. 1254a(b)(1)(A) and (C), and (b)(2).

**Alejandro N. Mayorkas,**

*Secretary, U.S. Department of Homeland Security.*

## Eligibility and Employment Authorization for TPS

### Required Application Forms and Application Fees To Register or Re-Register for TPS

To register initially for TPS based on the designation of Ukraine, you must submit a Form I–821, Application for Temporary Protected Status, and pay the filing fee (or request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver). You may be required to pay the biometric services fee. If you can demonstrate an inability to pay the biometric services fee, you may request to have the fee waived.

[22] Lori Hinnant, Sam McNeil, and Illia Novikov, *Ukraine's dam collapse is both a fast-moving disaster and a slow-moving ecological catastrophe,* Associated Press, June 11, 2023, available at: *https://apnews.com/article/ukraine-dam-environment-disaster-753d1e03810e6bd2e4a26cf2dd3aa97b* (last visited: July 19, 2023).

[23] United Nations, Ukraine: 700,000 people affected by water shortages from dam disaster, June 16, 2023, available at: *https://news.un.org/en/story/2023/06/1137797#:~:text=Cut%20off%20from%20drinking%20water,empty%2C%20according%20to%20Ukrainian%* (last visited: July 19, 2023).

[24] United Nations, Ukraine: 700,000 people affected by water shortages from dam disaster, June 16, 2023, available at: *https://news.un.org/en/story/2023/06/1137797#:~:text=Cut%20off%20from%20drinking%20water,empty%2C%20according%20to%20Ukrainian%20authorities* (last visited: July 19, 2023).

[25] The Guardian, Ukrainians endure grim winter as Russia destroys infrastructure—in maps, Feb. 6, 2023, available at *https://www.theguardian.com/world/ng-interactive/2023/feb/06/ukrainians-endure-grim-winter-as-russia-destroys-infrastructure-in-maps* (last visited May 5, 2023).

[26] U.N. Office of the High Comm'r for Human Rights, Report on the human rights situation in Ukraine (1 August 2022–31 January 2023); Mar. 24, 2023, available at: *https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-august-2022-31-january-2023* (last visited on May 12, 2023).

[27] U.N. Office for the Coordination for Humanitarian Affairs (OCHA), Ukraine humanitarian response—Key achievements in 2022, Feb. 10, 2023, available at *https://reports.unocha.org/en/country/ukraine* (last visited May 5, 2023).

[28] OCHA, Ukraine humanitarian response—Key achievements in 2022, Feb. 10, 2023, available at *https://reports.unocha.org/en/country/ukraine* (last visited May 5, 2023).

[29] UNHCR, Ukraine Refugee Situation, Aug. 1, 2023, available at: *https://data2.unhcr.org/en/situations/ukraine* (last visited Aug. 3, 2023); IOM, Ukraine—Internal Displacement Report—General Population Survey Round 13 (11 May–14 June 2023), June 2023, available at: *https://dtm.iom.int/reports/ukraine-internal-displacement-report-general-population-survey-round-13-11-may-14-june-2023?close=true* (last visited Aug. 3, 2023).

[30] OCHA, Ukraine humanitarian response—Key achievements in 2022, Feb. 10, 2023, available at *https://reports.unocha.org/en/country/ukraine/* (last visited May 5, 2023).

Please see additional information under the ''Biometric Services Fee'' section of this notice.

TPS beneficiaries are eligible for an EAD, which proves their authorization to work in the United States. You are not required to submit Form I–765, Application for Employment Authorization, or have an EAD to be granted TPS, but see below for more information if you want an EAD to use as proof that you can work in the United States.

Individuals who have a Ukraine TPS application (Form I–821) that was still pending as of August 21, 2023 do not need to file the application again. If USCIS approves an individual's Form I–821, USCIS will grant the individual TPS through April 19, 2025.

For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.* Fees for the Form I–821, the Form I–765, and biometric services are also described in 8 CFR 103.7(b)(1) (Oct. 1, 2020).

**How can TPS beneficiaries obtain an employment authorization document (EAD)?**

Everyone must provide their employer with documentation showing that they have the legal right to work in the United States. TPS beneficiaries are eligible to obtain an EAD, which proves their legal right to work. Those who want to obtain an EAD must file a Form I–765 and pay the Form I–765 fee (or request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver). TPS applicants may file this form along with their TPS application, or at a later date, provided their TPS application is still pending or has been approved. Beneficiaries with a Ukrainian TPS-related Form I–765 that was still pending as of August 21, 2023 do not need to file the application again. If USCIS approves a pending TPS-related Form I–765, USCIS will issue the individual a new EAD that will be valid through April 19, 2025.

**Refiling an Initial TPS Registration Application After a Denial of a Fee Waiver Request**

If USCIS denies your fee waiver request, you can resubmit your TPS application. The fee waiver denial notice will contain specific instructions about resubmitting your application.

**Filing Information**

USCIS offers the option to applicants for TPS under Ukraine's designation to file Form I–821 and related requests for EADs online or by mail. When filing a TPS application, applicants can also request an EAD by submitting a completed Form I–765, with their Form I–821.

*Online filing:* Forms I–821 and I–765 are available for concurrent filing online.[31] To file these forms online, you must first create a USCIS online account.[32] However, if you are requesting a fee waiver, you cannot submit the applications online. You will need to file paper versions of the fee waiver request and the form for which you are requesting the fee waiver.

*Mail filing:* Mail your application for TPS to the proper address in Table 1.

Table 1—Mailing Addresses

Mail your completed Form I–821, Application for Temporary Protected Status; Form I–765, Application for Employment Authorization, if applicable; Form I–912, Request for Fee Waiver (if applicable); and supporting documentation to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

| | |
|---|---|
| Alabama, Alaska, American Samoa, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, New York, Ohio. | USCIS Chicago Lockbox.<br>U.S. Postal Service (USPS): U.S. Citizenship and Immigration Services, Attn: TPS Ukraine, P.O. Box 4464, Chicago, IL 60680–4464.<br><br>FedEx, UPS, or DHL: U.S. Citizenship and Immigration Services, Attn: TPS Ukraine (Box 4464), 131 S Dearborn St., 3rd Floor, Chicago, IL 60603–5517. |
| California, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Northern Mariana Islands, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virgin Islands, Virginia, Washington, West Virginia, Wisconsin, Wyoming. | USCIS Phoenix Lockbox.<br>U.S. Postal Service (USPS): U.S. Citizenship and Immigration Services, Attn: TPS Ukraine, P.O. Box 24047, Phoenix, AZ 85074–4047.<br><br>FedEx, UPS, or DHL: U.S. Citizenship and Immigration Services, Attn: TPS Ukraine (Box 24047), 2108 E Elliot Rd., Tempe, AZ 85284–1806. |

If you were granted TPS by an immigration judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD, please file online or mail your Form I–765 application to the appropriate mailing address in Table 1 regardless of whether you are requesting a fee waiver. If filing online, please include the fee. If filing by mail, please include the fee or fee waiver request. When you are requesting an EAD based on an IJ/BIA grant of TPS, please include a copy of the IJ or BIA order granting you TPS with your application. This will help us verify your grant of TPS and process your application.

**Supporting Documents**

The filing instructions on the Form I–821 list all the documents needed to establish eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying (*i.e.,* registering) for TPS on the USCIS website at *https://www.uscis.gov/tps* under ''Ukraine.''

**Travel**

TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion. You must file for travel authorization if you wish to travel outside of the United States. If granted, travel authorization gives you permission to leave the United States and return during a specific period. To request travel authorization, you must file Form I–131, Application for Travel Document, available at *https://www.uscis.gov/i-131.* You may file Form I–131 together with your Form I–821 or

[31] Find information about online filing at ''Forms Available to File Online,'' *https://www.uscis.gov/file-online/forms-available-to-file-online.*

[32] *https://myaccount.uscis.gov/users/sign_up.*

separately. When filing Form I–131, you must:

- Select Item Number 1.d. in Part 2 on the Form I–131; and
- Submit the fee for Form I–131, or request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver.

If you are filing Form I–131 together with Form I–821, send your forms to the address listed in Table 1. If you are filing Form I–131 separately based on a pending or approved Form I–821, send your form to the address listed in Table 2 and include a copy of Form I–797 for the approved or pending Form I–821.

TABLE 2—MAILING ADDRESSES

| If you are . . . | Mail to . . . |
|---|---|
| Filing Form I–131 together with a Form I–821, Application for Temporary Protected Status. | The address provided in Table 1. |
| Filing Form I–131 based on a pending or approved Form I–821, and you are using the U.S. Postal Service (USPS):<br>You must include a copy of the receipt notice (Form I–797 or I–797C) showing we accepted or approved your Form I–821. | USCIS, Attn: I–131 TPS, P.O. Box 660167, Dallas, TX 75266–0867. |
| Filing Form I–131 based on a pending or approved Form I–821, and you are using FedEx, UPS, or DHL:<br>You must include a copy of the receipt notice (Form I–797 or I–797C) showing we accepted or approved your Form I–821. | USCIS, Attn: I–131 TPS, 2501 S State Hwy. 121, Business Ste. 400, Lewisville, TX 75067. |

**Biometric Services Fee for TPS:**

Biometrics (such as fingerprints) are required for all applicants 14 years of age and older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay the biometric services fee, you may request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver. For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.* If necessary, you may be required to visit an Application Support Center to have your biometrics captured. For additional information on the USCIS biometric screening process, please see the USCIS Customer Profile Management Service Privacy Impact Assessment, available at *https://www.dhs.gov/publication/dhsuscispia-060-customer-profile-management-service-cpms.*

**General Employment-Related Information for TPS Applicants and Their Employers**

**How can I obtain information on the status of my TPS application and EAD request?**

To get case status information about your TPS application, as well as the status of your TPS-based EAD request, you can check Case Status Online at *uscis.gov,* or visit the USCIS Contact Center at *https://www.uscis.gov/contactcenter.* If your Form I–765 has been pending for more than 90 days, and you still need assistance, you may ask a question about your case online at *https://egov.uscis.gov/e-request/Intro.do* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

**Am I eligible to receive an automatic extension of my current EAD through October 19, 2024, through this Federal Register notice?**

Yes. Regardless of your country of birth, provided that you currently have a Ukraine TPS-based EAD that has the notation A–12 or C–19 under Category and a ''Card Expires'' date of October 19, 2023, this **Federal Register** notice automatically extends your EAD through October 19, 2024. Although this **Federal Register** notice automatically extends your EAD through October 19, 2024, you must re-register timely for TPS in accordance with the procedures described in this **Federal Register** notice to maintain your TPS and employment authorization.

**When hired, what documentation may I show to my employer as evidence of identity and employment authorization when completing Form I–9?**

You can find the Lists of Acceptable Documents on Form I–9, Employment Eligibility Verification, as well as the Acceptable Documents web page at *https://www.uscis.gov/i-9-central/acceptable-documents.* Employers must complete Form I–9 to verify the identity and employment authorization of all new employees. Within three days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I–9 requirements.

You may present any document from List A (which provides evidence of both identity and employment authorization) or one document from List B (which provides evidence of your identity) together with one document from List C (which provides evidence of employment authorization), or you may present an acceptable receipt as described in the Form I–9 Instructions. Employers may not reject a document based on a future expiration date. You can find additional information about Form I–9 on the I–9 Central web page at *https://www.uscis.gov/I-9Central.* An EAD is an acceptable document under List A. See the section ''How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?'' of this **Federal Register** notice for further information. If your EAD states A–12 or C–19 under Category and has a ''Card Expires'' date of October 19, 2023, it has been extended automatically by virtue of this **Federal Register** notice and you may choose to present your EAD to your employer as proof of identity and employment eligibility for Form I–9 through October 19, 2024, unless your TPS has been withdrawn or your request for TPS has been denied. Your country of birth notated on the EAD does not have to reflect the TPS designated country of Ukraine for you to be eligible for this extension.

**What documentation may I present to my employer for Form I–9 if I am already employed but my current TPS-related EAD is set to expire?**

Even though we have automatically extended your EAD, your employer is required by law to ask you about your continued employment authorization. Your employer may need to re-examine your automatically extended EAD to check the ''Card Expires'' date and Category code if your employer did not keep a copy of your EAD when you initially presented it. Once your employer has reviewed the Card Expiration date and Category code, your employer should update the EAD expiration date in Section 2 of Form I–

9. See the section ''What updates should my current employer make to Form I–9 if my EAD has been automatically extended?'' of this **Federal Register** notice for further information. You may show this **Federal Register** notice to your employer to explain what to do for Form I–9 and to show that USCIS has automatically extended your EAD through October 19, 2024, but you are not required to do so. The last day of the automatic EAD extension is October 19, 2024. Before you start work on October 20, 2024, your employer is required by law to reverify your employment authorization on Form I–9. By that time, you must present any document from List A or any document from List C on Form I–9 Lists of Acceptable Documents, or an acceptable List A or List C receipt described in the Form I–9 instructions to reverify employment authorization.

Your employer may not specify which List A or List C document you must present and cannot reject an acceptable receipt.

**If I have an EAD based on another immigration status, can I obtain a new TPS-based EAD?**

Yes, if you are eligible for TPS, you can obtain a new TPS-based EAD, regardless of whether you have an EAD or work authorization based on another immigration status. If you want to obtain a new TPS-based EAD valid through April 19, 2025, then you must file Form I–765, Application for Employment Authorization, and pay the associated fee (unless USCIS grants your fee waiver request).

**Can my employer require that I provide any other documentation such as evidence of my status, proof of my Ukrainian citizenship, or a Form I–797C showing that I registered for TPS for Form I–9 completion?**

No. When completing Form I–9, employers must accept any documentation you choose to present from the Form I–9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers may not request proof of Ukrainian citizenship or proof of registration for TPS when completing Form I–9 for new hires or reverifying the employment authorization of current employees. If you present an EAD that USCIS has automatically extended, employers should accept it as a valid List A document so long as the EAD reasonably appears to be genuine and to relate to you. Refer to the ''Note to Employees'' section of this **Federal Register** notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

**How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?**

When using an automatically extended EAD to complete Form I–9 for a new job before October 20, 2024:

1. For Section 1, you should:

a. Check ''A noncitizen authorized to work until'' and enter October 19, 2024, as the ''expiration date''; and

b. Enter your USCIS number or A-Number where indicated. (Your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix.)

2. For Section 2, employers should:

a. Determine if the EAD is auto-extended by ensuring it is in category A–12 or C–19 and has a ''Card Expires'' date of October 19, 2023.

b. Write in the document title;

c. Enter the issuing authority;

d. Provide the document number; and

e. Write October 19, 2024, as the expiration date.

Before the start of work on October 20, 2024, employers must reverify the employee's employment authorization on Form I–9.

**What updates should my current employer make to Form I–9 if my EAD has been automatically extended?**

If you presented a TPS-related EAD that was valid when you first started your job and USCIS has now automatically extended your EAD, your employer may need to re-examine your current EAD if they do not have a copy of the EAD on file. Your employer should determine if your EAD is automatically extended by ensuring that it contains Category A–12 or C–19 and has a ''Card Expires'' date of October 19, 2023. Your employer may not rely on the country of birth listed on the card to determine whether you are eligible for this extension.

If your employer determines that USCIS has automatically extended your EAD, your employer should update Section 2 of your previously completed Form I–9 as follows:

1. Write EAD EXT and October 19, 2024, as the last day of the automatic extension in the Additional Information field; and

2. Initial and date the correction.

**Note:** This is not considered a reverification. Employers do not reverify the employee until either the automatic extension has ended, or the employee presents a new document to show continued employment authorization, whichever is sooner. By October 20, 2024, when the employee's automatically extended EAD has expired, employers are required by law to reverify the employee's employment authorization on Form I–9.

**If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?**

Employers may create a case in E-Verify for a new employee by entering the number from the Document Number field on Form I–9 into the document number field in E-Verify. Employers should enter October 19, 2024, as the expiration date for an EAD that has been extended under this **Federal Register** notice.

**If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiring'' alert for an automatically extended EAD?**

E-Verify automated the verification process for TPS-related EADs that are automatically extended. If you have employees who provided a TPS-related EAD when they first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when the auto-extension period for this EAD is about to expire. Before this employee starts work on October 20, 2024, you must reverify their employment authorization on Form I–9. Employers may not use E-Verify for reverification.

**Note to All Employers**

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls and emails in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee

Rights Section (IER) Employer Hotline at 800–255–8155 (TTY 800–237–2515). IER offers language interpretation in numerous languages. Employers may also email IER at *IER@usdoj.gov.*

**Note to Employees**

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls in English, Spanish and many other languages. Employees or job applicants may also call the IER Worker Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based on citizenship, immigration status, or national origin, including discrimination related to Form I–9 and E-Verify. The IER Worker Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the Form I–9 Instructions. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (mismatch) must promptly inform employees of the mismatch and give such employees an opportunity to take action to resolve the mismatch. A mismatch means that the information entered into E-Verify from Form I–9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold or lower pay, or take any adverse action against an employee because of a mismatch while the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot confirm an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Form I–9 and E-Verify procedures is available on the IER website at *https://www.justice.gov/ier* and the USCIS and E-Verify websites at *https://www.uscis.gov/i-9-central* and *https://www.e-verify.gov.*

**Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)**

For Federal purposes, if you present an automatically extended EAD referenced in this **Federal Register** notice, you do not need to show any other document, such as a Form I–797C, Notice of Action reflecting receipt of a Form I–765 EAD renewal application or this **Federal Register** notice, to prove that you qualify for this extension. While Federal Government agencies must follow the guidelines laid out by the Federal Government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary, show you are authorized to work based on TPS or other status, or that may be used by DHS to determine if you have TPS or another immigration status. Examples of such documents are:

- Your current EAD with a TPS category code of A–12 or C–19, even if your country of birth noted on the EAD does not reflect the TPS designated country of Ukraine;
- Your Form I–94, Arrival/Departure Record;
- Your Form I–797, Notice of Action, reflecting approval of your Form I–765; or
- Form I–797 or Form I–797C, Notice of Action, reflecting approval or receipt of a past or current Form I–821, if you received one from USCIS.

Check with the government agency requesting documentation regarding which document(s) the agency will accept. Some state and local government agencies use the SAVE program to confirm the current immigration status of applicants for public benefits.

While SAVE can verify that an individual has TPS, each agency's procedures govern whether they will accept an unexpired EAD, Form I–797, Form I–797C, or Form I–94, Arrival/Departure Record. If an agency accepts the type of TPS-related document you present, such as an EAD, the agency should accept your automatically extended EAD, regardless of the country of birth listed on the EAD. It may assist the agency if you:

a. Give the agency a copy of the relevant **Federal Register** notice showing the extension of TPS-related documentation in addition to your recent TPS-related document with your A-number, USCIS number, or Form I–94 number;

b. Explain that SAVE will be able to verify the continuation of your TPS using this information; and

c. Ask the agency to initiate a SAVE query with your information and follow through with additional verification steps, if necessary, to get a final SAVE response verifying your TPS.

You can also ask the agency to look for SAVE notices or contact SAVE if they have any questions about your immigration status or automatic extension of TPS-related documentation. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but occasionally verification can be delayed.

You can check the status of your SAVE verification by using CaseCheck at *https://save.uscis.gov/casecheck/.* CaseCheck is a free service that lets you follow the progress of your SAVE verification case using your date of birth and one immigration identifier number (such as A-number, USCIS number, or Form I–94 number) or Verification Case Number. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted on or will act on a SAVE verification and you do not believe the SAVE response is correct, the SAVE website, *https://www.uscis.gov/save,* has detailed information on how to make corrections or update your immigration record, make an appointment, or submit a written request to correct records.

[FR Doc. 2023–17875 Filed 8–18–23; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[FR–6421–N–01]**

### Increasing the Supply of Affordable Housing Through Off-Site Construction and Pro-Housing Reforms Research Grant Program Pre and Full Application

**AGENCY:** Office of Policy Development and Research, Department of Housing and Urban Development (HUD).

**ACTION:** Notice.

**SUMMARY:** Through this notice, HUD is correcting the Estimated Total Funding made available for the Increasing the Supply of Affordable Housing through Off-Site Construction and Pro-Housing Reforms Research Grant Program Pre and Full Application Notice of Funding Opportunity (NOFO), from approximately four million dollars to approximately three million dollars; and corrects the funding source appropriation.

**FOR FURTHER INFORMATION CONTACT:** Curtissa Coleman, Director, Office of University Partnerships, Department of Housing and Urban Development, 451 7th Street SW, Washington DC; telephone number 202–402–7580 (this is not a toll-free number); email *curtissa.l.coleman@hud.gov*. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

**SUPPLEMENTARY INFORMATION:** HUD is publishing a correction to the Estimated Total Funding for the Increasing the Supply of Affordable Housing through Off-Site Construction and Pro-Housing Reforms Research Grant Program Pre and Full Application Notice of Funding Opportunity (NOFO) published on June 15, 2023, and closed on August 1, 2023. The correct Estimated Total Funding is $3,000,000; and the correct funding source appropriation is the Consolidated Appropriations Act, 2023 (Pub. L. 117–328, approved December 29, 2022).

**Kurt Usowski,**

*Deputy Assistant Secretary, Office of Economic Affairs.*

[FR Doc. 2023–17912 Filed 8–18–23; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R5–ES–2023–N066; FXES11130500000–234–FF05E00000]**

### Endangered Species; Receipt of Recovery Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing the requested permits, we will take into consideration any information that we receive during the public comment period.

**DATES:** We must receive any written comments on or before September 20, 2023.

**ADDRESSES:** Use one of the following methods to request documents or submit comments. Requests and comments should specify the applicant's name and application number (*e.g.,* PER0001234):

- *Email: permitsR5ES@fws.gov.*
- *U.S. Mail:* Abby Goldstein, Ecological Services, U.S. Fish and Wildlife Service, 300 Westgate Center Dr. Hadley, MA 01035.

**FOR FURTHER INFORMATION CONTACT:** Abby Goldstein, 413–253–8212 (phone), or *permitsR5ES@fws.gov* (email). 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:** We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered under the ESA.

#### Background

With some exceptions, the ESA prohibits activities that constitute take of listed species, unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

#### Permit Applications Available for Review and Comment

We invite local, State, and Federal agencies; Tribes; and the public to comment on the following applications.

| Application No. | Applicant | Species | Location | Activity | Type of take | Permit action |
|---|---|---|---|---|---|---|
| PER3765003 ... | Kathleen O'Brien, New York State Department of Environmental Conservation, Albany, NY. | Karner blue butterfly (*Lycaeides melissa samuelis*). | New York, New Hampshire. | Collection, propagation, translocation, release. | Capture, collect ..... | New. |
| ES01311C–1 ... | Shawn McKinley, Grafton, WV. | Indiana bat (*Myotis sodalis*), gray bat (*Myotis grisescens*), northern long-eared bat (*Myotis septentrionalis*), Virginia big-eared bat (*Corynorhinus* (=*Plecotus*) *townsendii virginianus*). | Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Virginia, Vermont, West Virginia, Wisconsin, Wyoming. | Capture, band, telemetry, nonintrusive measurements, release. | Capture, collect ..... | Renew. |
| PER3765688 ... | Jason Clingerman, Morgantown, WV. | Candy darter (*Etheostoma osburni*). | Virginia, West Virginia .. | Presence/probable absence survey. | Capture, release ..... | New. |
| PER3770204 ... | Marco Carvello, Department of Energy and the Environment, District of Columbia. | Northern long-eared bat (*Myotis septentrionalis*), tricolored bat (*Perimyotis subflavus*). | District of Columbia ..... | Capture, band, telemetry, nonintrusive measurements, release. | Capture, collect ..... | New. |

## Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

## Next Steps

If we decide to issue permits to the applicants listed in this notice, we will publish a notice in the **Federal Register**.

## Authority

Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

**Martin Miller,**

*Manager, Division of Endangered Species, Ecological Services, Northeast Region.*

[FR Doc. 2023–17852 Filed 8–18–23; 8:45 am]

**BILLING CODE 4333–15–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1365]**

## Certain Photovoltaic Connectors and Components Thereof; Notice of a Commission Determination Not To Review Initial Determinations Amending the Complaint and Notice of Investigation and Setting a 17-Month Target Date

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review two initial determinations issued by the presiding administrative law judge (''ALJ'') granting a motion of complainant Shoals Technologies Group, LLC (''Shoals Technologies'' or ''Complainant'') to amend the complaint and notice of investigation (''NOI'') to assert certain claims of U.S. Patent No. 11,689,153 (''the '153 patent'') (Order No. 5) and setting a 17-month target date for November 12, 2024 (Order No. 6).

**FOR FURTHER INFORMATION CONTACT:** Paul Lall, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2043. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** On June 9, 2023, the Commission instituted this investigation based on a complaint filed by Shoals Technologies. 88 FR 37905–06 (June 9, 2023). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 based upon the importation into the United States, the sale for importation, or sale within the United States after importation of certain photovoltaic connectors and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 10,553,739 (''the

'739 Patent'') and 10,992,254 (''the '254 Patent''). The Commission's NOI named the following eight respondents: (1) Hikam America, Inc. of Chula Vista, CA; (2) Hikam Electrónica de México, S.A. de C.V. of Mexicali, Mexico; (3) Hikam Tecnologia de Sinaloa of Guasave, Mexico; (4) Hewtech Philippines Corp. of Laguna, Philippines; (5) Hewtech Philippines Electronics Corp. of Pampanga, Philippines; (6) Hewtech (Shenzhen) Electronics Co., Ltd. of Shenzhen, China; (7) Voltage, LLC of Chapel Hill, NC; and (8) Ningbo Voltage Smart Production Co. (''Ningbo Voltage'') of Ningbo, China. *Id.* The Office of Unfair Import Investigations was also named as a party in this investigation. *Id.*

On June 29, 2023, Complainant filed an unopposed motion for leave to amend the complaint and NOI to add allegations of infringement against respondents Voltage, LLC and Ningbo Voltage (collectively, ''Voltage'') related to claims 1, 2–3, 6, 8, 11–18, 21, 23, and 24 of U.S. Patent No. 11,689,153 (''the '153 patent''). *See* Order No. 5, at 1. In its motion, Complainant argued that: (1) addition of the '153 patent will not affect the scope of discovery because ''the '153 Patent is a continuation of a patent that is already asserted in the Investigation; (2) it seeks to assert the '153 Patent against the same respondents and accused products; and (3) the '153 Patent relates to the same technology that is already at issue in the Investigation.'' Order No. 5, at 2. Complainant further argued that ''[g]ranting the proposed amendment will not prejudice the rights of the parties or the public interest because the proposed amendment will: (1) add substantially similar allegations based on a related patent to those currently asserted; (2) not delay or disrupt the timely progression of the Investigation; and (3) promote judicial economy by allowing the parties to litigate related patents by the same parties against the same accused products in the same investigation.'' *Id.* No party opposed the motion. *Id.* at 1.

On July 18, 2023, the ALJ issued the first subject ID (Order No. 5), granting Complainant's motion to amend the complaint and NOI as requested. The ID finds that Complainant had established good cause for the proposed amendment pursuant to Commission Rule 210.14(b)(1) (19 CFR 210.14(b)(1)). As the ID explains, Complainant could not have asserted the '153 patent at the time it filed its original Complaint because the '153 patent issued on June 27, 2023, over a month after the original complaint was filed on May 4, 2023. *See* Order No. 5, at 4. In addition, the ID finds that ''there does not appear to be any evidence demonstrating that inclusion of the '153 patent will substantially expand the scope of discovery because the claimed subject matter is similar to the '254 patent, which is already asserted in this investigation, and the accused and domestic industry products are the same.'' *Id.* The ID concludes that neither Voltage nor the public interest will be prejudiced by the amendment. *Id.*

On July 18, 2023, the ALJ issued the second subject ID (Order No. 6), pursuant to Commission Rule 210.51(a)(1), setting a 17-month target date for completion of the investigation of November 12, 2024 in consideration of ''the parties' proposals, the parties' scheduling conflicts, the scope of this investigation, and the [presiding ALJ's] responsibilities in other investigations.'' Order No. 6, at 2. The ID further states that the deadline for issuing the final ID is July 12, 2024. *Id.*

No party filed a petition for review of the subject IDs.

The Commission has determined not to review the subject IDs (Order Nos. 5 and 6). Pursuant to Commission Rule 210.14, the Notice of Investigation is amended to include claims 1, 2–3, 6, 8, 11–18, 21, 23, and 24 of the '153 patent. The target date for completion of the investigation is set for November 12, 2024, and the deadline for issuing the final ID is July 12, 2024.

The Commission vote for this determination took place on August 15, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: August 16, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2023–17898 Filed 8–18–23; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Agreed Modification of Consent Decree Under The Comprehensive Environmental Response, Compensation, and Liability Act

On August 11, 2023, the Department of Justice lodged a proposed Agreed Modification of the Consent Decree with the United States District Court for the Western District of Michigan in the lawsuit entitled *United States of America and the State of Michigan* v. *NCR Corporation,* Civil Action No. 1:19–cv–01041.

The United States, on behalf of the United States Environmental Protection Agency (''EPA''), and the State of Michigan, on behalf Michigan Department of Environment, Great Lakes, and Energy, filed suit in 2019 against NCR Corporation (''NCR'') under the Comprehensive Environmental Response, Compensation, and Liability Act for the recovery of response costs and the performance of response work at the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site in Michigan (the ''Site'').

The Agreed Modification concern the provisions of the Original Consent Decree relating to Operable Unit 5, Area 3 (''OU5, Area 3'') of the Site, constituting a portion of the Kalamazoo River. The Original Consent Decree included a template Agreed Modification to amend the Decree to add the OU5, Area 3 Record of Decision and an updated Statement of Work. In May 2022, EPA issued the ROD for OU5, selecting a remedy with a current estimated cost of $34,000,000. This proposed Agreed Modification of the Consent Decree follows the template from the Original Consent Decree and will govern NCR's performance of that work.

Additionally, the Agreed Modification also makes one minor clarifying correction to the Original Consent Decree regarding how NCR should make installment payments to EPA for future response costs, specifying that the payments should go to the Financial Litigation Unit.

The publication of this notice opens a period for public comment on the Agreed Modification of the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America and the State of Michigan* v. *NCR Corporation,* D.J. Ref. No. 90–11–2–07912/11. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| *To submit comments:* | *Send them to:* |
|---|---|
| By email ..... | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ..... | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. |

During the public comment period, the proposed Agreed Modification of the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.*

We will provide a paper copy of the proposed Agreed Modification of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $57.25 (25 cents per page reproduction cost) payable to the United States Treasury.

**Patricia McKenna,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2023–17905 Filed 8–18–23; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OJP (OJP) Docket No. 1813]**

### Meeting of the Global Justice Information Sharing Initiative Federal Advisory Committee

**AGENCY:** Office of Justice Programs (OJP), Justice.

**ACTION:** Notice of meeting.

**SUMMARY:** This is an announcement of a meeting of the Global Justice Information Sharing Initiative (Global) Federal Advisory Committee (GAC) to discuss the Global Initiative, as described at *https://bja.ojp.gov/program/it/global.*

**DATES:** The meeting will take place on Thursday, September 21, 2023 from 9:00 a.m. until 3:30 p.m. ET, and Friday, September 22, 2023 from 9:00 a.m. until 12:00 p.m. ET.

**ADDRESSES:** This meeting will be held at the Homeland Security and Emergency Management Agency (HSEMA), 1015 Half Street SE, 10th Floor, Washington, DC 20003. Approved observers will receive an invitation and instructions for entering the building.

**FOR FURTHER INFORMATION CONTACT:** Mr. David P. Lewis, Global Designated Federal Official (DFO), Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, Washington, DC 20531; Phone (202) 616–7829 [note: this is not a toll-free number]; Email: *david.p.lewis@usdoj.gov.*

**SUPPLEMENTARY INFORMATION:** This meeting is open to the public, however, members of the public who wish to attend this meeting must register with Mr. David P. Lewis at least (7) days in advance of the meeting. Access to the meeting room will not be allowed without prior authorization. All attendees will be required to sign-in and go through security before they will be admitted to the meeting.

Anyone requiring special accommodations should notify Mr. Lewis at least seven (7) days in advance of the meeting.

*Purpose:* The GAC will act as the focal point for justice information systems integration activities in order to facilitate the coordination of technical, funding, and legislative strategies in support of the Administration's justice priorities.

The GAC will guide and monitor the development of the Global information sharing concept. It will advise the Assistant Attorney General, OJP; the Attorney General; the President (through the Attorney General); and local, state, tribal, and federal policymakers in the executive, legislative, and judicial branches. The GAC will also advocate for strategies for accomplishing a Global information sharing capability.

Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the Global DFO.

**David P. Lewis,**

*Global DFO, Senior Policy Advisor, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice.*

[FR Doc. 2023–17864 Filed 8–18–23; 8:45 am]

**BILLING CODE 4410–18–P**

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Comment Request; Grantee Reporting Requirements for National User Facilities Managed by the NSF Division of Materials Research

**AGENCY:** National Science Foundation.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

**DATES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays). Copies of the submission may be obtained by calling 703–292–7556.

**SUPPLEMENTARY INFORMATION:** NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

*Title of Collection:* Grantee Reporting Requirements for National User Facilities managed by the NSF Division of Materials Research.

*OMB Number:* 3145–0234.

*Type of Request:* Revision to and extension of approval of an information collection.

*Proposed Project:*

The NSF Division of Materials Research (DMR) supports a number of National User Facilities that provide specialized capabilities and instrumentation to the scientific community on a competitive proposal basis. In addition to the user program, these facilities support in-house research, development of new instrumentation or techniques, education, and knowledge transfer.

The facilities integrate research and education for students and post-docs involved in experiments, and support extensive K–12 outreach to foster an interest in Science Technology Engineering and Mathematics (STEM) and STEM careers. Facilities capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups

underrepresented in science and engineering.

National User Facilities will be required to submit annual reports on progress and plans, which will be used as a basis for performance review and determining the level of continued funding. User facilities will be required to develop a set of management and performance indicators for submission annually to NSF via the Research Performance Project Reporting (RPPR) module in *Research.gov.* These indicators are both quantitative and descriptive and may include, for example, lists of successful proposal and users, the characteristics of facility personnel and students; sources of financial support and in-kind support; expenditures by operational component; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degrees granted to students supported through the facility or users of the facility; descriptions of significant advances and other outcomes of this investment. Such reporting requirements are included in the cooperative agreement which is binding between the academic institution and the NSF.

Each facility's annual report will address the following categories of activities: (1) research, (2) education and training, (3) knowledge transfer, (4) partnerships, (5) diversity, (6) management, and (7) budget issues.

For each of the categories the report will describe overall objectives and metrics for the reporting period, challenges or problems the facility has encountered in making progress towards goals, anticipated problems in the following year, and specific outputs and outcomes.

Facilities are required to file a final report through the RPPR. Final reports contain similar information and metrics as annual reports, but are retrospective and focus on the period that was not addressed in previous annual reports.

*Use of the Information:* NSF will use the information to continue funding of the DMR National User Facilities, and to evaluate the progress of the program.

*Estimate of Burden:* 200 hours per facility for three National User Facilities for a total of 600 hours.

*Respondents:* Non-profit institutions.

*Estimated Number of Responses per Report:* One (1) from each of the DMR user facilities.

*Comments:* Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: August 16, 2023.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2023–17949 Filed 8–18–23; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2023–0001]**

### Sunshine Act Meetings

**TIME AND DATE:** Weeks of August 21, 28, September 4, 11, 18, 25, 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 and closed.

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 August 21, 2023**

There are no meetings scheduled for the week of August 21, 2023.

**Week of August 28, 2023—Tentative**

There are no meetings scheduled for the week of August 28, 2023.

**Week of September 4, 2023—Tentative**

There are no meetings scheduled for the week of September 4, 2023.

**Week of September 11, 2023—Tentative**

*Tuesday, September 12, 2023*

10:00 a.m. All Employees Meeting (Public Meeting) (Contact: Anthony de Jesus: 301–287–9219; Adrienne Brown: 301–415–3764)

*Additional Information:* The meeting will be held in the Two White Flint North auditorium, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting live by webcast at the Web address—*https://video.nrc.gov/.*

*Thursday, September 14, 2023*

10:00 a.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9)

**Week of September 18, 2023—Tentative**

There are no meetings scheduled for the week of September 18, 2023.

**Week of September 25, 2023—Tentative**

There are no meetings scheduled for the week of September 25, 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: August 16, 2023.

For the Nuclear Regulatory Commission.

**Wesley W. Held,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2023–17988 Filed 8–17–23; 11:15 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2023–0140]**

### Level 3 Probabilistic Risk Assessment Project Documentation (Volume 4)

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft report; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft report on the Level 3 Probabilistic Risk Assessment (PRA) project; specifically, ''Volume 4:

Overview of Reactor, At-Power, Level 1, 2, and 3 PRAs for Internal Fires, Seismic Events, and High Winds.''

**DATES:** Submit comments by October 20, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0140. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

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

**FOR FURTHER INFORMATION CONTACT:** Alan Kuritzky, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1552, email: *Alan.Kuritzky@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2023–0140 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0140.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

### *B. Submitting Comments*

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2023–0140 in your comment submission.

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

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

## II. Discussion

As directed in SRM–SECY–11–0089, ''Options for Proceeding with Future Level 3 Probabilistic Risk Assessment (PRA) Activities,'' the staff is conducting a full-scope multi-unit site Level 3 PRA (Level 3 PRA project) that addresses all internal and external hazards; all plant operating modes; and all reactor units, spent fuel pools, and dry cask storage. The reference site for this study contains two four-loop Westinghouse pressurized water reactors with large dry containments. The objectives of the Level 3 PRA project are to (1) develop a Level 3 PRA, generally based on current state-of-practice methods, tools, and data, that (a) reflects technical advances since the last NRC-sponsored Level 3 PRAs (NUREG–1150), which were completed over 30 years ago, and (b) addresses scope considerations that were not previously considered (*e.g.,* low-power and shutdown risk, multi-unit risk, other radiological sources); (2) extract new insights to enhance regulatory decision making and to help focus limited NRC resources on issues most directly related to the agency's mission to protect public health and safety; (3) enhance PRA staff capability and expertise and improve documentation practices to make PRA information more accessible, retrievable, and understandable; and (4) demonstrate technical feasibility and evaluate the realistic cost of developing new Level 3 PRAs.

The work performed under this project is being documented as a multi-volume report. This second batch of Level 3 PRA project reports describes the analyses and results for the reactor, at-power, Level 1, 2, and 3 PRAs for internal fires, seismic events, and high winds (Volume 4). Each set of Level 3 PRA project reports covering the Level 1, 2, and 3 PRAs for a specific site radiological source, plant operating state, and hazard group (or groups) is accompanied by an overview report. The overview reports summarize the results and insights from all three PRA levels.

The Level 3 PRA project analyses reflect the reference plant as it was designed and operated as of 2012. To provide results and insights better aligned with the current design and operation of the reference plant, the overview reports also provide a reevaluation of the plant risk based on a set of new plant equipment and PRA model assumptions and compare the results of the reevaluation to the original study results. This reevaluation reflects the current reactor coolant pump shutdown seal design at the reference plant, as well as the potential impact of FLEX strategies, both of which reduce the risk to the public.

As documented in Section 2 of the Volume 4 overview report, the results of the original Level 3 PRA project analyses and the reevaluation both show that, when considering all hazards combined for the reactor at power, the combination of this plant design and site location has substantial margin to the quantitative health objectives related to the NRC's safety goal policy, though the margins are noticeably less for the surrogate risk metrics of core damage frequency and large, early release frequency. Even though these margins can vary for other plants due to variations in their design and siting, the estimates derived for the reference

plant, when adjusted for siting and design variations, would provide useful qualitative risk insights for other U.S. operating plants.

## III. Availability of Documents

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

| Document description | ADAMS accession No. |
| --- | --- |
| SRM–SECY–11–0089, ''Options for Proceeding with Future Level 3 Probabilistic Risk Assessment (PRA) Activities'' | ML112640419 |
| Level 3 PRA Project, Volume 4: Overview of Reactor, At-Power, Level 1, 2, and 3 PRAs for Internal Fires, Seismic Events, and High Winds; Draft Report for Comment | ML23194A015 |
| Level 3 PRA Project, Volume 4a: Reactor, At-Power, Level 1 PRA for Internal Fires | ML23194A016 |
| Level 3 PRA Project, Volume 4b: Reactor, At-Power, Level 1 PRA for Seismic Events | ML23194A017 |
| Level 3 PRA Project, Volume 4c: Reactor, At-Power, Level 1 PRA High Winds and Other Hazards | ML23194A012 |
| Level 3 PRA Project, Volume 4d: Reactor, At-Power, Level 2 PRA for Internal Fires, Seismic Events, and High Winds | ML23194A013 |
| Level 3 PRA Project, Volume 4e: Reactor, At-Power, Level 3 PRA for Internal Fires, Seismic Events, and High Winds | ML23194A014 |

Dated: August 9, 2023.

For the Nuclear Regulatory Commission.

**Jonathan E. Evans,**

*Chief, Probability Risk Assessment Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.*

[FR Doc. 2023–17401 Filed 8–18–23; 8:45 am]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2023–222 and R2023–4; Order No. 6619]**

## New Postal Products

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is recognizing a recent Postal Service filing requesting the addition of a negotiated service agreement with Publisher's Clearing House to the Market Dominant product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* September 11, 2023.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

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I. Introduction
II. Overview of the Postal Service's Filing
III. Initial Administrative Actions
IV. Ordering Paragraphs

## I. Introduction

On August 11, 2023, the Postal Service filed a request to add a negotiated service agreement (NSA) with Publisher's Clearing House (PCH) to the Market Dominant product list.[1] If favorably reviewed by the Commission, the intended effective date will be in November or December 2023. Request at 1. The Request, which was filed pursuant to 39 U.S.C. 3622 and 3642 as well as 39 CFR 3040 subparts B and G, triggers a notice-and-comment proceeding.

## II. Overview of the Postal Service's Filing

*Contents of filing.* The Postal Service's filing consists of its Request, six attachments, and one set of financial workpapers:

- Attachment A—a copy of Governors' Resolution No. 23–5, establishing price and classification changes for Market Dominant products to implement a negotiated service agreement with PCH, which the Postal Service asserts conforms with 39 CFR 3040.131(b);
- Attachment B—a copy of the instant contract, which the Postal Service asserts conforms with 39 CFR 3040.221(b);
- Attachment C—proposed changes to the Mail Classification Schedule (MCS), which the Postal Service asserts conforms with 39 CFR 3040.131(f);
- Attachment D—a proposed data collection plan, which the Postal Service asserts conforms with 39 CFR 3040.222;
- Attachment E—a statement of supporting justification, which the Postal Service asserts conforms with 39 CFR 3040.132 and 39 CFR 3040.221(f)–(j);
- Attachment F—an application for non-public treatment of ''certain data which reflect commercially sensitive aspects of Publisher's Clearing House's business model, response rates, and strategy[,]'' (*id.* Attachment F at 1), appearing in the Request and financial analysis, which the Postal Service asserts conforms with 39 CFR part 3011; and
- Supporting Financial Analysis—an Excel file containing a financial analysis, which the Postal Service asserts conforms with 39 CFR 3040.221(f) and demonstrates that the PCH NSA will improve the net financial position of the Postal Service.

Request at 2–3, 9.

*Background.* The Postal Service explains that in recent years the mailing industry has seen steady year-over-year decline in mail volumes. *Id.* at 3. To compensate for industry shifts away from direct mail, the Postal Service states that it ''has been looking to strengthen its existing strategic partnerships and build new ones when opportunities arise.'' *Id.* PCH ''is a prominent direct mail marketing company that sends a variety of letter mail to consumers related to sweepstakes entries, marketing materials, invoicing, and related correspondence.'' *Id.* The Postal Service explains that ''PCH typically interacts with the Postal Service in a five-stage mailing and shipping lifecycle, which begins with promotional mailings and ends with bill payments.'' *Id.* at 3–4.

The Postal Service represents that PCH has found that certain dormant prospects (*i.e.,* individuals not mailed to in at least 3 months) ''are no longer profitable for PCH to send promotional mail to, because the lifetime value of these prospects falls below the cost of mailing . . . .'' *Id.* at 4. The Postal Service asserts that an up-front discount on an initial USPS Marketing Mail promotional mailing would allow PCH to inject reactivation volume into the

[1] USPS Notice of Filing of Contract and Supporting Data and Request to Add Publisher's Clearing House Negotiated Service Agreement to the Market-Dominant Product List, with Portions Filed Under Seal, August 11, 2023 (Request).

cycle that it would not have mailed under normal business practices. *Id.* The Postal Service avers that the resulting proportional increases in final mail volume is anticipated to be two times greater than if the dormant prospect mailing list were never reactivated. *Id.* Accordingly, the Postal Service states that it engaged in discussions with PCH ''to determine whether an NSA could help PCH make these dormant prospecting mailings economically feasible,'' while at the same time providing the Postal Service ''with a needed boost in volume, revenue, and contribution from additional follow-on mailings.'' *Id.*

*The Postal Service's position.* The Postal Service asserts that the PCH NSA conforms to the policies embodied in the Postal Accountability and Enhancement Act (PAEA),[2] the statutory standards supporting the desirability of special classifications (39 U.S.C. 3622(c)(10)), and associated regulations. *Id.* at 3. The Postal Service provides a statement of supporting justification from Mr. Steven E. Mills, Director of Product Management, Mailing Services, which reviews the objectives and factors appearing in 39 U.S.C. 3622(b) and (c) and asserts, *inter alia,* that the PCH NSA will provide an incentive for profitable new mail; will enhance the financial position of the Postal Service; will encourage increased mail volume; and will not imperil the ability of USPS Marketing Mail (or the PCH NSA) to cover its attributable costs. *See id.* at 2; *id.* Attachment E at 1–3. The Postal Service states that the PCH NSA would also align with a core mission of the *Delivering for America* plan, as it would allow the Postal Service ''to build and set new rational pricing strategies with long-standing partners.''

Request at 4.

*PCH NSA.* The Postal Service states that the PCH NSA is designed to give PCH a discounted initial mailing of 1 million pieces of USPS Marketing Mail letters, mailed at cost. *Id.* at 5. This initial mailing would be limited to 1 million dormant prospecting customer addresses, which PCH has not mailed to within the past 3 months. *Id.* In exchange for these discounts, the Postal Service represents that PCH has committed to certain performance targets for follow-on mailings (both from PCH to the addresses of the million-piece mailing and to PCH from the addresses of the million-piece mailing) that are expected to result from the initial mailing, also known as the ''multiplier effect.'' *Id.* PCH expects that 2 million pieces will result from the initial mailing, mailed at published rates, within 9 months of the date of the initial mailing. *Id.* If the parties deem the initial mailing and performance satisfactory, an additional second prospecting mailing could be authorized at least 6 months after the initial mailing. *Id.* The Postal Service represents that ''[t]he same performance period and targets would apply to the second mailing.'' *Id.*

The parties intend for the PCH NSA to take effect in November or December 2023, assuming favorable review by the Commission. *Id.* The Postal Service states that the initial mailing date would then be established at least 30 calendar days after the effective date of the contract, expected to be in January 2024 or shortly thereafter. *Id.* at 5–6. The contract term would be for 1 year from the date of the initial mailing. *Id.* at 6. If the parties were to agree to a second mailing, then the NSA term would conclude 1 year from the date of the second mailing. *Id.*

The contract contains a termination for convenience provision, which allows either party to terminate the NSA without penalty upon 30 days' written notice to the other party, provided that no termination by the Postal Service would be effective during the 15-week period prior to either the initial mailing or the potential subsequent mailing. *Id.* Additionally, either party may immediately terminate the NSA for breach of any material term of the contact, if the breaching party fails to cure such breach within 5 business days after receiving written notice from the non-breaching party describing the breach. *Id.*

*Similarly situated mailers.* The Postal Service states that if the NSA were to prove successful at improving the financial position of the Postal Service as expected, then the Postal Service ''stands ready to consider NSAs on comparable terms to similarly situated mailers, provided that [they] can provide a similar 'multiplier effect' and are willing to commit to performance targets that mitigate the financial risk to the Postal Service.'' *Id.*

*Financial analysis.* The Postal Service states that to both incent PCH to meet certain performance targets and protect the financial interests of the Postal Service, the financial terms of the PCH NSA consist of three primary components:

- The Postal Service would provide PCH with an initial 1-million-piece mailing priced at the Postal Service's attributable cost, which the Postal Service asserts would result in approximately $128,000 in revenue. To maintain this discount, PCH would need to achieve at least 50 percent of its forecasted total multiplier volume.
- If PCH were to not achieve at least 50 percent of the forecasted multiplier volume, PCH would lose the discount on the initial mailing, which would be paid back to the Postal Service. The Postal Service asserts that this would result in approximately $299,000 in total postage and $171,000 in contribution from the initial mailing, plus however much multiplier percentage PCH were able to achieve.
- If PCH were to achieve 90 percent of more of the multiplier volume, the Postal Service would provide an additional discount to PCH of the price paid for the initial mailing in the form of a postage credit of approximately $128,000.

*Id.* at 6–7. The Postal Service maintains that under any scenario, it would see an improvement in its financial position. *Id.* at 8.

*Possibility of harm to the marketplace.* Pursuant to 39 U.S.C. 3622(c)(10)(B), a Market Dominant NSA may not ''cause unreasonable harm to the marketplace.'' The Postal Service maintains that the PCH NSA will not cause any such harm. *Id.* at 10. The Postal Service states that the NSA will cover its attributable costs in all cases, and to the extent the Postal Service might have overestimated the multiplier effect, risk mitigation provisions have been agreed to, in which PCH must pay back the amount of the discounted mailing if specified performance metrics are not achieved. *Id.* The Postal Service notes that the Commission has previously found ''unreasonable harm to the marketplace'' to consist of anticompetitive pricing, *i.e.,* pricing below cost,[3] and the Postal Service states that since the terms of the contract would price the postage of the initial mailing and the potential subsequent mailing at cost, the proposed rates would be neither anticompetitive nor unreasonably harmful to the marketplace.

Request at 10–11.

*Notice.* The Postal Service represents that it will inform customers of the new proposed classification changes and associated price effects through publication in the **Federal Register**. *Id.* at 2.

[2] Public Law 109–435, 120 Stat. 3198 (2006).

[3] *See* Docket Nos. MC2012–14 and R2012–8, Order Approving Addition of Valassis Direct Mail, Inc. Negotiated Service Agreement to the Market Dominant Product List, August 23, 2012, at 27 (Order No. 1448); *see also Newspaper Ass'n of America* v. *Postal Regul. Comm'n,* 734 F.3d 1208 (D.C. Cir. 2013) (denying petition for review of Order No. 1448).

## III. Initial Administrative Actions

The Commission establishes Docket No. MC2023–222 and Docket No. R2023–4 for consideration of the Request pertaining to the proposed new product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3622 and 3642, as well as 39 CFR part 3040. Comments are due September 11, 2023. The public portions of the Postal Service's filing are available for review on the Commission's website (*https://www.prc.gov*). Comments and other material filed in this proceeding will be available for review on the Commission's website unless the information contained therein is subject to an application for non-public treatment. The Commission's rules on non-public materials (including access to documents filed under seal) appear in 39 CFR part 3011.

Pursuant to 39 U.S.C. 505, the Commission appoints Stephanie A. Quick to represent the interests of the general public (Public Representative) in these dockets.

## IV. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. MC2023–222 and Docket No. R2023–4 for consideration of the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Stephanie A. Quick is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments are due September 11, 2023.

4. The Commission directs the Secretary of the Commission to arrange for publication of this order in the **Federal Register**.

By the Commission.

**Mallory Richards,**

*Attorney-Adviser.*

[FR Doc. 2023–17904 Filed 8–18–23; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. R2023–3; Order No. 6618]**

### Market Dominant Price Adjustment

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is recognizing a recently filed Postal Service notice of a Market Dominant price change proposing two incentives, along with proposed classification changes. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* September 11, 2023.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

On August 11, 2023, the Postal Service filed a notice of a Market Dominant price change proposing two incentives, along with classification changes to the Mail Classification Schedule (MCS).[1] The intended effective date for the two new incentives is January 1, 2024. Notice at 1. The Notice, which was filed pursuant to 39 CFR part 3030, triggers a notice-and-comment proceeding. 39 CFR 3030.124.

## II. Overview of the Postal Service's Filing

The Postal Service's filing consists of the Notice, which the Postal Service represents addresses applicable requirements of 39 CFR 3030.122 and 39 CFR 3030.123; one PDF attachment (Attachment A) to the Notice; and three Excel workbooks entitled ''Marketing Mail Incentive_Projections.xls,'' ''First Class Mail Incentive_Projections.xls,'' and ''CY24 Consolidated Incentives_Projections.xlsx.''

Attachment A includes the changes to the MCS necessary to implement the incentives. Notice, Attachment A. The three Excel workbooks contain the Postal Service's financial models to support the proposed incentives.[2]

The Postal Service states that ''incentives build stronger relationships between the Postal Service and the mailing industry and encourage mailers to continue to use the mail to engage with their customers, expand their customer base, and increase customer loyalty.'' Notice at 2–3. The Postal Service also asserts that ''incentives have the potential to improve the Postal Service's overall financial position.'' *Id.* at 3. Based on this, as well as declining volume trends, the Postal Service proposes an incentive for First-Class Mail (First-Class Mail Growth Incentive) and an incentive for USPS Marketing Mail (Marketing Mail Growth Incentive). *Id.*

The Postal Service states that the two incentives are ''substantially identical.'' *Id.* A mailer would be eligible for the First-Class Mail Growth Incentive when its combined volume of qualifying pieces in the incentive period, Calendar Year (CY) 2024, exceeds the incentive threshold. *Id.* The qualifying pieces are First-Class Mail Presort Letters; First-Class Mail Presort Cards; or First-Class Mail Presort Flats. *Id.* Similarly, a mailer would be eligible for the Marketing Mail Growth Incentive when its combined volume of qualifying pieces in CY 2024 exceeds the incentive threshold. *Id.* The qualifying pieces are USPS Marketing Mail Letters and High Density/Saturation Letters; USPS Marketing Mail Flats and High Density/Saturation Flats & Parcels; USPS Marketing Mail Carrier Route; or USPS Marketing Mail Parcels. *Id.*

Under both incentives, ''for every qualifying piece mailed in calendar year 2024 after the first million pieces, mailers receive a credit equal to 30 percent of the average per-piece price paid for mailing all qualifying pieces, unless the volume of qualifying pieces the mailer sent in the preceding fiscal year exceeded 1,000,000 pieces. In that case, credits accrue only after the mailer surpasses its fiscal year 2023 volume of qualifying pieces.'' *Id.* The Postal Service states that its use of CY 2024 for the incentive period and Fiscal Year 2023 for the comparison period ''is intentional'' and ''allows the Postal Service time to complete the administrative setup of the incentives before the incentive period begins.'' *Id.* at 4. The Postal Service states that calculating the credits earned is ''somewhat complex'' because ''[t]here is more than one qualifying product for each incentive, and within any given product, pieces of different weights, sortation levels, and dropship locations have different prices.'' *Id.* The Postal Service states that for each incentive, the credits earned are equal to ''the total actual price paid for all qualifying pieces (not including any special

[1] United States Postal Service Notice of Market Dominant Price Change Creating Two Incentives, August 11, 2023 (Notice).

[2] Notice, Excel files ''Marketing Mail Incentive_Projections.xls,'' ''First Class Mail Incentive_Projections.xls,'' and ''CY24 Consolidated Incentives_Projections.xlsx.''

services that might be added to and paid for with these pieces), divided by the total volume of qualifying pieces,'' which is then multiplied by the total volume of pieces eligible for credits and 30 percent. *Id.* at 4–5.

The Postal Service estimates the First-Class Mail Growth Incentive ''will spur $259 to $432 million in growth revenue, pay $78 to $130 million in credits, and result in $91 to $152 million in net contribution . . . .'' *Id.* at 7. The Postal Service estimates that the Marketing Mail Growth Incentive will spur between $544 and $907 million in growth revenue, pay $163 to $272 million in credits, and result in a net contribution of $17 to $28 million. *Id.* at 6–7.

The Postal Service contends that the two incentives are rates of general applicability. *Id.* at 9. Under 39 CFR 3030.122(i), the Postal Service must state whether it elects to generate unused rate adjustment authority. 39 CFR 3030.122(i). The Postal Service states that it does elect to have the two incentives generate unused rate adjustment authority, but that ''sufficient billing determinants do not yet exist for the incentives to be included in any percentage calculation for a change in rates.'' *Id.* at 8. The Postal Service states that the soonest it would have sufficient billing determinants to include the incentives in a percentage calculation for a change in rates and generate rate adjustment authority would be an omnibus rate case in 2025. *Id.* at 9.

The Postal Service contends that 39 CFR 3030.221, which requires the Postal Service to raise rates for non-compensatory products in compensatory classes by at least 2 percentage points above the average for that class, does not apply in this proceeding because the Postal Service only seeks to lower prices. *Id.* at 12. The Postal Service also contends that applying 39 CFR 3030.221 to rate cases in which the Postal Service seeks to lower rates conflicts with 39 CFR 3030.122(i), which it asserts ''expressly contemplates and permits the Postal Service to bring rate cases in which it only lowers prices . . . .'' *Id.* at 13.

## III. Initial Administrative Actions

Pursuant to 39 CFR 3030.124(a), the Commission establishes Docket No. R2023–3 to consider the planned Market Dominant price change creating two incentives as well as the related classification changes identified in the Notice. The Commission invites comments from interested persons on whether the Postal Service's planned price adjustments are consistent with applicable statutory and regulatory requirements. 39 CFR 3030.125. The applicable statutory and regulatory requirements the Commission considers in its review are the requirements of 39 CFR part 3030, Commission directives and orders, and 39 U.S.C. 3626, 3627, and 3629. 39 CFR 3030.126(b). Comments are due no later than September 11, 2023. 39 CFR 3030.124(f).

The Postal Service's filing is available for review on the Commission's website (*http://www.prc.gov*). Comments and other material filed in this proceeding will be available for review on the Commission's website unless the information contained therein is subject to an application for non-public treatment. The Commission's rules on non-public materials (including access to documents filed under seal) appear in 39 CFR part 3011.

Pursuant to 39 U.S.C. 505, the Commission appoints John Avila to represent the interests of the general public (Public Representative) in this proceeding.

## IV. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. R2023–3 to consider the planned Market Dominant price change creating two incentives, as well as the related classification changes, identified in the Postal Service's August 11, 2023 Notice.

2. Comments on the planned price adjustments and related classification changes are due no later than September 11, 2023.

3. Pursuant to 39 U.S.C. 505, John Avila is appointed to serve as an officer of the Commission to represent the interests of the general public (Public Representative) in this proceeding.

4. The Commission directs the Secretary of the Commission to arrange for prompt publication of this notice in the **Federal Register**.

By the Commission.

**Mallory Richards,**

*Attorney-Adviser.*

[FR Doc. 2023–17874 Filed 8–18–23; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL SERVICE

### International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

**DATES:** *Date of notice:* August 21, 2023.

**FOR FURTHER INFORMATION CONTACT:** Christopher C. Meyerson, (202) 268–7820.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 11, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 25 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–221 and CP2023–225.

**Sarah Sullivan,**

*Attorney, Ethics and Legal Compliance.*

[FR Doc. 2023–17863 Filed 8–18–23; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### First-Class Mail and USPS Marketing Mail Growth Incentive

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service is providing notice that it has filed with the Postal Regulatory Commission a market dominant price change creating two new incentives.

**DATES:** August 21, 2023.

**FOR FURTHER INFORMATION CONTACT:** Steven Mills, Director Product Management (Mailing Svcs.) at (202) 268–7433.

**SUPPLEMENTARY INFORMATION:** On August 11, 2023, the United States Postal Service® filed with the Postal Regulatory Commission a notice of market dominant price change creating two new incentives.

As indicated in the filing, the Postal Service will offer two new incentives designed to promote the growth of First-Class Mail® (the ''First-Class Mail Growth Incentive'') and USPS Marketing Mail® (the ''Marketing Mail Growth Incentive''). The effective dates of both incentives is January 1, 2024, and the incentive period runs through December 31, 2024. Qualifying Market Dominant products eligible for the incentive are: First-Class Mail Presort Letters, First-Class Mail Presort Cards, First-Class Mail Presort Flats, USPS

Marketing Mail Letters and High Density/Saturation Letters, USPS Marketing Mail Flats and High Density/Saturation Flats, USPS Marketing Mail Carrier Route Letters and Flats, and USPS Marketing Mail and Saturation Parcels.

Documents pertinent to this notice are available at *http://www.prc.gov* under docket number R2023–3 and on the daily docket for August 11, 2023.

**Sarah Sullivan,**

*Attorney, Ethics & Legal Compliance.*

[FR Doc. 2023–17865 Filed 8–18–23; 8:45 am]

**BILLING CODE 7710–12–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 2:00 p.m. on Thursday, August 24, 2023.

**PLACE:** The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov*.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

**CONTACT PERSON FOR MORE INFORMATION:** For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

*Authority:* 5 U.S.C. 552b.

Dated: August 17, 2023.

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2023–18014 Filed 8–17–23; 11:15 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98137; File No. SR–CboeEDGX–2023–051]**

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

August 15, 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 August 1, 2023, Cboe EDGX Exchange, Inc. (''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''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

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform (''EDGX Equities'') as follows: (1) by modifying the criteria of Add Volume Tier 6; and (4) modifying the rates associated with Remove Volume Tier 1. The Exchange proposes to implement these changes effective August 1, 2023.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Securities Exchange Act of 1934 (the ''Act''), to which market participants may direct their order flow. Based on publicly available information,[3] no single registered equities exchange has more than 14% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Maker-Taker'' model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above $1.00, the Exchange provides a standard rebate of $0.00160 per share for orders that add liquidity and assesses a fee of $0.0030 per share for orders that remove liquidity.[4] For orders in securities priced below $1.00, the Exchange provides a standard rebate

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (July 24, 2023), available at *https://www.cboe.com/us/equities/_statistics/*.

[4] *See* EDGX Equities Fee Schedule, Standard Rates.

of $0.00009 per share for orders that add liquidity and assesses a fee of 0.30% of the total dollar value for orders that remove liquidity.[5] Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Add Volume Tiers

Under footnote 1 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers six Add Volume Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes B,[6] V,[7] Y,[8] 3,[9] and 4,[10] where a Member reaches certain add volume-based criteria. The Exchange is proposing to modify the criteria associated with Add Volume Tier 6. Currently, the criteria for Add Volume Tier 6 is as follows:

• Add Volume Tier 6 provides a rebate of $0.0034 per share for securities priced above $1.00 to qualifying orders (*i.e.,* orders yielding fee B, V, Y, 3, or 4) where (1) MPID adds an ADV [11] (excluding fee codes ZA [12] or ZO [13]) ≥ 37,500,000; and (2) MPID has a QDP ADV (*i.e.,* yielding fee codes DQ [14] and DX [15]) ≥8,000,000.

The proposed criteria for Add Volume Tier 6 is as follows:

• Add Volume Tier 6 provides a rebate of $0.0033 per share for securities priced above $1.00 to qualifying orders (*i.e.,* orders yielding fee B, V, Y, 3, or 4) where (1) MPID adds an ADV (excluding fee codes ZA or ZO) ≥ 27,500,000; and (2) MPID has a QDP ADV (*i.e.,* yielding fee codes DQ and DX) ≥ 3,500,000.

The Exchange believes that the proposed modifications to Add Volume Tier 6 continue to incentivize Members to add volume on the Exchange, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange. The Exchange further believes the lower proposed rebate associated with Add Volume Tier 6 provides a rebate commensurate with the difficulty of meeting the revised criteria associated with the tier.

Remove Volume Tiers

In addition to the Add/Remove Volume Tiers offered under footnote 1, the Exchange also offers three Remove Volume Tiers that each assess a reduced fee for Members' qualifying orders yielding fee codes BB,[16] N [17] and W,[18] where a Member reaches certain add volume-based criteria. Currently, Members who satisfy the criteria of Remove Volume Tier 1 are assessed a reduced fee of $0.00285 for securities priced above $1.00 and a reduced fee of 0.28% of total dollar value for securities priced at or below $1.00. The Exchange now proposes to revise the fees associated with Remove Volume Tier 1. As proposed, Members who satisfy the criteria of Remove Volume Tier 1 will be assessed a reduced fee of $0.0029 for securities priced above $1.00 and a reduced fee of 0.29% of total dollar value for securities priced at or below $1.00. The Exchange does not propose to revise the fees associated with Remove Volume Tiers 2 or 3. The purpose of increasing the reduced fee associated with Remove Volume Tier 1 is for business and competitive reasons, as the Exchange believes that increasing such fee as proposed would decrease the Exchange's expenditures with respect to transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange notes that despite the modest increase of the fee associated with Remove Volume Tier 1, the reduced fee remains competitive and continues to be in-line with the reduced fee assessed under Remove Volume Tiers 2 and 3.[19]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[20] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [21] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [22] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4) [23] as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that its proposal to modify the criteria of Add Volume Tier 6 reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,[24] including the Exchange,[25] and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and

[5] *Id.*

[6] Fee code B is appended to orders adding liquidity to EDGX in Tape B securities.

[7] Fee code V is appended to orders adding liquidity to EDGX in Tape A securities.

[8] Fee code Y is appended to orders adding liquidity to EDGX in Tape C securities.

[9] Fee code 3 is appended to orders adding liquidity to EDGX in the pre and post market in Tapes A or C securities.

[10] Fee code 4 is appended to orders adding liquidity to EDGX in the pre and post market in Tape B securities.

[11] ''ADV'' means average daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADV is calculated on a monthly basis.

[12] Fee code ZA is appended to Retail Orders that add liquidity.

[13] Fee code ZO is appended to Retail orders that adds liquidity during the pre- and post-market.

[14] Fee code DQ is appended to orders using the QDP order type that add liquidity to EDGX.

[15] Fee code DX is appended to orders using the QDP order type that remove liquidity from EDGX.

[16] Fee code BB is appended to orders that remove liquidity from EDGX in Tape B securities.

[17] Fee code N is appended to orders that remove liquidity from EDGX in Tape C securities.

[18] Fee code W is appended to orders that remove liquidity from EDGX in Tape A securities.

[19] *See e.g.,* EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] *Id.*

[23] 15 U.S.C. 78f(b)(4).

[24] *See e.g.,* BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

[25] *See e.g.,* EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

In particular, the Exchange believes its proposal to modify the criteria of Add Volume Tier 6 is reasonable because the revised tier will be available to all Members and provide all Members with an additional opportunity to receive an enhanced rebate or a reduced fee. The Exchange further believes the proposed modifications to Add Volume Tier 6 will provide a reasonable means to encourage liquidity adding displayed orders in Members' order flow to the Exchange and to incentivize Members to continue to provide liquidity adding volume to the Exchange by offering them an additional opportunity to receive an enhanced rebate on qualifying orders. An overall increase in activity would deepen the Exchange's liquidity pool, offers additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

In addition, the Exchange believes that its proposal to increase the reduced fee assessed to Members that satisfy the criteria of Remove Volume Tier 1 is reasonable, equitable, and consistent with the Act because such change is designed to decrease the Exchange's expenditures with respect to transaction pricing in order to offset some of the costs associated with the Exchange's current pricing structure, which provides various rebates for liquidity-adding orders, and the Exchange's operations generally, in a manner that is consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The proposed increased reduced fee ($0.0029 per share for securities priced above $1.00 and 0.29% of total dollar value for securities priced at or below $1.00) is reasonable and appropriate because it represents only a modest increase from the current reduced fee ($0.00285 per share for securities priced above $1.00 and 0.28% of total dollar value for securities priced at or below $1.00) and remains competitive with the reduced fees offered under Remove Volume Tiers 2 and 3. The Exchange further believes that the proposed increase to the reduced fee associated with Remove Volume Tier 1 is not unfairly discriminatory because it applies to all Members equally, in that all Members will receive the reduced fee upon satisfying the criteria of Remove Volume Tier 1.

The Exchange believes that the proposed changes to Add Volume Tier 6 are reasonable as they do not represent a significant departure from the criteria currently offered in the Fee Schedule. The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members will be eligible for the revised tiers and have the opportunity to meet the tiers' criteria and receive the corresponding enhanced rebate or reduced fee if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying the new proposed tiers. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on the prior months volume, the Exchange anticipates that at least one Member will be able to satisfy proposed Add Volume Tier 6, and at least two Members will be able to satisfy Remove Volume Tier 1. The Exchange also notes that proposed changes will not adversely impact any Member's ability to qualify for enhanced rebates or reduced fees offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate or reduced fee.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes to the Exchange's Add Volume Tier 6 and Remove Volume Tier 1 will apply to all Members equally in that all Members are eligible for each of the Tiers, have a reasonable opportunity to meet the Tiers' criteria and will receive the enhanced rebate or reduced fee on their qualifying orders if such criteria is met. The Exchange does not believe the proposed changes burden competition, but rather, enhances competition as it is intended to increase the competitiveness of EDGX by amending an existing pricing incentive and adopting pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

Next, the Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 14% of the market share.[26] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in

[26] *Supra* note 4.

determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [27] The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[28] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [29] and paragraph (f) of Rule 19b–4 [30] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[27] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[28] *NetCoalition* v. *SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 17 CFR 240.19b–4(f).

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGX–2023–051 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–CboeEDGX–2023–051. 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–CboeEDGX–2023–051 and should be submitted on or before September 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–17862 Filed 8–18–23; 8:45 am]

**BILLING CODE 8011–01–P**

[31] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, August 23, 2023 at 10:00 a.m.

**PLACE:** The meeting will be webcast on the Commission's website at *www.sec.gov.*

**STATUS:** This meeting will begin at 10:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at *www.sec.gov.*

**MATTERS TO BE CONSIDERED:**

1. The Commission will consider whether to adopt rule amendments to narrow an exemption from the requirement under the Securities Exchange Act of 1934 that any Commission-registered broker-dealer become a member of a national securities association if it effects securities transactions elsewhere than an exchange where it is a member.

2. The Commission will consider whether to adopt rules and amendments under the Investment Advisers Act of 1940 (''Advisers Act'') for private fund advisers and whether to adopt amendments to the compliance rule under the Advisers Act.

**CONTACT PERSON FOR MORE INFORMATION:** For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

*Authority:* 5 U.S.C. 552b.

Dated: August 16, 2023.

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–17996 Filed 8–17–23; 11:15 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98139; File No. SR–BOX–2023–22]**

## Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update and Amend IM–7240–1 Regarding Complex Order and Multi-Leg Price Protections

August 15, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 7, 2023, BOX Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] 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 update and amend IM–7240–1 regarding Complex Order [5] and Multi-Leg price protections. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *https://rules.boxexchange.com/rulefilings.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is twofold: first, to amend IM–7240–1(a) to include Multi-Leg Orders; [6] and second, to make certain price protections voluntary for Complex Qualified Open Outcry (''QOO'') Orders and multi-leg QOO Orders. In May 2018, BOX adopted protections for Complex Orders.[7] Multi-leg QOO Orders were added to the Trading Floor in February of 2019.[8] At that time, the Complex Order protections in IM–7240–1(a) were designed to apply to multi-leg QOO Orders, however, IM–7240–1(a) was not updated accordingly. The Exchange now proposes to update IM–7240–1 to explicitly include multi-leg QOO Orders in IM–7240–1(a) to accurately describe system functionality. The Exchange notes that IM–7240–1 includes both the debit/credit check and maximum price protections. At present, debit/credit check in IM–7240–1(a) applies to both Complex Orders and Multi-Leg Orders and maximum price in IM–7240–1(b) applies to Complex Orders but not to Multi-Leg Orders because maximum price only applies to true butterfly spreads, vertical spreads, and box spreads which have ratios that are equal to or greater than one-to-three and less than or equal to three-to-one and by definition are always Complex Orders.[9]

As background, BOX implemented a debit/credit check which helps prevent the execution of Complex Orders at erroneous prices.[10] Specifically, under the debit/credit check, the system will reject a Complex Limit Order for a credit strategy with a net debit price or a Complex Limit Order for a debit strategy with a net credit price. The debit/credit check mechanism is designed to value strategies using principles that are based on theoretical models used to value options. Such models take into account variables such as current market price, strike price, and time to expiration. All else equal, longer-dated options are more valuable because of their greater time to expiration. Additionally, holding everything constant, including expiration date, a put option with a higher strike price will be more valuable than a put option with a lower strike price because the higher strike price allows the holder to sell the underlying security at a higher price. Conversely, a call option with a lower strike price is more expensive than a call option with a higher strike price because the lower strike price allows the holder to buy the underlying security at a lower price. Taking these principles into account, BOX designed the debit/credit check as a way to identify strategies as credit or debit and only accept appropriate prices based on that determination.

In addition to the debit/credit check, the system will also calculate a maximum price for true butterfly spreads, vertical spreads, and box spreads. After calculating the maximum price, the system will reject a Complex Limit Order that is a true butterfly spread, vertical spread, or a box spread if the absolute value of the Complex Order's limit price is greater than the maximum price. For a Complex Market Order that is a true butterfly spread, vertical spread, or a box spread, the system will reject the Complex Market Order if the absolute value of the execution price is greater than the maximum price. The maximum price value is calculated by adding a price buffer to the absolute value of a true butterfly spread, vertical spread, or box spread.[11]

The Exchange notes that the principals [sic] drawn from theoretical models used to value options do not take into account bid to ask spreads and other factors that may influence the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The term ''Complex Order'' means any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy. *See* BOX Rule 7240(a)(7).

[6] The term ''Multi-Leg Order'' means any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, and for the purpose of executing a particular investment strategy in a ratio that is less than one-to-three (.333) or greater than three-to-one (3.00). *See* BOX Rule 7240(a)(10).

[7] *See* Securities and Exchange Act Release No. 83163 (May 3, 2018), 83 FR 21320 (May 9, 2018) (SR–BOX–2018–13) (Notice of Immediate Effectiveness of a Proposed Rule Change to Adopt Price Protections for Complex Orders).

[8] *See* Securities and Exchange Act Release No. 85052 (February 5, 2019), 84 FR 3265 (February 11, 2019) (SR–BOX–2019–01) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Clarify That Multi-leg Qualified Open Outcry Orders are Permitted on the BOX Trading Floor).

[9] A true butterfly spread has a ratio of two-to-one while vertical spreads and box spreads have a leg ratio of one-to-one. As noted above, a Complex Order means any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy. *See* BOX Rule 7240(a)(7). Further, a Multi-Leg Order means any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, and for the purpose of executing a particular investment strategy, in a ratio that is less than one-to-three (.333) or greater than three-to-one (3.00). *See* BOX Rule 7240(a)(10).

[10] *See* BOX IM–7240–1(a) (Debit/Credit Check).

[11] *See* BOX IM–7240–1(b) (Maximum Price).

prices at which Participants [12] trade options. For example, Participants may need to close positions to reduce risk or to reduce margin requirements and, in such cases, may be less sensitive to prices of individual options. Further, Participants may believe that market conditions warrant trades that would otherwise be rejected by BOX. The Exchange believes that Participants make this determination based on their own theoretical models, positions, and evaluation of market conditions. As described further below, the Exchange's proposal is designed to allow Participants to make this determination on a per order basis based on their internal evaluations of relevant factors.

The Exchange now proposes to amend IM–7240–1(a) to explicitly include Multi-Leg Orders and to make the debit/credit check voluntary for Complex QOO Orders and multi-leg QOO Orders and [sic] maximum price in IM–7240–1(b) voluntary for Complex QOO Orders on the BOX Trading Floor.[13] Specifically, the Exchange is proposing to clarify system functionality by explicitly including Multi-Leg Orders within the debit/credit check, and to add an exception whereby both Complex QOO Orders and multi-leg QOO Orders may be excluded from the debit/credit check on a per order basis. Additionally, the Exchange is proposing to add an exception to maximum price to exclude Complex QOO Orders on a per order basis. The Exchange notes that even when the debit/credit check and maximum price are not applied to an order, Floor Brokers [14] will evaluate the price of an order based on then-existing market conditions prior to submitting the order to the Trading Host for execution. The debit/credit check will apply to Complex QOO Orders and multi-leg QOO Orders and maximum price will apply to Complex QOO Orders by default unless Participants elect otherwise on a per order basis. Specifically, when submitting an order, there is an optional tag to disable the debit/credit check and maximum price, if the tag is not populated then the debit/credit check and maximum price will apply by default. Although Participants who voluntarily choose not to apply the debit/credit check and maximum price do not have the benefit of such protections, there is still an opportunity for Floor Brokers to detect any errors resulting in minimal risk of execution at an erroneous price. Additionally, the Exchange notes that Complex QOO Orders will still be executed at a price that is equal to or better than the BOX BBO for each component series and executed at a price that is equal to or better than the Extended cNBBO [15] for the Complex Order Strategy and that each component series of a multi-leg QOO Order must be executed at a price that is equal to or better than the NBBO for that series subject to the exceptions of Rule 15010(b).[16] The Exchange notes that the NBBO aspect of the Complex QOO Order filter may be disabled on an order by order basis by a Floor Broker executing Complex QOO Orders.[17] Lastly, the Exchange notes that Participants have expressed that the current application of these protections is too restrictive and prevents executions that would be allowed to execute on competing exchanges.[18] The Exchange believes that other exchanges do not apply similar protections on their trading floors.[19] As such, Participants have requested this flexibility for their Complex QOO Orders and multi-leg QOO Orders because of instances when a Participant order was rejected on BOX due to debit/credit check or maximum price, the Participant still desires to execute the order, and sends the order to another exchange where such orders are allowed to execute.

Lastly, the Exchange proposes to remove the word ''regular'' in IM–7240–1(a)(5) and IM–7240–1(b)(5). The Exchange believes the use of the word may cause confusion and is unnecessary, and, as such, believes that removing it will provide clarity within the rule text.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[20] in general, and Section 6(b)(5) of the Act,[21] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In particular, amending IM–7240–1(a) to include Multi-Leg Orders aligns the Exchange's rules with current system functionality and accurately describes the application of the protections in IM–7240–1(a). The Exchange believes that codifying the inclusion of Multi-Leg Orders in IM–7240–1(a) will ensure the rulebook accurately reflects the operation of the Exchange's rules and, therefore, the proposed rule change reduces potential investor or market participant confusion. Additionally, this amendment is designed to provide Participants with greater certainty about how Complex Order and Multi-Leg Order price protections are applied to their orders. Further, the Exchange believes applying the protections in IM–72401(a) to Multi-Leg Orders helps prevent Multi-Leg Orders from executing at erroneous prices.

The Exchange believes further that allowing the debit/credit check to be voluntary for Complex QOO Orders and multi-leg QOO Orders and maximum price to be voluntary for Complex QOO Orders will provide flexibility for investors to enter Complex QOO Orders and multi-leg QOO Orders which otherwise may have been rejected due to the debit/credit check and maximum price even though such orders may have been designed to meet investors' investment objectives. The election to forgo the debit/credit check and maximum price will only be allowed on the BOX Trading Floor because Floor Brokers will have an opportunity to evaluate the price of an order based on then-existing market conditions prior to submitting the order to the BOX Trading Host for execution, resulting in minimal risk of execution at an erroneous price. For example, Floor Brokers may communicate with their clients to determine whether an order was intended to be priced as a debit or as a credit or may be aware of the market conditions influencing a client to price an order as a debit or as a credit. The debit/credit check will apply to Complex QOO Orders and multi-leg QOO Orders and maximum price will apply to Complex QOO Orders by default unless Participants elect otherwise on a per order basis. The Exchange notes that Complex QOO

[12] *See* BOX Rule 100(a)(42).

[13] The Exchange notes that the price protections discussed herein cannot be waived for electronic orders.

[14] *See* BOX Rule 7540.

[15] The term ''Extended cNBBO'' means the maximum permissible net bid and offer execution price for a Complex Order Strategy. *See* BOX Rule 7240(a)(5).

[16] *See* BOX Rules 7240(b)(3)(iii) and 7600(c).

[17] *See* BOX Rule 7240(b)(3)(iii).

[18] *See* NYSE Arca, Inc. (''NYSE Arca'') Rule 6.91P–O (providing Complex Strategy Protections for Electronic Complex Orders but not for open outcry orders) *and* Cboe Exchange, Inc. (''CBOE'') Rule 5.34(b)(3) *and* Securities and Exchange Act Release No. 80439 (April 12, 2017), 82 FR 18320 (April 18, 2017) (SR–CBOE–2017–031) (providing that debit/credit price reasonability checks do not apply to orders routed through its PAR workstation and order management terminal).

[19] *Id.*

[20] 15 U.S.C. 78f(b).

[21] 5 U.S.C. 78f(b)(5).

Orders will still be executed at a price that is equal to or better than the BOX BBO for each component series and executed at a price that is equal to or better than the Extended cNBBO for the Complex Order Strategy and that each component series of a multi-leg QOO Order must be executed at a price that is equal to or better than the NBBO for that series subject to the exceptions of Rule 15010(b).[22] The Exchange notes further that the NBBO aspect of the Complex QOO Order filter may be disabled on an order by order basis by a Floor Broker executing Complex QOO Orders.[23] Thus, the Exchange believes that allowing the debit/credit check to be voluntary only for Complex QOO Orders and multi-leg QOO Orders and maximum price to be voluntary for Complex QOO Orders removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest.

The Exchange notes that other exchanges do not currently apply Complex Order price protections similar to the debit/credit check in open outcry trading.[24] In particular, the NYSE Arca Rule titled Electronic Complex Order (''ECO'') Trading provides for ECO Risk Checks, including Complex Strategy Protections.[25] The Exchange believes that NYSE Arca's Complex Strategy Protections only apply to electronic orders and not to open outcry orders because ECO Risk Checks specifically apply to a Complex Order that is submitted electronically to NYSE Arca.[26] BOX, on the other hand, currently applies the debit/credit check to Complex QOO Orders and multi-leg QOO Orders and maximum price to Complex QOO Orders which are executed on the BOX Trading Floor. The proposal herein will make debit/credit voluntary for Complex QOO Orders and multi-leg QOO Orders and maximum price voluntary for Complex QOO Orders such that Participants may choose to execute certain Complex QOO Orders and multi-leg QOO Orders on the BOX Trading Floor. The Exchange believes that the proposal herein would allow certain Complex Orders that are currently allowed in open outcry on NYSE Arca to also be allowed on the BOX Trading Floor as Complex QOO Orders.

The Exchange notes that CBOE also has debit/credit price reasonability checks which do not apply to orders routed through its PAR workstation and order management terminal (''OMT''), which are subject to manual handling.[27] As such, CBOE does not apply debit/credit price reasonability checks to some of the orders subject to manual handling.[28] Specifically, a PAR or OMT operator evaluates the price of an order based on then-existing market conditions prior to submitting it for electronic execution, thus minimizing the risk of an erroneous execution and reducing the need for application of additional price checks. Similarly, the Exchange proposes to make the debit/credit check voluntary for Complex QOO Orders and multi-leg QOO Orders.

The Exchange believes that the proposed changes strike a balance between providing adequate risk controls and flexibility so that Participants may execute their intended strategies. Specifically, the Exchange believes that investors will have the added flexibility of executing Complex QOO Orders and multi-leg QOO Orders at prices of their choosing while still benefiting from Floor Brokers' handling of orders. Additionally, the Exchange notes that the proposed changes will provide Participants with another venue to execute certain Complex Orders and Multi-Leg Orders that would otherwise be rejected by BOX but accepted on another exchange.

Lastly, the Exchange believes that the proposed change to remove the word ''regular'' in IM–7240–1(a)(5) and IM–7240–1(b)(5) will provide clarity within the rule text and will reduce potential investor or market participant confusion.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that, amending IM–7240–1(a) to include Multi-Leg Orders does not impose any burden on intramarket competition as the change will apply in the same manner to all Participants. Further, the inclusion of Multi-Leg Orders in IM–7240–1(a) does not impose a burden on intermarket competition as the change simply intends to align the Exchange's rules with current system functionality and accurately describe the application of the protections in IM–7240–1(a). The Exchange does not believe the proposed rule change will impose any burden on intramarket competition, as the proposed rule change will apply in the same manner to all Participants. The Exchange notes that debit/credit check applies to Complex Orders and Multi-Leg Orders and maximum price to Complex Orders of all Participants, regardless of account type. Additionally, all Participants will have the ability to opt out of the debit/credit check for Complex QOO Orders and multi-leg QOO Orders and maximum price for Complex QOO Orders on a per order basis. Further, the proposed rule change will provide all Participants with the ability to execute certain Complex QOO Orders and multi-leg QOO Orders on BOX that previously were not allowed. The Exchange believes the proposed rule change does not impose any undue burden on intermarket competition and may, on the contrary, promote competition, as other exchanges currently apply similar protections while allowing certain orders to execute in open outcry on their respective trading floors.[29] As such, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[22] *See supra* note 14.

[23] *See supra* note 15.

[24] *See supra* note 16. [sic]

[25] *See* NYSE Arca Rule 6.91P–O(g)(3). '''Electronic Complex Order' or 'ECO' means a Complex Order . . . that is submitted electronically to the Exchange.'' *See* NYSE Arca Rule 6.91P–O(a)(7). NYSE Arca's Complex Strategy Protections protect participants with the expectation that an order will receive (or pay) a net premium but prices the ECO such that the ECO sender will instead pay (or receive) a net premium. These protections apply to ''all buy'' or ''all sell'' strategies, vertical spreads, and calendar spreads. The Exchange notes that the debit/credit check in IM–7240–1 includes ''all buy'' and ''all sell'' strategies, Vertical spreads and Calendar spreads. The Exchange also notes that NYSE Arca Rule 6.91P–O does not include maximum price protections.

[26] NYSE Arca Rule 6.91P–O(a)(7) by its terms is applicable to electronic orders but not to open outcry orders.

[27] *See* Securities and Exchange Act Release No. 80439 (April 12, 2017), 82 FR 18320 (April 18, 2017) (SR–CBOE–2017–031).

[28] The Exchange notes that CBOE Rule 5.34(b)(4) titled ''Buy Strategy Parameters'' does not apply to orders auctioned via PAR and OMT whereas Rule 5.34(b)(5) titled ''Maximum Value Acceptable Price Range'' does apply to such orders. The Exchange notes further that the proposed rules determine whether a Complex Order is debit or credit by using a slightly different process than that employed by CBOE. Specifically, other than for call and put butterfly spreads, CBOE will group the legs of a Complex Order into pairs and compare multiple pairs to determine whether the Complex Order is a credit or debit while the Exchange creates groups (which may include more than two legs) based on expiration date. However, the ultimate determination of whether a Complex Order is a debit or credit is similar under the different processes. Therefore, the Exchange believes the debit/credit check is similar to CBOE's Debit/Credit Price Reasonability Checks. *See* CBOE Rule 5.34(b)(3).

[29] *See supra* note 16. [sic]

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not (a) significantly affect the protection of investors or the public interest; (b) impose any significant burden on competition; and (c) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [30] and Rule 19b–4(f)(6) thereunder.[31]

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[32] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange states that amending the debit/credit check in IM–7240–1(a) to include Limit Multi-Leg Orders will help to prevent Limit Multi-Leg Orders from executing at erroneous prices and help to ensure the accuracy of the Exchange's rules. The Exchange states that amending IM–7240–1 to make the debit/credit check voluntary for Complex QOO Orders and Multi-Leg QOO Orders and to make the maximum price protection voluntary for Complex QOO Orders will provide BOX Participants with flexibility in executing their Complex QOO Orders and Multi-Leg QOO Orders. As discussed above, the Exchange states that Participants that need to close positions to reduce risk or margin requirements may be less sensitive to the prices of individual options. The Exchange further states that Participants may believe, based on their own theoretical models and positions, that market conditions warrant trades that would otherwise be rejected by the Exchange. Under the proposal, the debit/credit check and the maximum price protection will continue to apply by default unless a Participant elects to forgo on a per order basis. Because the waiver will available only for orders traded in open outcry, but not for orders traded electronically, a Floor Broker will evaluate the price of the Complex QOO or Multi-Leg QOO Order based on then-existing market conditions prior to submitting the order to the Trading Host for execution, which the Exchange states will result in minimal risk of the order executing at an erroneous price. The Exchange further states that other options exchanges do not apply similar protections to orders executed on their trading floors, and that Participants have indicated that the current application of the debit/credit check and the maximum price protection is too restrictive and prevents executions that would be permitted on other options exchanges.[33] The Exchange states that deleting the word ''regular'' from IM–7240–1(a)(5) and IM–7240–1(b)(5) will help to clarify the Exchange's rules by removing an unnecessary and potentially confusing word from the Exchange's rules.

The Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposal will allow Participants to elect to waive the debit/credit check for Complex QOO Orders and Multi-Leg QOO Orders, and the maximum price protection for Complex QOO Orders, on an order-by-order basis. As discussed above, the Exchange states that Participants seek the flexibility to execute Complex QOO Orders and Multi-Leg QOO Orders at prices that the Exchange would otherwise reject. The Commission believes that the proposal will provide Participants with flexibility in executing Complex QOO and Multi-Leg QOO Orders that meet their investment objectives. Under the proposal, the debit/credit check and the maximum price protection will continue to apply by default, and Participants will have the ability to waive the protections on a per order basis. Because the waiver will be available only for Complex QOO and Multi-Leg QOO Orders traded in open outcry, but not for orders traded electronically, a Floor Broker will be able to evaluate the price of the Complex QOO or Multi-Leg QOO Order before submitting the order to the Trading Host for execution, which the Exchange believes will minimize the risk of a Complex QOO or Multi-Leg QOO Order executing at an erroneous price. The proposal to apply the debit/credit check to Limit Multi-Leg Orders should protect investors by helping to prevent Limit Multi-Leg Orders from executing at potentially erroneous prices. The proposal to delete the unnecessary word ''regular'' from IM–7240–1 should eliminate potential confusion and help to clarify the Exchange's rules. For these reasons, the Commission designates the proposal operative upon filing.[34]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–BOX–2023–22.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–BOX–2023–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[32] 17 CFR 240.19b–4(f)(6)(iii).

[33] *See* notes 24–28, *supra,* and accompanying text.

[34] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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–BOX–2023–22 and should be submitted on or before September 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–17859 Filed 8–18–23; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98140; File No. SR–ICC–2023–012)**

## Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the Stress Testing Framework

August 15, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 8, 2023, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change, as described in Items I, II and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to revise the ICC Stress Testing Framework (''STF''). These revisions do not require any changes to the ICC Clearing Rules (''Rules'').

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) Purpose

ICC proposes to update the STF. The STF sets forth the ICC stress testing practices that are focused on ensuring the adequacy of systemic risk protections. The proposed changes are limited to updating the stress period of the default-free Euro discount interest rate curve used in ICC's interest rate sensitivity analysis and providing additional clarifying language to the STF. ICC believes the proposed changes will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. ICC proposes to move forward with implementation of these changes following Commission approval of the proposed rule change. The proposed changes are described in detail as follows.

ICC proposes to update STF Section 11, ''Interest Rate Sensitivity Analysis'', which describes ICC's interest rate sensitivity analysis to account for the risks associated with changes to default-free discount interest rates. The STF currently incorporates two, currency specific, stress test parallel shifts (*i.e.,* up, and down) of the default-free discount interest rate for both CDS and CDS Index Options instruments. The magnitude of the interest rate stress scenarios reflects the largest shock, estimated using the collateral haircut model, during a selected stress period for the applicable sovereign debt, and such selected stress periods are subject to periodic review. Following such review, ICC proposes to update the stress period used to shock the EURO default-free discount interest rate.

The reasoning behind such proposed change is to respond to the current volatile interest rate period which began in 2022 and continues into 2023 due to the fast pace of U.S. Dollar and Euro interest rate increases. The impact to Euro interest rate volatility has been significant due to the sudden and rapid increases in Euro interest rates by the European Central Bank in an effort to curb multi-decade high inflation. Such interest rate volatility observed during this currently ongoing ''2022/2023 inflation crisis period'' is greater than the interest rate volatility observed in the Euro stress period currently in place in the STF (*i.e.,* the ''western European credit crisis period'' which occurred in 2011–2012). Specifically, the magnitude of the collateral haircuts observed in the currently ongoing ''2022/2023 inflation crisis period'' exceed the collateral haircuts observed during the ''western European credit crisis period.''

Therefore, ICC proposes to replace the current ''western European credit crisis period'' stress period with the ''2022/2023 inflation crisis period'' stress period in Section 11 of the STF. Such proposed change is prudent, from a risk perspective, as it improves ICC's interest rate sensitivity analysis by referencing the higher interest rate volatility stress period. As the current inflation crisis remains ongoing, ICC will continue to monitor interest rate volatility for any new volatility peak observed in the current ''2022/2023 inflation crisis period.''. In addition, ICC proposes to make analogous clarifying language changes to the identification of the default-free USD discount interest rate curve in Section 11 of the STF to remove the specific dates of the applicable stress period (*i.e.,* the 2008/2009 credit crisis period).

(b) Statutory Basis

As discussed herein, the proposed changes update the default-free Euro discount interest rate curve used in ICC's interest rate sensitivity analysis to reflect the interest rate shocks observed during the recent 2022–2023 inflation crisis period. Such proposed change strengthens the STF by updating the Euro stress period. Accordingly, ICC believes that the proposed changes to the STF are consistent with the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, the safeguarding of securities and funds

[35] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17(A)(b)(3)(F) of the Act.[3]

In addition, the proposed changes to the STF are consistent with the relevant requirements of Rule 17Ad–22.[4] Rule 17Ad–22(b)(3)[5] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions. The proposed changes to the STF provide further clarity and transparency regarding ICC's stress testing practices, including updating the stress periods used in ICC's interest rate sensitivity analysis. The proposed revisions also support ICC's ability to maintain sufficient risk requirements and enhance ICC's approach to identifying potential weaknesses in the risk management system by updating time periods to existing stress testing hypotheticals, thereby ensuring that ICC maintains sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions, consistent with the requirements of Rule 17Ad–22(b)(3).[6]

The amendments would also satisfy relevant requirements of Rule 17Ad–22.[7] Rule 17Ad–22(e)(4)(ii)[8] requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for ICC in extreme but plausible market conditions. The proposed amendments enhance ICC's ability to manage its financial resources by updating a stress period used in ICC's interest rate sensitivity analysis. The proposed amendments add descriptive detail to be clearer, which would ensure transparency and strengthen the documentation, thereby supporting the effectiveness of ICC's risk management system. The proposed clarifying language further enhances the readability of the STF and ensures that it remains up-to-date, clear, and transparent. As such, the proposed amendments would strengthen ICC's ability to maintain its financial resources and withstand the pressures of defaults, consistent with the requirements of Rule 17Ad–22(e)(4)(ii).[9]

Rule 17Ad–22(e)(4)(vi)[10] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by testing the sufficiency of its total financial resources available to meet the minimum financial resource requirements, including by conducting stress testing of its total financial resources once each day using standard predetermined parameters and assumptions; conducting a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions; and reporting the results of its analyses to appropriate decision makers at ICC. The proposed rule change continues to ensure that ICC's policies and procedures, including the STF, provide a clear framework for ICC to conduct stress testing and analysis and report the results to appropriate decision makers at ICC, in compliance with this requirement. As such, ICC believes the proposed rule change is consistent with the requirements of Rule 17Ad–22(e)(4)(vi).[11]

*(B) Clearing Agency's Statement on Burden on Competition*

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed changes to the STF update the stress period used in ICC's interest rate sensitivity analysis and make other clarifying changes, which ICC believes are appropriate in furtherance of the risk management of the clearing house. The changes to the STF will apply uniformly across all market participants. ICC does not believe these changes would affect the costs of clearing or the ability of market participants to access clearing. Therefore, ICC does not believe the proposed rule change would impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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–ICC–2023–012 on the subject line.

*Paper Comments*

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2023–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements

[3] 17 CFR 240.17(A)(b)(3)(F).

[4] 17 CFR 240.17Ad–22.

[5] 17 CFR 240.17Ad–22(b)(3).

[6] *Id.*

[7] 17 CFR 240.17Ad–22.

[8] 17 CFR 240.17Ad–22(e)(4)(ii).

[9] *Id.*

[10] 17 CFR 240.17Ad–22(e)(4)(vi).

[11] 17 CFR 240.17Ad–22(e)(4)(vi).

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 such filings also will be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

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–ICC–2023–012 and should be submitted on or before September 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–17857 Filed 8–18–23; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98138; File No. SR–ICEEU–2023–019]**

## Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to the Model Risk Policy

August 15, 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 August 4, 2023, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') proposes to modify its Model Risk Governance Framework (to be renamed the Model Risk Policy) (the ''Model Risk Policy'' or the ''Policy'')[3] to make certain enhancements to the Clearing House's current policy and practices as they pertain to model and parameter risks.

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) Purpose

ICE Clear Europe is proposing to amend its Model Risk Governance Framework (to be renamed the Model Risk Policy) to expand its current scope to include certain risk frameworks and to distinguish between ''Business As Usual'' (''BAU'') and non-BAU parameter changes, among other changes discussed herein.

The amendments would expand the scope of the Policy to include risk frameworks used to quantify, aggregate and manage the risks of the Clearing House. The amendments would further clarify that references to ''model'' in the rest of the document would refer to both models and risk frameworks. The discussion of the architecture supporting the Policy would be revised to also include guidelines for the remediation of validation findings relating to models.

The amendments would also state that changes to risk parameters would be categorized as significant and not significant. This would follow the same categorization under the existing Policy with respect to model changes. A footnote referencing a specific ESMA opinion as providing the criteria defining model change significance would be revised to state more generally that the criteria will be in accordance with prevailing regulatory opinions, guidelines or requirements (in order to take into account any other regulatory positions that may be in effect from time to time). Moreover, the changes to parameters would be categorized as Business as Usual (''BAU'') and Non-BAU. Changes considered BAU would be defined as changes in the parameters resulting from the application of existing methodologies as part of a regular review or calibration exercise. Non-BAU changes would be all other changes. The amendments would clarify that the definition of BAU would be in accordance with existing regulatory guidelines.

The amendments would also clarify certain governance responsibilities. The Board would be responsible for the approval of significant non-BAU changes to risk parameters. Auto Pilot versus Production deviations beyond BAU thresholds will generally follow a similar governance process to that for changes in parameters but given that these deviations are usually time sensitive and driven by stressed market conditions, the Clearing House will need the ability to act quickly to ensure market stability. Thus, for these situations the governance process will involve Board notification rather than Board pre-approval and Risk Oversight Department review rather than full independent pre-validation. The Model Oversight Committee would be responsible for establishing and maintaining a model inventory and assigning a specific owner to each model (a function currently performed by the First Line). The Model Oversight Committee would also be responsible for approving non-significant non-BAU changes to risk parameters and for reviewing significant non-BAU changes to risk parameters for recommendation to the Board. In addition, the committee would be responsible for approving changes to model documentation.

The First Line responsibilities would also be modified by the amendments. As noted above, the First Line would no longer be responsible for establishing and maintaining a model inventory and assigning a specific owner to each model as that responsibility would be moved to the Model Oversight Committee. The First Line would be responsible for proposing and seeking approval for non-BAU changes to risk parameters (as it currently does for models, model changes, and model retirements). Similarly, the First Line

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules and the Policy.

would also be responsible for proposing significance levels for non-BAU changes to risk parameters. The Second Line would be responsible for performing independent validation exercises for non-BAU changes to risk parameters (as it currently does for models).

Finally, a new sub-section would be added addressing Non-BAU parameter changes. The section would provide that significant non-BAU changes to risk parameters must be validated before they are implemented in production. Non-significant non-BAU changes must be validated in accordance with the validation pipeline.

A number of other drafting clarifications and conforming changes replacing the references to ''Framework'' with ''Policy'' would also be made throughout the document.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Policy are consistent with the requirements of Section 17A of the Securities Exchange Act of 1934 (the ''Act'') [4] and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act [5] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest.

The proposed changes to the Policy are designed to facilitate the risk management and governance of risk frameworks in a similar manner to that for models under the existing framework. The processes, controls and escalations used by the Clearing House with respect to the testing and reviewing of models, as well the responsibilities of the Clearing House's committees, management and the Board in relation to the models would thus be applied to risk frameworks. The amendments provide additional procedures for the management of risk parameter changes, distinguishing between BAU and non-BAU (which are subject to additional review and governance requirements). The Clearing House believes these changes will further overall risk management at the Clearing House, which would in turn promote the stability of the Clearing House and the prompt and accurate clearance and settlement of cleared contracts. The enhanced Policy is therefore also generally consistent with the protection of investors and the public interest in the safe operation of the Clearing House. (ICE Clear Europe would not expect the amendments to affect the safeguarding of securities and funds in ICE Clear Europe's custody or control or for which it is responsible.) Accordingly, the amendments satisfy the requirements of Section 17A(b)(3)(F).[6]

The amendments to the Policy are also consistent with relevant provisions of Rule 17Ad–22.[7] Rule 17Ad–22(e)(3)(i) provides ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency''.[8] The amendments to the Policy are intended to expand the considerations of the existing model governance framework to apply to risk frameworks as well as models and to distinguish BAU and non-BAU changes to risk parameters for purposes of ongoing review and oversight. The expanded scope of the Policy will, in ICE Clear Europe's view, assist the Clearing House in the ongoing review and oversight of the models and frameworks it uses in the operation of the Clearing House, and the management of the risks that may arise from the use of such models and frameworks. The amendments would thus strengthen the overall risk management of the Clearing House. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad–22(e)(3)(i).[9]

Rule 17Ad–22(b)(4) provides ''[a] registered clearing agency that performs central counterparty services shall establish, implement, maintain and enforce written policies and procedures reasonably designed to [. . .] [p]rovide for an annual model validation consisting of evaluating the performance of the clearing agency's margin models and the related parameters and assumptions associated with such models by a qualified person who is free from influence from the persons responsible for the development or operation of the models being validated''.[10] The amendments add non-BAU changes to risk parameters but do not otherwise change the Policy's or Clearing House's practice in reviewing and validating models. Under the Policy, the First Line would still be responsible for development and operation of the models, while the Risk Oversight Department (as part of the Second Line) is responsible for performing independent validation exercises for the new models, model changes and non-BAU changes to risk parameters. The Risk Oversight Committee would also oversee independent validation exercises performed by external validators. In ICE Clear Europe's view, the amendments are therefore consistent with Rule 17Ad–22(b)(4).[11]

Rules 17Ad–22(e)(4)(vii) provides ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [. . .] [e]ffectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by [. . .] [p]erforming a model validation for its credit risk models not less than annually or more frequently as may be contemplated by the covered clearing agency's risk management framework established [. . .]'' [12] and 17Ad–22(e)(6)(vii) provides ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [. . .] [c]over, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum [. . .] [r]equires a model validation for the covered clearing agency's margin system and related models to be performed not less than annually, or more frequently as may be contemplated by the covered clearing agency's risk management framework [. . .]''.[13] The amendments to the Policy expand the current scope to include risk frameworks and do not otherwise change ICE Clear Europe's model validation cycles. As per the Policy and the Clearing House's current practice, the validation pipeline would still include annual validation cycles. In ICE Clear Europe's view, the amendments are therefore consistent with Rules 17Ad–22(e)(4)(vii) [14] and 17Ad–22(e)(6)(vii).[15]

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 240.17 Ad–22.

[8] 17 CFR 240.17 Ad–22(e)(3)(i).

[9] 17 CFR 240.17 Ad–22(e)(3)(i).

[10] 17 CFR 240.17Ad–22(b)(4).

[11] 17 CFR 240.17Ad–22(b)(4).

[12] 17 CFR 240.17Ad–22(e)(4)(vii).

[13] 17 CFR 240.17Ad–22(e)(6)(vii).

[14] 17 CFR 240.17Ad–22(e)(4)(vii).

[15] 17 CFR 240.17Ad–22(e)(6)(vii).

Rule 17Ad–22(e)(2) provides that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] provide for governance arrangements that are clear and transparent'' [16] and ''[s]pecify clear and direct lines of responsibility''.[17] The amendments to the Policy would extend the existing responsibilities of the Clearing House's committees, management and the Board with respect to models to also apply to risk frameworks. The amendments would also clarify certain responsibilities of the Board and other relevant committees and personnel as they relate to BAU and Non-BAU changes to risk parameters. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad–22(e)(2).[18]

*(B) Clearing Agency's Statement on Burden on Competition*

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted to update and expand the Clearing House's Model Risk Policy, which relate to the Clearing House's internal processes for model and risk framework review, and overall risk management. The amendments will not change the Clearing House Rules or Procedures and will not change the rights or obligations of the Clearing House or Clearing Members. ICE Clear Europe does not believe the amendments and adoption would affect the costs of clearing, the ability of market participants to access clearing, or the market for clearing services generally. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any written comments received with respect to the proposed rule change.

[16] 17 CFR 240.17 Ad–22(e)(2)(i).

[17] 17 CFR 240.17 Ad–22(e)(2)(v).

[18] 17 CFR 240.17 Ad–22(e)(2).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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–ICEEU–2023–019 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2023–019. 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 such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.ice.com/clear-europe/regulation.*

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–ICEEU–2023–019 and should be submitted on or before September 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–17860 Filed 8–18–23; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98136; File No. SR–NYSEARCA–2023–52]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

August 15, 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 August 1, 2023, NYSE Arca, Inc. (''NYSE Arca'' or the ''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.

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges (''Fee Schedule'') to amend the Mid-Point Liquidity (''MPL'') Order pricing tiers. The Exchange proposes to implement the fee changes effective August 1, 2023. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Fee Schedule to amend the MPL Order [3] pricing tiers. More specifically, the Exchange proposes to adopt new MPL Tiers 1 and 2, replace current MPL Orders Step Up Tier 1 with MPL Tier 3, replace current MPL Orders Step Up Tier 2 with MPL Tier 4, and separate current MPL Orders tier into MPL Tier 5 and MPL Tier 6. The Exchange proposes to implement the fee changes effective August 1, 2023.

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [4]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [5] Indeed, equity trading is currently dispersed across 16 exchanges,[6] numerous alternative trading systems,[7] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 17% market share.[8] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange currently has less than 10% market share of executed volume of equities trading.[9]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, based on transaction fees and credits. Accordingly, the Exchange's fees are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Rule Change

In response to this competitive environment, the Exchange has already established multiple levels of credits for MPL Orders that allow ETP Holders to passively interact with trading interest on the Exchange and offer potential price improvement to incoming marketable orders submitted to the Exchange.[10] In order to provide an incentive for ETP Holders to provide such liquidity, the credits increase based on increased levels of volume directed to the Exchange. The MPL Order pricing tiers are intended to incentivize ETP Holders to earn increased credits by sending greater amounts of liquidity-providing MPL Orders in Tapes A, B and C securities to the Exchange.

As noted above, the Exchange currently provides multiple levels of credits, ranging from $0.0010 per share to $0.0026 per share, to ETP Holders that send MPL Orders that provide liquidity to the Exchange. For the current MPL Order pricing tier, the amount of the per share credit is based on an ETP Holder's ADV of provided liquidity in MPL Orders for Tape A, Tape B and Tape C Securities combined (''MPL Adding ADV''). For ETP Holders that have MPL Adding ADV during a billing month of at least 3 million shares, the Exchange currently provides a credit of $0.0015 per share in Tape A securities and $0.0020 per share in Tape B and Tape C securities. For ETP Holders with MPL Adding ADV during a billing month of at least 1.5 million shares but less than 3 million shares, the Exchange currently provides a credit of $0.0015 per share in Tape A, Tape B and Tape C securities. For ETP Holders with MPL Adding ADV during a billing month of less than 1.5 million shares, the Exchange currently provides a credit of $0.0010 per share in Tape A, Tape B and Tape C securities.[11]

For the current MPL Orders Step Up Tier 1 and MPL Orders Step Up Tier 2, the amount of the per share credit is based on an ETP Holder's MPL Adding ADV as compared to such orders sent in May 2019. Under MPL Order Step Up Tier 1, if an ETP Holder's traded volume against its MPL Orders that provide liquidity is 2 million shares more than such ETP Holder's baseline of MPL liquidity-providing ADV, as measured in May 2019, the Exchange currently provides a credit of $0.0026 per share in Tape A, Tape B and Tape C securities. Under MPL Orders Step Up Tier 2, if an ETP Holder's traded volume against its MPL Orders that provide liquidity is 1 million shares more than such ETP Holder's baseline of MPL liquidity-

[3] A MPL Order is a limit order that is not displayed and does not route, with a working price at the midpoint of the Protected Best Bid/Offer. *See* NYSE Arca Rule 7.31–E(d)(3).

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[5] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[6] *See* Cboe U.S. Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share.*

[7] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[9] *See id.*

[10] *See, e.g.,* Securities Exchange Act Release No. 54511 (September 26, 2006), 71 FR 58460, 58461 (October 3, 2006) (SR–PCX–2005–53).

[11] The Exchange charges a fee of $0.0030 per share for MPL Orders in Tape A, Tape B and Tape C Securities that remove liquidity from the Exchange that are not designated as ''Retail Orders.'' MPL Orders removing liquidity from the Exchange that are designated as Retail Orders are subject to a fee of $0.0010 per share. *See* Fee Schedule.

providing ADV, as measured in May 2019, the Exchange currently provides a credit of $0.0025 per share in Tape A, Tape B and Tape C securities.

The Exchange now proposes to adopt new MPL Tiers 1 and 2, replace current MPL Orders Step Up Tier 1 with proposed MPL Tier 3, replace current MPL Orders Step Up Tier 2 with proposed MPL Tier 4, and separate current MPL Orders tier into proposed MPL Tier 5 and proposed MPL Tier 6. The proposed changes are described more fully below.

First, the Exchange proposes to adopt two new MPL Order pricing tiers. Under proposed new MPL Tier 1, the Exchange would provide a credit of $0.0028 per share in Tape A, Tape B and Tape C securities to ETP Holders that have MPL Adding ADV during a billing month of at least 15 million shares.

Next, under proposed new MPL Tier 2, the Exchange would provide a credit of $0.0027 per share in Tape A, Tape B and Tape C securities to ETP Holders that have MPL Adding ADV during a billing month of at least 13 million shares.

Next, the Exchange proposes to replace current MPL Orders Step Up Tier 1 with proposed MPL Tier 3. Under proposed MPL Tier 3, the Exchange would provide a credit of $0.0026 per share in Tape A, Tape B and Tape C securities to ETP Holders that have MPL Adding ADV during a billing month of at least 5 million shares. ETP Holders may alternatively qualify for the proposed MPL Tier 3 credit if they have MPL Adding ADV during the billing month of at least 2 million shares and have MPL Adding ADV, as a percent of Adding ADV, of at least 50%.

Next, the Exchange proposes to replace current MPL Orders Step Up Tier 2 with proposed MPL Tier 4. Under proposed MPL Tier 4, the Exchange would provide a credit of $0.0025 per share in Tape A, Tape B and Tape C securities to ETP Holders that have MPL Adding ADV during a billing month of at least 3 million shares. ETP Holders may alternatively qualify for the proposed MPL Tier 4 credit if they have MPL Adding ADV during the billing month of at least 1 million shares and have MPL Adding ADV, as a percent of Adding ADV, of at least 50%.

Next, the Exchange proposes to separate current MPL Orders tier into proposed MPL Tier 5 and proposed MPL Tier 6. Under current MPL Orders tier, ETP Holders that have MPL Adding ADV during a billing month of at least 3 million shares currently qualify for a credit of $0.0015 per share in Tape A securities and $0.0020 per share in Tape B and Tape C securities. The Exchange proposes the following changes to the current pricing tier:

- Rename the tier as MPL Tier 5;
- Lower the MPL Adding ADV requirement to qualify for the renamed tier, from 3 million shares to 2 million shares; and
- Increase the credit applicable to the renamed tier in Tape A securities, from $0.0015 per share to $0.0020 per share.

Finally, under current MPL Orders Tier, ETP Holders that have MPL Adding ADV during a billing month of at least 1.5 million shares currently qualify for a credit off $0.0015 per share in Tape A, Tape B and Tape C securities. The Exchange proposes to rename the current pricing tier as MPL Tier 6 without any change to the volume requirement or credits payable under the pricing tier.

With this proposed change, the MPL Order Tiers pricing tier would appear as follows:

| Tier | MPL order tiers | | | |
|---|---|---|---|---|
| | Minimum requirement | | Credit for MPL adding | |
| | MPL adding ADV | MPL adding ADV as percent of adding ADV | Tape A | Tape B and tape C |
| MPL Tier 1 | 15 Million | | ($0.0028) | ($0.0028) |
| MPL Tier 2 | 13 Million | | (0.0027) | (0.0027) |
| MPL Tier 3 | 5 Million or 2 Million | 50 | (0.0026) | (0.0026) |
| MPL Tier 4 | 3 Million or 1 Million | 50 | (0.0025) | (0.0025) |
| MPL Tier 5 | 2 Million | | (0.0020) | (0.0020) |
| MPL Tier 6 | 1.5 Million | | (0.0015) | (0.0015) |

The goal of the proposed rule change is to incentivize ETP Holders with higher per share credits to increase the number of MPL Orders they post on the Exchange's Book, which would provide additional price improvement opportunities for incoming orders. MPL Orders allow for additional opportunities for passive interaction with trading interest on the Exchange and are designed to offer potential price improvement to incoming marketable orders submitted to the Exchange. The Exchange believes that by correlating the level of the credit to the level of MPL Adding ADV, the Exchange's fee structure would incentivize ETP Holders to submit more liquidity-providing MPL Orders to the Exchange, thereby increasing the potential for price improvement to incoming marketable orders submitted to the Exchange.

The Exchange believes adopting increased credits payable under the proposed MPL Tiers 1 and 2 would provide an incentive for ETP Holders to send increased order flow to qualify for these tiers. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting MPL Orders that are posted on the Exchange's Book. Because each of the proposed MPL Tiers 1 and 2 pricing tiers would require ETP Holders to provide increased liquidity, the Exchange believes that the proposed higher credits would incentivize ETP Holders to route additional liquidity-providing orders to the Exchange to qualify for the proposed pricing tiers.

The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. Without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether the proposed new pricing tiers would result in any ETP Holders sending more of their liquidity-providing orders to the Exchange to qualify for the proposed new credits. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of this opportunity, but additional liquidity-providing orders would benefit all market participants because it would provide greater execution opportunities on the Exchange. The Exchange believes the proposed higher credits would provide

an incentive for ETP Holders to submit additional MPL Orders to the Exchange to qualify for such credits.

As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable, providing liquidity that would be displayed on the Exchange. The proposed rule change is designed to incentivize ETP Holders to increase the orders sent to the Exchange that would provide displayed liquidity, which would support the quality of price discovery and transparency on the Exchange. The Exchange believes that by correlating the level of the credit to the level of executed providing volume on the Exchange, the Exchange's fee structure would incentivize ETP Holders to submit more displayed, liquidity-providing orders to the Exchange that are likely to be executed (*i.e.,* are not orders that are intended to be displayed, but are priced such that they are not likely to be executed), thereby increasing the potential for incoming marketable orders submitted to the Exchange to receive an execution.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[13] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Fee Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [15] Indeed, equity trading is currently dispersed across 16 exchanges,[16] numerous alternative trading systems,[17] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 17% market share (whether including or excluding auction volume).[18] The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, the Exchange's fees are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange believes the proposed changes to the MPL Order pricing tiers, including the adoption of new MPL Tier 1 and MPL Tier 2 and the proposed adoption of an alternative criteria to qualify for proposed MPL Tier 3 and MPL Tier 4, are reasonable because the current credits and the increased credits under the proposed MPL Tier 1 and MPL Tier 2 would provide an incentive for ETP Holders to route greater amounts of liquidity-providing orders to the Exchange. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting order flow that provides liquidity on an exchange. The Exchange believes it is reasonable to continue to provide the current level of credits and the higher credits under the proposed MPL Tier 1 and MPL Tier 2 for orders that provide liquidity if an ETP Holder meets the qualification for such pricing tiers.

Because the proposed MPL Tier 1 and MPL Tier 2 would be new with a requirement to submit greater amounts of MPL Adding ADV, no ETP Holder currently qualifies for the proposed new pricing tiers. The Exchange believes the proposed increased credits are reasonable as they would provide an additional incentive for ETP Holders to qualify for these new tiers and direct their order flow to the Exchange and provide meaningful added levels of liquidity, thereby contributing to the depth and market quality on the Exchange.

The Exchange believes that the proposed alternative to qualify for MPL Tier 3 and MPL Tier 4 by utilizing a lower MPL adding volume requirement coupled with a MPL Adding ADV, as a percent of Adding ADV, of at least 50%, is reasonable because the proposed adoption of an alternative criteria would provide ETP Holders with greater flexibility to reach these tiers, thereby creating an added incentive for ETP Holders to bring additional order flow to a public exchange, thereby encouraging greater participation and liquidity.

The Exchange believes amending the current pricing tier by adopting an alternative requirement may encourage those ETP Holders who could not previously achieve the volume requirement an incentive to increase their order flow on the Exchange. Increased liquidity would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

On the backdrop of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt by the Exchange to increase its liquidity and improve its market share relative to its competitors.

The Proposed Fee Change Is An Equitable Allocation of Credits and Fees

The Exchange believes the proposed fee change is an equitable allocation of its fees and credits. The Exchange believes that the proposed changes to the MPL Order pricing tiers, including the adoption of increased credits under the proposed MPL Tier 1 and MPL Tier 2 pricing tiers and the proposed adoption of an alternative criteria to qualify for proposed MPL Tier 3 and MPL Tier 4, is equitable because the magnitude of the additional credit is not unreasonably high in comparison to the credit paid with respect to other pricing tiers on the Exchange, and in comparison to the credits paid by other exchanges for orders that provide

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See* Regulation NMS, *supra* note 4, 70 FR at 37499.

[15] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Final Rule).

[16] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[17] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[18] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

midpoint liquidity. For example, ETP Holders currently receive credits in Tape A, Tape B and Tape C securities that range between $0.0010 per share and $0.0026 per share under Standard and Tiered rates. With respect to credits paid by the Exchange's competitors, the Nasdaq Stock Market LLC provides a credit of $0.0025 per share to add non-displayed midpoint liquidity in Tape A, Tape B and Tape C Securities on that market for members that add greater than 5 million shares of midpoint liquidity and add 8 million shares on non-displayed liquidity.[19]

The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange thereby improving market-wide quality. ETP Holders that currently qualify for credits associated with MPL Orders will continue to receive credits when they provide liquidity to the Exchange. With the proposed new MPL Tier 1 and MPL Tier 2, all ETP Holders would be eligible to qualify for the higher credit if they increase their MPL Adding ADV. The Exchange believes that recalibrating the credits for providing liquidity will continue to attract order flow and liquidity to the Exchange, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not presently qualify for the credits associated with MPL Orders, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

The Proposed Fee Change Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. Moreover, this proposed rule change neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes it is not unfairly discriminatory to provide the current level of credits and the increased per share credits under proposed MPL Tier 1 and MPL Tier 2 as each such credit would be provided on an equal basis to all ETP Holders that add liquidity by meeting the requirements of the existing MPL Order pricing tiers, including the proposed MPL Tier 1 and MPL Tier 2. The Exchange believes the proposed increased per share credits would incentivize ETP Holders that meet the current tiered requirements to send more of their MPL Orders to the Exchange to qualify for such credits. The Exchange further believes it is not unfairly discriminatory to adopt an alternative requirement to qualify for the current level of credits under proposed MPL Tier 3 and MPL Tier 4 as each such credit would be provided on an equal basis to all ETP Holders and each such ETP Holder would have an opportunity to qualify for the current level of credit by utilizing a mix of MPL Adding ADV and Adding ADV in Tape A, Tape B and Tape C securities. The Exchange also believes that the proposed changes are not unfairly discriminatory because they are reasonably related to the value of the Exchange's market quality associated with higher volume. The credits, both existing and the proposed higher ones, would apply equally to all ETP Holders as each would be required to provide liquidity in MPL Orders for Tape A, Tape B and Tape C Securities combined during the billing month regardless of whether an ETP Holder currently meets the requirement of another pricing tier.

Finally, the submission of orders to the Exchange is optional for ETP Holders in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[20] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [21]

*Intramarket Competition.* The proposed changes are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed changes to the MPL Order pricing tiers, including the adoption of higher credits under proposed MPL Tier 1 and MPL Tier 2, would continue to incentivize market participants to direct more orders to the Exchange, and in particular, liquidity-providing MPL Orders. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities. The proposed changes to the MPL Order pricing tier should incentivize ETP Holders to send liquidity-providing orders to the Exchange, thereby contributing to robust levels of liquidity, which would benefit all market participants on the Exchange. The current and proposed new credits would be available to all similarly-situated market participants, and, as such, the proposed changes would not impose a disparate burden on competition among market participants on the Exchange.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading (*i.e.,* excluding auctions) is currently less than 10%. In such an environment, the Exchange must continually review, and consider adjusting its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed changes could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

[19] *See* Rebate to Add Non-Displayed Midpoint Liquidity, at *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

[20] 15 U.S.C. 78f(b)(8).

[21] Regulation NMS, 70 FR at 37498–99.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)[22] of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2023–52 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2023–52. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to file number SR–NYSEARCA–2023–52, and should be submitted on or before September 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–17858 Filed 8–18–23; 8:45 am]

**BILLING CODE 8011–01–P**

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #18061 and #18062; HAWAII Disaster Number HI–00073]**

### Presidential Declaration of a Major Disaster for the State of HAWAII

**AGENCY:** Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for the State of Hawaii (FEMA–4724–DR), dated 08/10/2023.

*Incident:* Wildfires.

*Incident Period:* 08/08/2023 and continuing.

**DATES:** Issued on 08/10/2023.

*Physical Loan Application Deadline Date:* 10/10/2023.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/10/2024.

**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 08/10/2023, applications for disaster loans may be filed 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 (Physical Damage and Economic Injury Loans):* Maui

*Contiguous Counties (Economic Injury Loans Only):*

Hawaii: Kalawao

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners with Credit Available Elsewhere | 5.000 |
| Homeowners without Credit Available Elsewhere | 2.500 |
| Businesses with Credit Available Elsewhere | 8.000 |
| Businesses without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations with Credit Available Elsewhere | 2.375 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.375 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.375 |

The number assigned to this disaster for physical damage is 18061 5 and for economic injury is 18062 0.

(Catalog of Federal Domestic Assistance Number 59008)

**Francisco Sánchez, Jr.,**

*Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2023–17935 Filed 8–18–23; 8:45 am]

**BILLING CODE 8026–09–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #18067 and #18068; MISSISSIPPI Disaster Number MS–00154]**

### Presidential Declaration of a Major Disaster for the State of MISSISSIPPI

**AGENCY:** Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–4727–DR), dated 08/12/2023.

*Incident:* Severe Storms, Straight-line Winds, and Tornadoes.

*Incident Period:* 06/14/2023 through 06/19/2023.

**DATES:** Issued on 08/12/2023.

*Physical Loan Application Deadline Date:* 10/11/2023.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/13/2024.

**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 08/12/2023, applications for disaster loans may be filed 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 (Physical Damage and Economic Injury Loans):* Jackson, Jasper.

*Contiguous Counties (Economic Injury Loans Only):*

*Mississippi:* Clarke, George, Harrison, Jones, Lauderdale, Newton, Scott, Smith, Stone, Wayne.

*Alabama:* Mobile.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners with Credit Available Elsewhere | 5.000 |
| Homeowners without Credit Available Elsewhere | 2.500 |
| Businesses with Credit Available Elsewhere | 8.000 |
| Businesses without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations with Credit Available Elsewhere | 2.375 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.375 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.375 |

The number assigned to this disaster for physical damage is 18067 C and for economic injury is 18068 0.

(Catalog of Federal Domestic Assistance Number 59008)

**Francisco Sánchez, Jr.,**

*Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2023–17933 Filed 8–18–23; 8:45 am]

**BILLING CODE 8026–09–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #18071 and #18072; NEW JERSEY Disaster Number NJ–00074]**

### Presidential Declaration of a Major Disaster for Public Assistance Only for the State of NEW JERSEY

**AGENCY:** Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Jersey (FEMA–4725–DR), dated 08/11/2023.

*Incident:* Severe Storm and Flooding.

*Incident Period:* 07/14/2023 through 07/15/2023.

**DATES:** Issued on 08/11/2023.

*Physical Loan Application Deadline Date:* 10/10/2023.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/13/2024.

**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 08/11/2023, 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:* Warren

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 18071 6 and for economic injury is 18072 0.

(Catalog of Federal Domestic Assistance Number 59008)

**Francisco Sánchez, Jr.,**

*Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2023–17936 Filed 8–18–23; 8:45 am]

**BILLING CODE 8026–09–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #18073 and #18074; MONTANA Disaster Number MT–00170]**

### Presidential Declaration of a Major Disaster for Public Assistance Only for the State of MONTANA

**AGENCY:** Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Montana (FEMA–4726–DR), dated 08/12/2023.

*Incident:* Flooding.

*Incident Period:* 04/10/2023 through 04/26/2023.

**DATES:** Issued on 08/12/2023.

*Physical Loan Application Deadline Date:* 10/11/2023.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/13/2024.

**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 08/12/2023, 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:* Blaine, Daniels, Hill, Park, Roosevelt, Sheridan, Valley and the Fort Peck Tribes.

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 |

| | Percent |
|---|---|
| *For Economic Injury:* | |
| Non-Profit Organizations without Credit Available Elsewhere | 2.375 |

The number assigned to this disaster for physical damage is 18073 6 and for economic injury is 18074 0.

(Catalog of Federal Domestic Assistance Number 59008)

**Francisco Sánchez, Jr.,**

*Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2023–17937 Filed 8–18–23; 8:45 am]

**BILLING CODE 8026–09–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #18026 and #18027; VERMONT Disaster Number VT–00047]**

### Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of VERMONT

**AGENCY:** Small Business Administration.

**ACTION:** Amendment 2.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Vermont (FEMA–4720–DR), dated 07/14/2023.

*Incident:* Severe Storms, Flooding, Lanslides, and Mudslides.

*Incident Period:* 07/07/2023 through 07/17/2023.

**DATES:** Issued on 08/15/2023.

*Physical Loan Application Deadline Date:* 09/12/2023.

*Economic Injury (EIDL) Loan Application Deadline Date:* 04/15/2024.

**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:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Vermont, dated 07/14/2023, is hereby amended to establish the incident period for this disaster as beginning 07/07/2023 through 07/17/2023.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**Francisco Sánchez, Jr.,**

*Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2023–17930 Filed 8–18–23; 8:45 am]

**BILLING CODE 8026–09–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #18075 and #18076; ILLINOIS Disaster Number IL–00086]**

### Presidential Declaration of a Major Disaster for the State of ILLINOIS

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–4728–DR), dated 08/15/2023.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 06/29/2023 through 07/02/2023.

**DATES:** Issued on 08/15/2023.

*Physical Loan Application Deadline Date:* 10/16/2023.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/15/2024.

**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 08/15/2023, applications for disaster loans may be filed 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 (Physical Damage and Economic Injury Loans):* Cook

*Contiguous Counties (Economic Injury Loans Only):*

*Illinois:* DuPage, Kane, Lake, McHenry, Will

*Indiana:* Lake

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners with Credit Available Elsewhere | 5.000 |
| Homeowners without Credit Available Elsewhere | 2.500 |
| Businesses with Credit Available Elsewhere | 8.000 |
| Businesses without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations with Credit Available Elsewhere | 2.375 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.375 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.375 |

The number assigned to this disaster for physical damage is 18075 6 and for economic injury is 18076 0.

(Catalog of Federal Domestic Assistance Number 59008)

**Francisco Sánchez, Jr.,**

*Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2023–17938 Filed 8–18–23; 8:45 am]

**BILLING CODE 8026–09–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 18016 and # 18017; VERMONT Disaster Number VT–00046]**

### Presidential Declaration Amendment of a Major Disaster for the State of VERMONT

**AGENCY:** Small Business Administration.

**ACTION:** Amendment 4.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Vermont (FEMA–4720–DR), dated 07/14/2023.

*Incident:* Severe Storms, Flooding, Landslides, and Mudslides.

*Incident Period:* 07/07/2023 through 07/17/2023.

**DATES:** Issued on 08/15/2023.

*Physical Loan Application Deadline Date:* 09/12/2023.

*Economic Injury (EIDL) Loan Application Deadline Date:* 04/15/2024.

**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:** The notice of the President's major disaster declaration for the State of Vermont,

dated 07/14/2023, is hereby amended to establish the incident period for this disaster as beginning 07/07/2023 through 07/17/2023.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**Francisco Sánchez, Jr.,**

*Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2023–17932 Filed 8–18–23; 8:45 am]

**BILLING CODE 8026–09–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #18069 and #18070; MISSISSIPPI Disaster Number MS–00156]**

### Presidential Declaration of a Major Disaster for Public Assistance Only for the State of MISSISSIPPI

**AGENCY:** Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Mississippi (FEMA–4727–DR), dated 08/12/2023.

*Incident:* Severe Storms, Straight-line Winds, and Tornadoes.

*Incident Period:* 06/14/2023 through 06/19/2023.

**DATES:** Issued on 08/12/2023.

*Physical Loan Application Deadline Date:* 10/11/2023.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/13/2024.

**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 08/12/2023, 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:*

Claiborne, Copiah, Covington, Jackson, Jasper, Jefferson, Jefferson Davis, Lawrence, Leake, Neshoba, Newton, Rankin, Scott, Simpson, Smith, Wayne and the Mississippi Band of Choctaw Indians

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 18069 C and for economic injury is 18070 0.

(Catalog of Federal Domestic Assistance Number 59008)

**Francisco Sánchez, Jr.,**

*Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2023–17934 Filed 8–18–23; 8:45 am]

**BILLING CODE 8026–09–P**

## DEPARTMENT OF STATE

**[Public Notice: 12157]**

### Charter Renewal, Foreign Affairs Policy Board

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. 1001 *et seq.,* and 41 CFR 102–3.65, the Department of State hereby provides notice of the renewal of the charter of the Foreign Affairs Policy Board (''the Board'').

The Foreign Affairs Policy Board provides the Secretary of State with advice, feedback, and perspectives from a diverse array of experts to advance the Department's mission and help root American foreign policy in the needs and aspirations of the American people.

The Board's activities are advisory only. The Board is established under the general authority of the Secretary of State and the Department of State as set forth in title 22 of the United States Code, in particular section 2656 of that Title and consistent with Federal Advisory Committee Act.

For additional information, contact Leslie Thompson in the Office of Policy Planning, U.S. Department of State, at email *ThompsonL2@state.gov* or phone 202–341–4949.

**Salman Ahmed,**

*Director, Office of Policy Planning, Department of State.*

[FR Doc. 2023–17950 Filed 8–18–23; 8:45 am]

**BILLING CODE 4710–10–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No.: FAA–2023–0288; Summary Notice No. 2023–33]**

### Petition for Exemption; Summary of Petition Received; Ampaire, Inc.

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

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before September 11, 2023.

**ADDRESSES:** Send comments identified by docket number FAA–2023–0288 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for

accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Andrew Thai at (202) 267–0175, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

**Angela O. Anderson,**

*Director, Regulatory Support Division, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2023–0288.
*Petitioner:* Ampaire, Inc.
*Section(s) of 14 CFR Affected:* §§ 91.305 and 91.319(c).
*Description of Relief Sought:* Ampaire, Inc. (Ampaire) is requesting an exemption to demonstrate their modified Hybrid Electric Cessna 337 Skymaster technology to potential customers when flying over densely populated areas outside of the airport traffic pattern and flight on congested airways solely during market survey operations for the purpose of repositioning the aircraft from the Camarillo Airport (KCMA) to and from the Hawthorne Municipal Airport (KHHR). Ampaire will be within a power off glide distance of the Santa Monica or Hawthorne airports at all times.

[FR Doc. 2023–17947 Filed 8–18–23; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Issuance of Supplemental Record of Approval of Newark Liberty International Airport (EWR) Noise Compatibility Program

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of supplemental approval of the Newark Liberty International Airport (EWR) noise compatibility program.

**SUMMARY:** The Federal Aviation Administration (FAA) announces additional findings for the noise compatibility program submitted by the Port Authority of New York and New Jersey for EWR, see **SUPPLEMENTARY INFORMATION** for details. On January 15, 2019, the FAA determined that the noise exposure maps submitted for EWR were in compliance with applicable requirements. On August 19, 2022, the FAA determined that the noise compatibility program submitted for EWR would be initiating final review for approval or disapproval. On February 15, 2023, the FAA approved the EWR noise compatibility program with the issuance of a Record of Approval. The noise compatibility program contained 28 recommended measures, including 13 noise abatement measures, three land use measures, and 12 program management measures. Of the measures proposed, 15 were approved, two were approved as voluntary, two were partially approved as voluntary and partially disapproved, five were disapproved, and one was determined to have no FAA action as continuations of existing mandatory practices at EWR. Three measures contained in the noise compatibility program were noise abatement procedures that required additional consultation with the FAA Air Traffic Organization. Additionally, following issuance of the Record of Approval on February 15, 2023, the Port Authority requested that the FAA revisit the decision for Noise Abatement Measure 6, indicating that the rationale for disapproval originally provided contained an error. On August 14, 2023, the FAA issued a Supplemental Record of Approval for the EWR noise compatibility program regarding these four noise abatement measures. The Supplemental Record of Approval disapproves the three measures upon which No Action was taken with the February 15, 2023 Record of Approval and revises the decision on Noise Abatement Measure 6 from disapproved to approved.

**DATES:** The effective date of the FAA's Supplemental Record of Approval of the EWR noise compatibility program is August 14, 2023.

**FOR FURTHER INFORMATION CONTACT:** Andrew Brooks, Regional Environmental Program Manager, Airports Division, Federal Aviation Administration, 1 Aviation Plaza, Room 516, Jamaica, NY 11434. Phone Number: 718–553–2511.

**SUPPLEMENTARY INFORMATION:** This notice announces FAA's issuance of a Supplemental Record of Approval (ROA) of the EWR noise compatibility program (NCP), effective on August 14, 2023. Per United States Code section 47504 (49 U.S.C. 47504) and title 14, Code of Federal Regulations (CFR) part 150, an airport sponsor who previously submitted a noise exposure map (NEM) may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport sponsor for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the NEMs. As required by 49 U.S.C. 47504, such programs must be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and the FAA. The FAA does not substitute its judgment for that of the airport sponsor with respect to which measures should be recommended for action. The FAA approval or disapproval of an airports recommendations in their NCP are made in accordance with the requirements and standards pursuant to 49 U.S.C. 47504 and 14 CFR part 150, which is limited to the following determinations:

a. The NCP was developed in accordance with the provisions and procedures of 14 CFR 150.23;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations of FAA's approval of NCPs are delineated in 14 CFR 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the noise compatibility program nor a determination that all measures covered by the NCP are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests must be submitted to the FAA

New York Airports District Office at 1 Aviation Plaza, Room 111, Jamaica, New York 11434.

The Port Authority submitted the EWR NEMs, descriptions, and other documentation produced during the noise compatibility planning study to the FAA and the FAA determined that the EWR NEMs were in compliance with applicable requirements under 14 CFR 150, effective January 15, 2019 (Noise Exposure Map Notice for Newark Liberty International Airport, Newark, New Jersey, volume 84, **Federal Register**, pages 27183–4, June 11, 2019). The FAA formally received the NCP based on the accepted NEMs for EWR on August 8, 2022. The Port Authority requested that the FAA review the submitted material and that the noise mitigation measures, to be implemented jointly by the Port Authority and surrounding communities, be approved as a NCP. The formal review period, limited by law to a maximum of 180 days with the exception of noise abatement procedures, was initiated on August 19, 2022. Notice of the intent to review the NCP was published in the **Federal Register** on August 24, 2022 (Notice of Receipt and Request for Review of Noise Compatibility Program, volume 87, **Federal Register**, page 52105, August 24, 2022). That **Federal Register** Notice also announced the start of a 60-day period of public review for the NCP documentation. The FAA received no comments from interested parties during the public review period.

The EWR NCP is comprised of actions designed for phased implementation by Port Authority and adjacent jurisdictions within the next one to five years. FAA evaluated and approved this material as a noise compatibility program as described in 49 U.S.C. 47504. The submitted NCP contained 28 proposed measures to minimize impacts of aviation noise on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the 49 U.S.C. 47504 and 14 CFR part 150 were satisfied. A ROA for the overall program was issued by the FAA effective February 15, 2023 (Approval of Newark Liberty International Airport (EWR) Noise Compatibility Program, volume 88, **Federal Register**, pages 10617–9, February 21, 2023). The individual determinations for the specific program elements from the ROA issued February 15, 2023 that are the subject of the Supplemental ROA were:

Noise Abatement Measure 2: Continue Use of Easterly Departure Headings on Runways 4L and 4R—No Action Required at This Time. This measure relates to flight procedures under title 49 U.S.C. 47504(b). In accordance with 14 CFR part 150.35(a), additional coordination will be occurring with the Air Traffic Organization and a Supplemental Record of Approval with FAA's final decision on this proposed measure will be issued on or before August 14, 2023.

Noise Abatement Measure 4: Determine and Implement Optimal Easterly Departure Headings on Runways 4L and 4R—No Action Required at This Time. This measure relates to flight procedures under Title 49 U.S.C. 47504(b). In accordance with 14 CFR part 150.35(a), additional coordination will be occurring with the Air Traffic Organization and a Supplemental Record of Approval with FAA's final decision on this proposed measure will be issued on or before August 14, 2023.

Noise Abatement Measure 6: Encourage Use of FAA-prescribed Distant Noise Abatement Departure Profile Procedures on a Voluntary Basis—Disapproved for Purposes of part 150.

Noise Abatement Measure 12: Implement Nighttime ''New Jersey Turnpike'' Departure Procedures for Runways 22L and 22R—No Action Required at This Time. This measure relates to flight procedures under Title 49 U.S.C. 47504(b). In accordance with 14 CFR part 150.35(a), additional coordination will be occurring with the Air Traffic Organization and a Supplemental Record of Approval with FAA's final decision on this proposed measure will be issued on or before August 14, 2023.

Consultation with the FAA's Air Traffic Organization was conducted for the three Noise Abatement Measures (Measures 2, 4, and 12) identified as requiring additional review. The Supplemental ROA includes decisions on these three measures. Additionally, following issuance of the ROA on February 15, 2023, the Port Authority requested that the FAA revisit the decision for Noise Abatement Measure 6, indicating that the rationale for disapproval of the proposed Noise Abatement Departure Procedures (NADP) originally provided contained an error. The ROA stated that ''Documentation provided in support of this measure by the Port Authority did not include analysis comparing implementation of the measure to the accepted EWR NEM, rather it included a comparative analysis of implementation of potential NADP 1 and NADP 2 procedures at EWR.'' After review, the FAA determined that this was an oversight due to a differing approach in analysis used at EWR in comparison to that done for the recently approved NCP for LaGuardia Airport and that the EWR NCP documentation did include the required analysis. This Supplemental ROA also includes a revised decision on this measure. The specific program elements within the Supplemental ROA and their individual determinations are as follows:

Noise Abatement Measure 2: Disapproved.

Noise Abatement Measure 4: Disapproved.

Noise Abatement Measure 6: Encourage Use of FAA-prescribed Distant Noise Abatement Departure Profile Procedures on a Voluntary Basis—Approved as Voluntary.

Noise Abatement Measure 12: Implement Nighttime ''New Jersey Turnpike'' Departure Procedures for Runways 22L and 22R—Disapproved.

These determinations are set forth in detail in the Supplemental ROA signed by the FAA Airports Eastern Division Director on August 14, 2023. The Supplemental ROA pertains to the listed measures only, and does not change the decisions made by the FAA in the ROA for the NCP dated February 15, 2023 for the measures not contained within the Supplemental ROA. The Supplemental ROA, as well as other evaluation materials and the documents comprising the original submittal, are available for review at the FAA office listed above. The Supplemental ROA also will be available on the internet on the FAA's website at *http://www.faa.gov/airports/environmental/airport_noise/part_150/states/* and the Port Authority of New York and New Jersey's website at *http://panynjpart150.com/EWR_documents.asp.*

Issued in Jamaica, NY, on August 16, 2023.

**David A. Fish,**

*Director, Airports Division Eastern Region.*

[FR Doc. 2023–17917 Filed 8–18–23; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2023–0022]**

### Qualification of Drivers; Exemption Applications; Hearing

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of applications for exemption; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 11 individuals for an

exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

**DATES:** Comments must be received on or before September 20, 2023.

**ADDRESSES:** You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2023–0022 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2023–0022) in the keyword box and click ''Search.'' Next, choose the only notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## I. Public Participation

### *A. Submitting Comments*

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2023–0022), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2023-0022/document.* Next, choose the only notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

FMCSA will consider all comments and material received during the comment period.

### *B. Viewing Comments*

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2023–0022) in the keyword box and click ''Search.'' Next, choose the only notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

### *C. Privacy Act*

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

## II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The 11 individuals listed in this notice have requested an exemption from the hearing requirement in 49 CFR 391.41(b)(11). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

On February 1, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Application for Exemptions; National Association of the Deaf,'' (78 FR 7479), its decision to grant requests from 40 individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers. Since that time the Agency has published additional notices granting requests from hard of hearing and deaf individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers.

## III. Qualifications of Applicants

### *Eric Blount*

Eric Blount, 28, holds a class D driver's license in Arizona.

### *Shaun Cannady*

Shaun Cannady, 22, holds a class C driver's license in California.

### *Rebecca Haynes*

Rebecca Haynes, 50, holds a class C driver's license in Texas.

*Kyesha Hemphill*

Kyesha Hemphill, 33, holds a class R driver's license in Mississippi.

*Kayla Lucero*

Kayla Lucero, 31, holds a class D driver's license in New Mexico.

*Alexandra Muller*

Alexandra Muller, 27, holds a class D driver's license in Arizona.

*Glenn Rozier*

Glenn Rozier, 78, holds a class B commercial driver's license (CDL) in Georgia.

*Aaron Sanders*

Aaron Sanders, 40, holds a driver's license in Washington.

*Eric Shepeard*

Eric Shepeard, 49, holds a class B driver's license in Delaware.

*Timothy Szabo*

Timothy Szabo, 36, holds a class ABCD CDL in Wisconsin.

*Perry Wesberry*

Perry Wesberry, 41, holds a class A CDL in Virginia.

**IV. Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2023–17940 Filed 8–18–23; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2014–0383; FMCSA–2014–0384; FMCSA–2018–0138; FMCSA–2021–0014]**

### Qualification of Drivers; Exemption Applications; Hearing

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to renew exemptions for 11 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

**DATES:** The exemptions were applicable on July 30, 2023. The exemptions expire on July 30, 2025.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**I. Public Participation**

*A. Viewing Comments*

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2014–0383, FMCSA–2014–0384, FMCSA–2018–0138, or FMCSA–2021–0014) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

*B. Privacy Act*

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

**II. Background**

On July 10, 2023, FMCSA published a notice announcing its decision to renew exemptions for 11 individuals from the hearing standard in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (88 FR 43648). The public comment period ended on August 9, 2023, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

**III. Discussion of Comments**

FMCSA received no comments in this proceeding.

**IV. Conclusion**

Based upon its evaluation of the 11 renewal exemption applications and comments received, FMCSA announces its decision to exempt the following drivers from the hearing requirement in § 391.41(b)(11).

As of July 30, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 11 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (88 FR 43649):

Selwyn Abrahamson, (MN)
Chris Anderson (TX)
Thomas Carr (PA)
Elezar Contreras (IL)
Michael Hoyt (OR)
Thomas Lipyanic (FL)
Jonas Pittman (NC)
Leroy Raine (AL)
Troy Rolland (TX)
Sandy Sloat (TX)
Richard Whittaker (FL)

The drivers were included in docket numbers FMCSA–2014–0383, FMCSA–2014–0384, FMCSA–2018–0138, or FMCSA–2021–0014. Their exemptions were applicable as of July 30, 2023 and will expire on July 30, 2025.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2023–17941 Filed 8–18–23; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2023–0021]**

### Qualification of Drivers; Exemption Applications; Hearing

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 12 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

**DATES:** The exemptions are applicable on August 16, 2023. The exemptions expire on August 16, 2025.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

#### I. Public Participation

*A. Viewing Comments*

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2023–0021) in the keyword box and click ''Search.'' Next, choose the only notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

*B. Privacy Act*

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

#### II. Background

On July 10, 2023, FMCSA published a notice announcing receipt of applications from 12 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (88 FR 43644). The public comment period ended on August 9, 2023, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

#### III. Discussion of Comments

FMCSA received no comments in this proceeding.

#### IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on relevant scientific information and literature, and the 2008 Evidence Report, ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety.'' The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) no studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety would likely be achieved by permitting each of these drivers to drive in interstate commerce, the Agency finds the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds further that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) would likely achieve a level of safety equal to that existing without the exemption, consistent with

the applicable standard in 49 U.S.C. 31315(b)(1).

**V. Conditions and Requirements**

The terms and conditions of the exemption are provided to the applicants in the exemption document and include the following: (1) each driver must report any crashes or accidents as defined in § 390.5T; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

**VI. Preemption**

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

**VII. Conclusion**

Based upon its evaluation of the 12 exemption applications, FMCSA exempts the following drivers from the hearing standard; in § 391.41(b)(11), subject to the requirements cited above:

Andrew Abraham (TX)
Dary Berke (MD)
Esteban Castro (DE)
Darius Cheatom (CA)
Oscar Faustinos (CA)
Corey Garton (AZ)
Montalvo Gonzalez (FL)
Wen Le (CA)
Kenneth Lloyd (PA)
Victor Lopez (CA)
Robert Troeller (WI)
William Whitfield (VA)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2023–17939 Filed 8–18–23; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2008–0355; FMCSA–2011–0089; FMCSA–2014–0382; FMCSA–2015–0323; FMCSA–2018–0057; FMCSA–2019–0028; FMCSA–2019–0029; FMCSA–2021–0025]**

### Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to renew exemptions for 10 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

**DATES:** Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**I. Public Participation**

*A. Viewing Comments*

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2008–0355, FMCSA–2011–0089, FMCSA–2014–0382, FMCSA–2015–0323, FMCSA–2018–0057, FMCSA–2019–0028, FMCSA–2019–0029, or FMCSA–2021–0025) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

*B. Privacy Act*

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

**II. Background**

On June 30, 2023, FMCSA published a notice announcing its decision to renew exemptions for 10 individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (88 FR 42417). The public comment period ended on July 31, 2023, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

[1] These criteria may be found in Appendix A to Part 391—Medical Advisory Criteria, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

## III. Discussion of Comments

FMCSA received no comments in this proceeding.

## IV. Conclusion

Based on its evaluation of the 10 renewal exemption applications and comments received, FMCSA announces its decision to exempt the following drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8).

As of July 5, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (88 FR 42417):

Alan Finlayson (AL); and Stephen Harmon (WV).

The drivers were included in docket number FMCSA–2015–0323 or FMCSA–2019–0029. Their exemptions are applicable as of July 5, 2023 and will expire on July 5, 2025.

As of July 12, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (88 FR 42417):

Prince Austin, Jr. (OH)
Frank Cekovic (PA)
Martin Ford (MS)
David Johnston (MN)
Enrico Mucci (PA)
Charles Skelton (AL)
Kevin Wiggins (KY)

The drivers were included in docket number FMCSA–2008–0355, FMCSA–2011–0089, FMCSA–2014–0382, FMCSA–2018–0057, or FMCSA–2019–0028. Their exemptions are applicable as of July 12, 2023 and will expire on July 12, 2025.

As of July 30, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the Charles Anthony (ND) has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (88 FR 42417).

The driver was included in docket number FMCSA–2021–0025. Their exemption is applicable as of July 30, 2023 and will expire on July 30, 2025.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2023–17942 Filed 8–18–23; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[FTA Docket No. FTA 2023–0017]**

### Agency Information Collection Activity Under OMB Review: Urbanized Area Formula Program

**AGENCY:** Federal Transit Administration, Department of Transportation (DOT).

**ACTION:** Notice of request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describe the nature of the information collection and their expected burdens.

**DATES:** Comments must be submitted on or before September 20, 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:* 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; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Tia Swain, Office of Administration, Management Planning Division, 1200 New Jersey Avenue SE, Mail Stop TAD–10, Washington, DC 20590; (202) 366–0354 or *tia.swain@dot.gov.*

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On May 25, 2023, FTA published a 60-day notice (88 FR 33962) in the **Federal Register** soliciting comments on the ICR that the agency was seeking OMB approval. FTA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

*Title:* 49 U.S.C. 5307 Urbanized Area Formula Program.

*OMB Control Number:* 2132–0502.

*Background:* The Urbanized Area Formula Funding program (49 U.S.C. 5307) makes federal resources available to urbanized areas and to governors for transit capital and operating assistance in urbanized areas and for transportation-related planning. An urbanized area is an incorporated area with a population of 50,000 or more that

is designated as such by the U.S. Department of Commerce, Bureau of the Census. Funding is made available to designated recipients that are public bodies with the legal authority to receive and dispense federal funds. Governors, responsible local officials and publicly owned operators of transit services shall designate a recipient to apply for, receive, and dispense funds for urbanized areas pursuant to 49 U.S.C. A5307(a)(2). The governor or governor's designee acts as the designated recipient for urbanized areas between 50,000 and 200,000. For urbanized areas with 200,000 in population and over, funds are apportioned and flow directly to a designated recipient selected locally to apply for and receive Federal funds. For urbanized areas under 200,000 in population, the funds are apportioned to the governor of each state for distribution. Eligible activities include: planning, engineering, design and evaluation of transit projects and other technical transportation-related studies; capital investments in bus and bus-related activities such as replacement, overhaul and rebuilding of buses, crime prevention and security equipment and construction of maintenance and passenger facilities; and capital investments in new and existing fixed guideway systems including rolling stock, overhaul and rebuilding of vehicles, track, signals, communications, and computer hardware and software. In addition, associated transit improvements and certain expenses associated with mobility management programs are eligible under the program. All preventive maintenance and some Americans with Disabilities Act complementary paratransit service costs are considered capital costs. For urbanized areas with populations less than 200,000, operating assistance is an eligible expense. Urbanized areas of 200,000 or more may not use funds for operating assistance unless identified by FTA as eligible under the Special Rule.

*Respondents:* State or local governmental entities that operates a public transportation service.

*Estimated Annual Number of Respondents:* 5,864.

*Estimated Total Annual Burden:* 114,008.

*Frequency:* Annually.

**Emily Anderson,**

*Director, Office of Management Planning.*

[FR Doc. 2023–17913 Filed 8–18–23; 8:45 am]

**BILLING CODE 4910–57–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[FTA Docket No. FTA 2023–0016]**

### Agency Information Collection Activity Under OMB Review: New Freedom Program

**AGENCY:** Federal Transit Administration, Department of Transportation (DOT).

**ACTION:** Notice of request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describe the nature of the information collection and their expected burdens.

**DATES:** Comments must be submitted on or before September 20, 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:* 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; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Tia Swain, Office of Administration, Management Planning Division, 1200 New Jersey Avenue SE, Mail Stop TAD–10, Washington, DC 20590 (202) 366–0354 or *tia.swain@dot.gov.*

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On May 25, 2023, FTA published a 60-day notice (88 FR 33963) in the **Federal Register** soliciting comments on the ICR that the agency was seeking OMB approval. FTA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

*Title:* 49 U.S.C. 5317–New Freedom Program.

*OMB Control Number:* 2132–0565.

*Background:* The purpose of the New Freedom program was to make grants available to assist states and designated recipients to reduce barriers to transportation services and expand the transportation mobility options available to people with disabilities beyond the requirements of the Americans with Disabilities Act (ADA) of 1990. The New Freedom program was repealed in 2012 with the enactment of the Moving Ahead for Progress in the 21st Century Act (MAP–21). However, funds previously authorized for programs repealed by MAP–21 remain available for their originally authorized purposes until the period of availability expires, the funds are fully expended, the funds are rescinded by Congress, or the funds are otherwise reallocated. To meet program oversight responsibilities, FTA must continue to collect

information until the period of availability expires, the funds are fully expended, the funds are rescinded by Congress, or the funds are otherwise reallocated. Grant recipients are required to make information available to the public and to publish a program of projects which identifies the sub-recipients and projects for which the State or designated recipient is applying for financial assistance. FTA uses the information to monitor the grantees' progress in implementing and completing project activities. FTA collects performance information annually from designated recipients in rural areas, small urbanized areas, other direct recipients for small urbanized areas, and designated recipients in urbanized areas of 200,000 persons or greater.

*Respondents*: State or local government, private non-profit organizations and public transportation authorities.

*Estimated Annual Number of Respondents:* 33.

*Estimated Total Annual Burden:* 1,320.

*Frequency:* Annually.

**Emily Anderson,**

*Director, Office of Management Planning.*

[FR Doc. 2023–17911 Filed 8–18–23; 8:45 am]

**BILLING CODE 4910–57–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Notice of OFAC Sanctions Actions

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for applicable date.

**FOR FURTHER INFORMATION CONTACT:** OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

#### Notice of OFAC Action(s)

On August 10, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

#### Individuals

**BILLING CODE 4810–AL–P**

**Individuals**

1. HOAYEK, Marianne (Arabic: ماريان حويك) (a.k.a. ANDRIANOPOULOS, Marianne Alexandros; a.k.a. HOUWAYEK, Marianne Hamid; a.k.a. HOYEK, Marianne Hamid Gebrayel), Beirut, Lebanon; DOB 14 May 1980; POB Faytroun, Lebanon; nationality Lebanon; Gender Female; Passport RL3598301 (Lebanon) expires 11 Feb 2021; alt. Passport LR1934306 (Lebanon) expires 11 Nov 2030; National ID No. 000040732326 (Lebanon) (individual) [LEBANON].

   Designated pursuant to section 1(a)(i)(B) of Executive Order 13441 of August 1, 2007, "Blocking Property of Persons Undermining the Sovereignty of Lebanon or Its Democratic Processes and Institutions," 72 FR 43499 (E.O. 13441), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of RIAD SALAMEH, a person whose property and interests in property are blocked pursuant to E.O. 13441.

2. SALAMEH, Nady (a.k.a. SALAME, Nadi Riad (Arabic: نادي رياض سلامة)), Street 10, Matn District, Rabieh, Mount Lebanon, Lebanon; United Kingdom; DOB 04 Dec 1986; POB Neuilly-Sur-Seine, France; nationality Lebanon; alt. nationality France; alt. nationality United Kingdom; Gender Male; Passport 282003 (Lebanon) expires 28 Dec 2006 (individual) [LEBANON].

   Designated pursuant to section 1(a)(i)(B) of E.O. 13441 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of RIAD SALAMEH, a person whose property and interests in property are blocked pursuant to E.O. 13441.

3. SALAMEH, Raja (a.k.a. SALAME, Raja (Arabic: رجا سلامة)), Chalet C9601 Portemilio Resort, Kaslik, Keserwan-Jbeil, Lebanon; DOB 15 Aug 1960; POB Antelias, Lebanon; nationality Lebanon; Gender Male; Passport RL1670084 (Lebanon) expires 22 Oct 2018 (individual) [LEBANON].

   Designated pursuant to section 1(a)(i)(B) of E.O. 13441 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of RIAD SALAMEH, a person whose property and interests in property are blocked pursuant to E.O. 13441.

4. SALAMEH, Riad (a.k.a. SALAMAH, Riad bin Tawfiq; a.k.a. SALAME, Riad Toufic (Arabic: رياض توفيق سلامة); a.k.a. SALAMEH, Riyad Tawfeek; a.k.a. SALIMI, Riyad), Street 10, Matn District, Rabieh, Mount Lebanon, Lebanon; DOB 17 Jul 1950; POB Antelias, Lebanon; nationality Lebanon; alt. nationality France; Gender Male; Passport 160D15

(Lebanon) expires 08 Oct 2020; alt. Passport 14AF60880 (France); National ID No. 1869570 (Lebanon) (individual) [LEBANON].

Designated pursuant to section 1(a)(i)(A) of E.O. 13441 for having taken, or posing a significant risk of taking, actions, including acts of violence, that have the purpose or effect of undermining Lebanon's democratic processes or institutions, or contributing to the breakdown of the rule of law in Lebanon.

5. KOSAKOVA, Anna, 65 Avenue Georges Mandel, Paris 75016, France; DOB 25 Nov 1976; POB Senaki, Georgia; nationality Ukraine; Gender Female (individual) [LEBANON].

Designated pursuant to section 1(a)(i)(B) of E.O. 13441 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of RIAD SALAMEH, a person whose property and interests in property are blocked pursuant to E.O. 13441.

Dated: August 10, 2023.

**Andrea M. Gacki,**

*Director, Office of Foreign Assets Control, U.S. Department of the Treasury.*

[FR Doc. 2023–17928 Filed 8–18–23; 8:45 am]

**BILLING CODE 4810–AL–C**

# FEDERAL REGISTER

Vol. 88 Monday,
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Part II

## Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Part 11
Horse Protection; Proposed Rule

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Part 11**

**[Docket No. APHIS–2022–0004]**

**RIN 0579–AE70**

## Horse Protection

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We propose to amend the horse protection regulations to provide that the Animal and Plant Health Inspection Service (APHIS) will screen, train, and authorize qualified persons to conduct inspections at horse shows, horse exhibitions, horse sales, and horse auctions to ensure compliance with the Horse Protection Act (the Act). The proposed actions are intended to strengthen regulatory requirements to protect horses from the practice of soring and eliminate unfair competition as the Act requires.

**DATES:** We will consider all comments that we receive on or before October 20, 2023.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2022–0004 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2022–0004, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *www.regulations.gov* or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Dr. Aaron Rhyner, DVM, Assistant Director, USDA–APHIS-Animal Care, 2150 Centre Ave., Building B, Mailstop 3W11, Fort Collins, CO 80526–8117; *horseprotection@usda.gov;* (970) 494–7484.

**SUPPLEMENTARY INFORMATION:**

Under the Horse Protection Act (HPA, or the Act, 15 U.S.C. 1821 *et seq.*), the Secretary of Agriculture is authorized to promulgate regulations to prohibit the movement, showing, exhibition, or sale of sore horses.

The Secretary has delegated responsibility for administering the Act to the Administrator of the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for administering the Act has been delegated to the Deputy Administrator for Animal Care. Regulations and standards established under the Act are contained in 9 CFR part 11 (referred to below as the regulations), and 9 CFR part 12 lists the rules of practice governing administrative proceedings.

Section 2 of the Act, ''Definitions'' (15 U.S.C. 1821(3)), defines a ''sore'' horse as follows:

''The term 'sore' when used to describe a horse means that:

(A) An irritating or blistering agent has been applied, internally or externally, by a person to any limb of a horse,

(B) Any burn, cut, or laceration has been inflicted by a person on any limb of a horse,

(C) Any tack, nail, screw, or chemical agent has been injected by a person into or used by a person on any limb of a horse, or

(D) Any other substance or device has been used by a person on any limb of a horse or a person has engaged in a practice involving a horse, and, as a result of such application, infliction, injection, use, or practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving. . . .''

Soring has been used primarily in the training of Tennessee Walking Horses and racking horses [1] to produce an exaggerated gait in competition. However, the HPA's prohibition against sored horses participating in shows, exhibitions, sales, and auctions applies to all horse breeds.[2] In addition to declaring that the soring of horses is cruel and inhumane, Congress further found that the movement, showing, exhibition, or sale of sore horses in intrastate commerce adversely affects and burdens interstate and foreign commerce and creates unfair competition.

### Background of HPA Regulations

Under the HPA, it is unlawful for any person to show, exhibit, sell, or transport sore horses, or to use any prohibited equipment, device, paraphernalia, or substance in horse shows, exhibitions, sales, or auctions. The HPA holds horse owners responsible should they allow any such unlawful activities to occur, and requires management of horse shows, exhibitions, sales, and auctions (referred to as ''management'' or ''event management,'' below) to ensure that sore horses do not compete or otherwise participate in these events.

After Congress passed the HPA in 1970, APHIS established regulations to enforce the Act, including restrictions on the use of certain equipment, devices, and substances. In accordance with the Act, the regulations also include inspection provisions for detecting soring in horses at shows, exhibitions, sales, and auctions. In 1976, Congress amended the Act [3] to allow (but not require) the management of any horse show, exhibition, or sale or auction to appoint persons qualified to inspect horses for soreness. Section 4 of the Act (15 U.S.C 1823(c)) requires the Secretary of Agriculture to prescribe by regulation requirements for any appointment by the management of a horse show, exhibition, sale, or auction of persons qualified to detect and diagnose a horse which is sore or to otherwise inspect horses for the purpose of enforcing the Act. Although the Act does not require that management appoint a qualified person to inspect horses, if management chooses not to do so it can be held liable for violating the Act if it fails to disqualify a sore horse from participating in an event. If, alternatively, event management appoints a qualified person to conduct inspections, management may be held liable only for failing to disqualify a sore horse after being notified by the qualified person or by the Secretary of Agriculture, or his or her designee, that a horse is sore.

Responding to Congress' 1976 amendment to the Act, APHIS revised the regulations (44 FR 1558–1566, January 5, 1979) to include qualifications for ''Designated Qualified Persons,'' or DQPs, to serve as third-party inspectors employed and compensated by the industry, as well as provisions for certifying industry-run

[1] The racking horse is a breed derived from the Tennessee Walking Horse. It has a smooth, natural gait known as the ''rack,'' a four-beat gait with only one foot striking the ground at a time.

[2] APHIS monitors the activities of other breeds and investigates credible evidence of soring as warranted.

[3] Public Law 94–360, 3, July 13, 1976, 90 Stat. 915; *https://www.govinfo.gov/content/pkg/STATUTE-90/pdf/STATUTE-90-Pg915.pdf.*

programs to train and license them. These programs are currently administered by Horse Industry Organizations, or HIOs.

HIOs currently fill several roles, both unregulated and regulated, for horse shows, exhibitions, sales, and auctions. For example, event management may retain an HIO to assist with activities not regulated under the Act, such as registering participants and coordinating event logistics, supplying show judges, and promoting events. Regulated HIO activities, in addition to training and licensing DQPs, include assessing and enforcing minimum penalties for certain violations of the regulations, conducting hearings for appeals of violations, and reporting disciplinary actions against exhibitors, event management, and DQPs to APHIS. Under the current regulatory regime, an HIO seeking certification to train and license DQPs is required to submit to APHIS a formal request in writing for certification of its DQP program and a detailed outline of the program, in accordance with paragraph (b) of § 11.7 of the regulations.[4]

Under the current Horse Protection program, DQPs are the primary party responsible for inspecting and diagnosing soreness in horses. A DQP is a qualified person who, under the provisions of 15 U.S.C. 1823(c) cited above, may be appointed by management of a horse show or sale to detect horses that are sored, and to otherwise conduct inspections for the purpose of enforcing the Act. DQPs may be reimbursed for services directly by event management or by an HIO which has contracted with them to provide inspections for events. DQPs must have equine experience and meet professional qualifications as set forth in § 11.7(a).

DQP candidates must successfully complete a formal training program developed and delivered by the HIO before they can be licensed, except that veterinarians already accredited by USDA may be licensed as DQPs without having to participate in formal training. Such veterinarians must also be a member of the American Association of Equine Practitioners, or large animal practitioners with substantial equine experience, or knowledgeable of equine lameness as related to soring and soring practices. Section 11.7(a)(1)(iii) states that veterinarians having such knowledge might include those with a small animal practice who own, train, judge, or show horses, or be Doctors of Veterinary Medicine who teach equine related subjects in an accredited college or school of veterinary medicine.

Alternatively, DQPs may be farriers, horse trainers, and other knowledgeable individuals whose past experience and training would qualify them for positions as HIO stewards or judges (or their equivalent), provided that they are trained and licensed by an HIO or association whose DQP program has been certified by APHIS. Of the 59 persons licensed as DQPs in fiscal year 2022, only one is a veterinarian.

APHIS Veterinary Medical Officers (VMOs) may attend HPA-covered events unannounced to oversee and conduct inspections and to otherwise determine compliance with the Act. To ensure that horses are disqualified when soreness is detected or when other violations are found, APHIS also reviews reports by event management, HIOs, and DQPs, and conducts audits of records maintained by certified DQP programs.

APHIS has several options for resolving a case in which the evidence substantiates that an alleged violation has occurred. These include issuing official warnings to those involved in the alleged violation, offering to resolve the case through a stipulated penalty, and referring the case to the USDA Office of the General Counsel for formal administrative action before the USDA Office of Administrative Law Judges or referral to the U.S. Department of Justice.

**Summary of Current Regulations**

The current structure of the Horse Protection regulations in 9 CFR parts 11 and 12 is summarized below.

Section 11.1, ''Definitions,'' lists the definitions for terms used throughout part 11.

Section 11.2, ''Prohibitions concerning exhibitors,'' lists general and specific prohibitions for any device, method, practice, or substance used on any horse at any horse show, exhibition, or horse sale or auction if such use causes or can reasonably be expected to cause such horse to be sore.

In § 11.2(a), the general prohibitions state that ''no chain, boot, roller, collar, action device, nor any other device, method, practice, or substance shall be used with respect to any horse at any horse show, horse exhibition, or horse sale or auction if such use causes or can reasonably be expected to cause such horse to be sore.'' Prohibitions regarding devices, equipment, or practices on any horse at any horse show, exhibition, or horse sale or auction are listed in paragraph (b) of § 11.2. (We discuss the specific prohibitions under ''Prohibitions Concerning Exhibitors'' below.)

Paragraph (c) prohibits all substances on the extremities above the hoof of any Tennessee Walking Horse or racking horse while being shown, exhibited, or offered for sale at any horse show, exhibition, or horse sale or auction, except lubricants such as glycerin, petrolatum, and mineral oil, or mixtures. Lubricants can only be applied after the horse has been inspected by management or by a DQP, and lubricants that will be applied must be made available to APHIS personnel for inspection and sampling as deemed necessary.

Paragraph (d) provides specific requirements for rest periods during horse show and horse exhibition workouts or performances for 2-year-old Tennessee Walking Horses and racking horses, and working exhibitions for 2-year-old Tennessee Walking Horses and racking horses at sales or auctions.

In paragraph (e) of § 11.2, failure to provide information or providing any false or misleading information required by the Act or regulations or requested by Department representatives, by any person that owns, trains, shows, exhibits, or sells or has custody of, or direction or control over any horse shown, exhibited, sold, or auctioned or entered for the purpose of being shown, exhibited, sold, or auctioned at any horse show, exhibition, or horse sale or auction, is prohibited.

Under § 11.3, ''Scar rule,''[5] horses that do not meet the scar rule criteria are considered to be sore and are subject to all prohibitions of the Act. Paragraph (a) of § 11.3 states the ''anterior and anterior-lateral surfaces of the fore pasterns (extensor surface)'' are required to ''be free of bilateral granulomas,[6] other bilateral pathological evidence of inflammation, and, other bilateral evidence of abuse indicative of soring including, but not limited to, excessive loss of hair.''

Paragraph (b) of § 11.3 states the ''posterior surfaces of the pasterns (flexor surface), including the sulcus or ''pocket'' may show bilateral areas of

[4] Details of the current HIO certification process are available in an APHIS-Animal Care Tech Note located at *https://www.aphis.usda.gov/animal_welfare/hp/downloads/tech-note-certification-requirements-dqp-programs-web-layout.pdf.*

[5] The term ''scar rule'' refers generally to the presence of visible lesions or other abnormalities on the horse's pasterns suggesting that a horse has been subjected to soring. We discuss the scar rule in detail in a later section titled ''Dermatologic Changes and the Scar Rule.''

[6] ''Granuloma'' is defined in the regulation as any one of a rather large group of fairly distinctive focal lesions that are formed as a result of inflammatory reactions caused by biological, chemical, or physical agents. This regulatory definition covers a considerably wider range of lesions than does the medical definition of *granuloma.* We elaborate on this distinction in ''Dermatologic Changes and the Scar Rule.''

uniformly thickened epithelial tissue if such areas are free of proliferating granuloma tissue, irritation, moisture, edema, or other evidence of inflammation.''

Section 11.4, ''Inspection and detention of horses,'' includes requirements regarding inspection of horses by APHIS representatives, as well as detention of horses for inspection if an APHIS representative has probable cause to believe that a horse is sore. This section also includes provisions for maintaining the well-being of a horse in detention and for informing the owner, trainer, exhibitor, or other person having immediate custody of or responsibility for any horse allegedly found to be in violation of the Act or the regulations of such alleged violation before the horse is released from detention. Provisions for requesting reexamination and testing of detained horses are also included in this section.

Under § 11.5, ''Access to premises and records,'' paragraph (a) provides that the management of any horse show, exhibition, or horse sale or auction ''shall, without fee, charge, assessment, or other compensation, provide APHIS representatives with unlimited access to the grandstands, sale ring, barns, stables, grounds, offices, and all other areas of any horse show, horse exhibition, or horse sale or auction, including any adjacent areas under their direction, control, or supervision for the purpose of inspecting any horses, or any records required to be kept by regulation or otherwise maintained.'' Management must also provide an adequate, safe, and accessible area for the visual inspection and observation of horses while such horses are competitively or otherwise performing at any horse show or horse exhibition, or while such horses are being sold or auctioned or offered for sale or auction at any horse sale or horse auction.

Paragraph (b) of § 11.5 requires that ''[e]ach horse owner, exhibitor, or other person having custody of or responsibility for any horse at any horse show, horse exhibition, or horse sale or auction shall, without fee, charge, assessment, or other compensation, admit any APHIS representative or Designated Qualified Person appointed by management, to all areas of barns, compounds, horse vans, horse trailers, stables, stalls, paddocks, or other show, exhibition, or sale or auction grounds or related areas at any horse show, horse exhibition, or horse sale or auction, for the purpose of inspecting any such horse at any and all reasonable times.'' Such persons must also promptly present his or her horse for inspection upon notification by any APHIS representative or DQP appointed by management for the purpose of determining whether such horse is in compliance with the Act and regulations.

Section 11.6, ''Inspection space and facility requirements,'' requires the management of every horse show, exhibition, or horse sale or auction containing Tennessee Walking Horses or racking horses to provide, without fee, sufficient space and facilities for APHIS representatives to carry out their duties under the Act and regulations, whether or not management has received prior notification by APHIS. The management of every horse show, exhibition, horse sale or auction which does not contain Tennessee Walking Horses or racking horses must provide, without fee, sufficient space and facilities when requested to do so by APHIS representatives. Space and facility requirements include sufficient space for inspecting horses, protection from the elements, a means to control crowds and onlookers, an accessible, reliable, and convenient 110-volt electrical power source, if electrical service is available at the site and is requested by the APHIS representative, and appropriate inspection waiting and detention areas.

Paragraph (a) of § 11.7, ''Certification and licensing of designated qualified persons (DQP's)'' currently lists basic professional qualifications required of DQP applicants and paragraph (b) lists certification requirements for DQP programs certified by APHIS and initiated and maintained by HIOs or associations.[7] As part of maintaining a DQP program that APHIS has certified, HIOs are responsible for delivering the training curriculum as well as ensuring that criteria for selecting and licensing DQPs are met. HIOs must also submit records to APHIS containing details of horse shows, exhibitions, sales, and auctions at which DQPs appointed by them inspect horses.

Paragraph (c) contains DQP licensing requirements in HIOs or associations receiving Department certification for the training and licensing of DQPs, and paragraph (d) of § 11.7 lists recordkeeping and other requirements to be met by HIOs or associations and DQPs.

Paragraph (e) of § 11.7 prohibits the management of any horse show, exhibition, horse sale, or horse auction from appointing any person to detect and diagnose horses which are sore or to otherwise inspect horses for the purpose of enforcing the Act if such person does not hold a valid DQP license, if the license is canceled, or if the person has been disqualified by the Secretary from performing diagnosis, detection, and inspection under the Act, after notice and opportunity for a hearing.

Paragraph (f) contains provisions for canceling a DQP license. Concluding this section, paragraph (g) provides the process for revoking the DQP program certification of an HIO or association.

Section 11.20 of the current regulations lists the responsibilities and liabilities of the management of any horse show, exhibition, or horse sale or auction which does not appoint a DQP to inspect horses, noting that in such cases event management is responsible and legally liable for identifying all horses that are sore or otherwise in violation of the Act or regulations and must disqualify or disallow any such horses from participating or competing in any horse show, exhibition, horse sale, or horse auction. If management does appoint a DQP to inspect horses, the section provides that management must not take any action which would interfere with or influence a DQP in carrying out his or her duties or making decisions concerning whether or not any horse is sore or otherwise in violation of the Act or regulations.

Section 11.20 also includes responsibilities for the management of any horse show, exhibition, horse sale or auction which designates and appoints one or more DQPs to inspect horses. Management in such cases must accord the DQP access to all records and areas of the grounds of such show, exhibition, sale, or auction and the same right to inspect horses and records as is accorded to any APHIS representative.

Section 11.21 lists inspection procedures that DQPs must follow, including requirements for walking and turning the horse in a manner that allows the DQP to determine whether the horse exhibits signs of soreness. This section also includes the procedure for proper palpation to detect soreness, as well as procedures for conducting horses through other elements of the inspection process.

Under § 11.22, ''Records required and disposition thereof,'' the management of any horse show, exhibition, or horse sale or auction, that contains Tennessee Walking Horses or racking horses is required to maintain for at least 90 days following the closing date of the show, exhibition, or sale or auction, all pertinent records. If specifically required by APHIS, management may be required to hold the records specified longer than 90 days.

[7] ''Association'' refers to HIOs using that term to describe themselves.

Under paragraph (a) of § 11.23, ''Inspection of records,'' the management of any horse show, exhibition, or horse sale or auction must allow any APHIS representative, upon request, to examine and make copies of any and all records pertaining to any horse. Similarly, paragraph (b) requires that HIOs or associations that train, maintain, and license inspectors under a certified DQP program must permit any APHIS representative, upon request, to examine and copy any and all records relating to the DQP program which are required by any part of the regulations.

In § 11.24, ''Reporting by management,'' paragraph (a) states that within 5 days following the conclusion of any horse show, exhibition, or horse sale or auction, containing Tennessee Walking Horses or racking horses, management must submit to the Regional Director for the State in which the show, exhibition, sale or auction was held, information required in paragraphs (a)(1) through (a)(6) of § 11.22 for each horse excused or disqualified by management or its representatives from being shown, exhibited, sold or auctioned, and the reasons for such action.

In paragraph (b) of § 11.24, within 5 days following the conclusion of any horse show, exhibition, or horse sale or auction which does not contain Tennessee Walking Horses or racking horses, the management must inform the Regional Director for the State in which the show, exhibition, sale or auction was held, of any case where a horse was excused or disqualified by management or its representatives from being shown, exhibited, sold or auctioned because it was found to be sore.

Section 11.25, ''Minimum penalties to be assessed and enforced by HIOs that license DQPs'' lists suspensions and minimum penalties for violations of the Act and regulations. HIOs are required to include penalties in their rulebooks [8] for violations that equal or exceed the penalties listed in paragraph (c) of the section; minimum penalties are specified in that paragraph. HIOs are also required in this section to assess and enforce the penalty, as well as and any suspension included with the penalty. The HIO must provide a process, subject to APHIS approval, for alleged violators to appeal penalties.

Section 11.40 lists prohibitions and requirements concerning persons involved in transportation of certain horses, including providing APHIS with transportation information in order to determine compliance with the Act and regulations.

Section § 11.41 currently requires each HIO or association which sponsors or sanctions any horse show, exhibition, or sale or auction, to furnish the Department by March 1st of each year with all such HIO or association rulebooks, and disciplinary procedures for the previous year pertaining to violations of the Act or regulations, applicable to such horse show, exhibition, or sale or auction. Each HIO or association must also furnish the Department with a quarterly report of all disciplinary actions taken against the management of [9] any horse show, exhibition, sale, or auction, any exhibitor, or any licensed DQP, for violation of the Act or regulations, and the results. The Department retains the authority to initiate enforcement proceedings with respect to any violation of the Act.

Part 12 of the Horse Protection regulations reference the rules of practice for USDA as promulgated in 7 CFR part 1.

Section 12.1 addresses the scope and applicability of rules of practice. These rules of practice are applicable to adjudicatory, administrative proceedings under section 6(a) of the Act (15 U.S.C. 1825(a)) and sections 6(b) and (c) of the Act (15 U.S.C. 1825(b) and (c)).

Lastly, § 12.10, ''Stipulations,'' provides that the Administrator may enter into a stipulation with any person notified of an apparent violation of the Act or regulations if that person waives a hearing and agrees to pay a specified civil penalty within a designated time.

**Evaluation of the Horse Protection Program**

Consistent with the aims of the HPA, the goal of the USDA–APHIS Horse Protection program and regulations is to eliminate the inhumane practice of soring and by so doing promote fair competition in horse shows and exhibitions. Since 1979, when APHIS promulgated the regulations to allow management to appoint qualified persons to conduct inspections, the Agency has regularly evaluated the effectiveness of the Horse Protection program and sought ways to improve its approaches to ending soring.

Unfortunately, soring persists despite the Agency's efforts to regulate and work with the Tennessee Walking Horse and racking horse industries to eliminate the practice. In September 2010, USDA's Office of the Inspector General (OIG) formally evaluated APHIS' oversight of the Horse Protection program [10] in accordance with generally accepted government auditing standards.[11] USDA–OIG concluded that the inspection program, in which the horse industry trains and licenses DQPs to inspect horses under APHIS' oversight, is ineffective in ensuring that horses are not sore upon inspection as required under the Act.

As part of the audit, OIG auditors performed fieldwork in 2008 and 2009 at APHIS offices in Washington, DC and Riverdale, Maryland. In addition, auditors completed field visits to horse shows in Florida, Kentucky, Missouri, South Carolina, and Tennessee, and reviewed laws, regulations, procedures, and inspection protocols relating to oversight of DQPs. They also interviewed APHIS program officials to understand how they ensure oversight of their respective programs and reviewed available laws, regulations, procedures, and program documents to evaluate program implementation. Audit staff also interviewed personnel from USDA–APHIS Investigative and Enforcement Services to understand their role in collecting evidence for Federal cases, as well as USDA Office of General Counsel officials to learn their processes for evaluating potential cases for enforcement, prosecution, and closing of Federal cases related to violations of the Act. APHIS Review and Analysis Branch personnel were interviewed regarding HIO record reviews performed and their study of the violation rate disparity that exists when APHIS veterinarians are present at shows, sales, and exhibitions.

OIG auditors also reviewed show and sale reports for 34 shows that they attended in 2008, in order to identify problems noted by APHIS veterinarians relating to DQP performance and the issuance of violation tickets. Audit staff interviewed HIO officials to discuss their perspective on APHIS' oversight of the DQP program and interviewed DQPs to discuss the program and possible improvements. Finally, auditors attended a training seminar hosted by

[8] Rulebooks issued by HIOs or associations also include rules and regulations for showing horses and descriptions of the several classes and divisions in which horses show.

[9] Due to a typographical error, the regulations in this section currently say, ''management or'' rather than ''management of.'' However, contextually, the latter is implied.

[10] USDA–OIG, Administration of the Horse Protection Program and the Slaughter Horse Transport Program Audit Report, 33601–2–KC, September 2010. The document is available on the *Regulations.gov* website (see under **ADDRESSES** in this document for a link to *Regulations.gov*).

[11] *Generally Accepted Government Auditing Standards* (the ''Yellow Book'') is a publication of the U.S. Government Accountability Office (GAO): *https://www.gao.gov/assets/gao-18-568g.pdf.*

APHIS for Tennessee Walking horse trainers to learn about new inspection procedures and to observe APHIS personnel interacting with industry trainers.

During these evaluations, OIG auditors identified multiple conflicts of interest among DQPs, the HIOs that train, license, and employ them, horse exhibitors, and management of shows and exhibitions that affiliate with HIOs for inspection services. OIG concluded that these conflicts of interest contributed to horses being allowed to compete while sore. They noted that some DQPs are reluctant to dismiss sored horses discovered during inspections, as doing so inconveniences event management and makes it less likely that such DQPs will be hired to inspect at future shows. Moreover, some DQPs own and exhibit their own horses, so a DQP inspecting an exhibitor's horse at one show may be facing that exhibitor conducting inspections at another show. As a consequence, auditors found that some DQPs frequently failed to inspect horses visually and physically in accordance with the regulations and allowed sored horses to show.

OIG auditors also discovered that some DQPs avoid documenting instances of soring in several ways. DQPs may provide only a warning to exhibitors when they detect soring in a horse, when under the regulations they are required to recommend to event management that the horse be prohibited from performing. The auditors also concluded that DQPs fail to sufficiently inspect and weigh chains, boots, and other action devices as required under the regulations. The report noted that when DQPs document a noncompliance with the Act, they sometimes identify a stable hand or a relative of the exhibitor as the alleged violator, so that the person actually at fault for the alleged violation can avoid responsibility. Further, the OIG report found that no reliable controls are in place to prevent an exhibitor who is serving an industry-issued suspension for a violation from competing in another show.

USDA–OIG's findings regarding the persistence of soring are consistent with those of the USDA's Office of the Judicial Officer (OJO), which issues final decisions on behalf of the Secretary of Agriculture for purposes of judicial review.[12] The Secretary of Agriculture, through the OJO, has found that DQP inspections of horses are less probative than inspections conducted by APHIS VMOs. Decisions issued by the OJO include accounts of exhibitors showing sored horses that had been inspected and cleared by DQPs, cursory inspections or use of incorrect methods by DQPs, and exhibitors attempting to avoid violations by having another person acknowledge responsibility.

As the USDA–OIG audit showed, DQPs are less likely to issue violations and more likely to allow sored horses to perform when APHIS officials are not present to observe and confirm the outcome of inspections. In a review of program data from 2005 to 2008, the OIG audit report[13] noted that out of 1,607 events in which DQPs provided inspection services, 49 percent of the violations they issued occurred at the 108 events at which APHIS officials were also present, suggesting that DQPs were considerably more inclined to issue violations when under APHIS observation than when they were not.

Furthermore, inspection data compiled by APHIS from fiscal year (FY) 2017 to 2022 (Tables 1 and 2, below) shows that inconsistencies persist in the number of violations detected by APHIS officials and those issued by DQPs inspecting horses. During this period, APHIS attended about 16 percent of all HPA-covered events featuring Tennessee Walking Horses, racking horses, and other breeds at which horse industry DQPs conducted inspections, performance as well as flat-shod classes. While APHIS attended only a fraction of the events at which DQPs were appointed to inspect horses, APHIS consistently reported higher rates of noncompliance at these events based on its VMO inspection findings. Most horses inspected by APHIS officials at these events were chosen at random, although APHIS chose to inspect some horses for which a suspicion of soring was warranted.[14]

Moreover, DQPs consistently reported higher rates of noncompliance when APHIS officials were in attendance than when they were not. In FY 2021, for example, if only horses wearing ''performance packages'' (*i.e.,* a padded horse) are considered, APHIS officials detected 158 instances of noncompliance with the HPA out of the 398 horses APHIS inspected at the 17 events attended, resulting in close to a 40 percent rate of noncompliance for performance horses. In contrast, of the 207 events attended and inspected by DQPs during the same period, DQPs detected just 321 instances of noncompliance with the HPA out of the 11,825 performance horses they inspected, recording only a 1.9 percent rate of noncompliance when APHIS officials were not present and 7.1 percent when they were.

Also notable is that the rate of noncompliance detected for horses wearing performance packages was significantly and consistently higher than that detected for flat-shod horses (Table 2). The marked difference between the rates of noncompliance found in padded performance classes and those found in flat-shod classes indicates that soring is concentrated in horses made to perform the exaggerated and unnatural chest-high gait popularly known as the ''big lick.'' Table 3 shows a similar discrepancy between performance and flat-shod horses regarding positive tests for prohibited substances.

[12] Decisions for showing sored horses include: Decision and Order, Tracy Essary (HPA Docket No. 15–0041, June 15, 2016): *http://nalcpro.wpenginepowered.com/wp-content/uploads//assets/decisions/061516-Essary-HPA15-0041-DO.pdf;* Decision and Order, Rocky Roy McCoy (HPA Docket No.16–0026, June 2, 2016): *http://nalcpro.wpenginepowered.com/wp-content/uploads//assets/decisions/060216-McCoy-HPA16-0026-DO.pdf,* and Decision and Order, Justin Jenne (HPA Docket No. 13–0080, July 29, 2014: *https://www.usda.gov/sites/default/files/documents/140729_13-0080%20Justin%20Jenne_%20DO.pdf.* Decisions also include those issued for horses sored under the scar rule, as in Decision and Order, Randall Jones (HPA Docket No. 13–0053, June 29, 2015): *http://nalcpro.wpenginepowered.com/wp-content/uploads//assets/decisions/062915-Jones-HPA13-0053-DO.pdf.* Decisions of the Office of the Judicial Officer are located at *https://www.usda.gov/oha/services/decisions.* Decisions entered prior to January 1, 2017, are available on the University of Arkansas National Agricultural Law Center website: *https://nationalaglawcenter.org/decisions/.* In addition, a digest published by USDA from 2013 to 2020, *Agricultural Decisions,* contains indexed summaries of decisions and orders issued in adjudicatory proceedings conducted for the Department: *https://www.usda.gov/oha/services/agriculture-decisions-publications.*

[13] See footnote 10. USDA–OIG's data review and table is found on page 11 of the audit report.

[14] The rates of noncompliance reported by APHIS VMOs represent the sampling of horses that they inspected, not every horse at each event. Moreover, APHIS records of inspections conducted by VMOs do not differentiate between horses chosen at random and those chosen on suspicion of soring. Horses in the latter group are more likely to be diagnosed, as that sample presented indications of soring prior to inspection.

TABLE 1—PERFORMANCE HORSE INSPECTION DATA FOR HPA-COVERED EVENTS FROM FY 2017–2022

| | Entries inspected by DQPs (APHIS not present) | HPA non-compliances detected by DQPs (APHIS not present) | Non-compliance rate detected by DQPs (APHIS not present) (%) | Entries inspected by DQPs (APHIS present) | HPA Non-compliances detected by DQPs (APHIS present) | Non-compliance rate detected by DQPs (APHIS present) (%) | Entries inspected by APHIS [1] | HPA Non-compliances detected by APHIS | Non-compliance rate detected by APHIS (%) |
|---|---|---|---|---|---|---|---|---|---|
| FY 2022 | 9,746 | 174 | 1.8 | 3,220 | 219 | 6.8 | 930 | 317 | 34.1 |
| FY 2021 | 11,825 | 224 | 1.9 | 1,373 | 97 | 7.1 | 398 | 158 | 39.7 |
| FY 2020 | 8,522 | 251 | 2.9 | 1,107 | 88 | 7.9 | 276 | 79 | 28.6 |
| FY 2019 | 9,698 | 417 | 4.3 | 2,978 | 297 | 10.0 | 901 | 233 | 25.9 |
| FY 2018 | 9,290 | 277 | 3.0 | 4,427 | 230 | 5.2 | 1,081 | 100 | 9.3 |
| FY 2017 | 9,992 | 154 | 1.5 | 4,112 | 163 | 4.0 | 1,005 | 126 | 12.5 |

[1] Horse industry DQPs conducted inspections at these events. Not included are the few events APHIS attended where DQPs were not present.

TABLE 2—FLAT-SHOD HORSE INSPECTION DATA FOR HPA-COVERED EVENTS FROM FY 2017–2022

| | Entries inspected by DQPs (APHIS not present) | HPA non-compliances detected by DQPs (APHIS not present) | Non-compliance rate detected by DQPs (APHIS not present) (%) | Entries inspected by DQPs (APHIS present) | HPA non-compliances detected by DQPs (APHIS present) | Non-compliance rate detected by DQPs (APHIS present) (%) | Entries inspected by APHIS [1] | HPA non-compliances detected by APHIS | Non-compliance rate detected by APHIS (%) |
|---|---|---|---|---|---|---|---|---|---|
| FY 2022 | 29,822 | 16 | 0.1 | 4,956 | 16 | 0.3 | 357 | 6 | 1.7 |
| FY 2021 | 33,949 | 31 | 0.1 | 1,624 | 3 | 0.2 | 143 | 1 | 0.7 |
| FY 2020 | 27,252 | 16 | 0.1 | 758 | 5 | 0.7 | 50 | 1 | 2.0 |
| FY 2019 | 35,302 | 32 | 0.1 | 4,045 | 24 | 0.6 | 297 | 16 | 5.4 |
| FY 2018 | 32,624 | 14 | 0.04 | 5,168 | 8 | 0.2 | 475 | 5 | 1.1 |
| FY 2017 | 31,871 | 9 | 0.03 | 3,818 | 17 | 0.4 | 483 | 3 | 0.6 |

[1] Horse industry DQPs conducted inspections at these events. Not included are the few events APHIS attended where DQPs were not present.

TABLE 3—PROHIBITED SUBSTANCE TESTING DATA FOR HPA-COVERED EVENTS FROM FY 2017–2022

| | Performance horses tested for prohibited substances | Performance horses positive for prohibited substances [1] | Flat-shod horses tested for prohibited substances | Flat-shod horses positive for prohibited substances [2] |
|---|---|---|---|---|
| FY 2022 | 1,196 | 55 | 382 | 4 |
| FY 2021 | 1,104 | 71 | 292 | 2 |
| FY 2020 | 51 | 8 | 11 | 1 |
| FY 2019 | 111 | 84 | 23 | 3 |
| FY 2018 | 194 | 144 | 66 | 28 |
| FY 2017 | 123 | 83 | 35 | 10 |

[2] These numbers reflect substances the laboratory reported to APHIS as significant findings.

While the data in tables 1 and 2 contain statistical anomalies and represent only a sampling of rates of noncompliance, the discrepancy between soring detected when APHIS officials are present at shows and when they are not is broadly consistent over time. We have considered several possible explanations for this discrepancy. In the absence of APHIS representatives, some DQPs may feel complacent and less focused on inspecting horses accurately, not due to any intention to allow a sore horse to show, but simply through inattention. It also may be that some DQPs are not receiving proper training in conducting inspections, although the evidence above suggests that, on the whole, DQPs are capable of diagnosing sored horses when under observation by APHIS representatives. We find none of these explanations credible in accounting for the discrepancy in soring diagnoses with and without APHIS representatives present, nor do we believe that a significantly different outcome would emerge if APHIS inspected every horse at every event. Our conclusion, as was also the conclusion of the OIG audit, is that a key obstacle to eliminating soring under the Horse Protection program is the unwillingness of some DQPs to correctly palpate and observe other actions necessary to making a proper diagnosis.

The data and findings presented in the OIG report and our evaluation of inspection records show that soring is still underdiagnosed in part because of the above noted conflicts of interest within the Tennessee Walking Horse and racking horse industries. The report also confirmed that APHIS lacked a sufficient number of veterinary officers to attend and oversee inspections at all shows. The report recommended that APHIS abolish the DQP program and establish by regulation that only independent, accredited veterinarians perform inspections at sanctioned shows. It also recommended that better controls be instituted to prevent persons disqualified for HPA infractions at sanctioned events from participating in subsequent events. The report added that APHIS should hire and train these

inspectors and pass the costs for inspections along to event management. In return, shows would benefit from improved compliance and exhibitors would see fairer competition.

As indicated in its 2010 response to the report, APHIS agreed with the intent of the USDA–OIG recommendations. APHIS responded that it would propose a regulatory change to abolish the current DQP licensing system and have the Agency be the only entity authorized to train and license DQPs but stated that it could not predict the timing for doing so. APHIS also stated that it would establish strict qualifications to prohibit conflicts of interest so that DQPs having close ties with the horse show industry would be excluded from licensing. APHIS additionally declared at the time that it would continue to allow HIOs to hire and compensate DQPs to inspect horse shows but they would have to use only DQPs trained and licensed by APHIS.[15] This would replace the practice, still in place today, of DQPs being trained and licensed under an HIO-run program under APHIS oversight, a practice that, as discussed immediately below, APHIS has determined to present an insoluble conflict of interests.

APHIS' response to the USDA–OIG audit report formed the basis for our proposed 2016 revision of the HPA regulations, discussed below.[16] After issuance of the report in 2010, APHIS also undertook several nonregulatory approaches to help the industry improve compliance with the Act, among them increased engagement with industry groups, inspection workshops for DQPs, and stepped-up APHIS presence at certain shows to oversee inspections and check whether disqualified persons are participating. From 2018 to the present, APHIS has also hosted joint training sessions with the HIOs to ensure all DQPs are receiving the same training. Despite being directly trained by APHIS, DQPs continued to perform unsatisfactory inspections, with no substantial reduction in the number of sored horses performing in certain show classes. We ultimately determined that the problem was not inadequate training, but rather a regulatory structure in which DQPs lacked sufficient latitude to inspect horses properly without fear of reprisal from management and often had strong incentives not to do so.

Two provisions, both in § 11.7(d)(7) of the current regulations, specifically address conflicts of interest—one that prohibits a DQP from exhibiting or selling a horse at an event in which he or she has been appointed to inspect horses, and another in which the DQP cannot inspect at a show or sale in which horses owned by a member of his or her immediate family or employer are competing or are being offered for sale. While these provisions focus on two clearly apparent conflicts of interest, many others are not addressed in the regulations and are not enforceable through nonregulatory actions. A DQP may, for example, have business or other transactional interests with show judges, HIO officials, or others who have horses competing in events inspected by that DQP. We believe that a regulatory change that brings inspectors directly under APHIS oversight is necessary so that they can be sufficiently screened for conflicts of interest as a condition of Agency authorization to conduct inspections.

**2011 HPA Rulemaking**

In 2011, APHIS initiated work on a rulemaking to reduce industry conflicts of interest and participation of suspended persons in HPA-covered events, as well as further restrict the physical means by which horses are sored. On July 26, 2016, we published in the **Federal Register** (81 FR 49112–49137, Docket No. APHIS–2011–0009) a proposal to amend the regulations to provide that APHIS, rather than HIOs, would train and license inspectors to diagnose sored horses and determine compliance with the Act at horse shows, exhibitions, sales, and auctions.

We invited the public to address our proposal to have APHIS train and license inspectors to address the conflict of interests between DQPs and the industry that results in underreporting violations of the Act. Following the recommendation from the USDA–OIG audit, we further proposed that only veterinarians and veterinary technicians,[17] screened by APHIS for conflicts of interest and having equine experience, may be licensed to inspect horses for soring at horse shows, exhibitions, sales, and auctions. This would help ensure that inspectors possess the medical expertise and adherence to professional veterinary ethics codes to detect and diagnose sore horses capably and reliably.

We also proposed in 2016 to amend the prohibitions on devices, equipment, substances, and practices that can cause or mask soring or can reasonably be expected to do so, particularly with respect to Tennessee Walking Horses and racking horses.

We solicited public comments on the proposal and received 130,975 submissions, as well as comments provided at 5 listening sessions. Comments came from State and Federal elected officials, including current and former U.S. Senators and Representatives; State agricultural agencies; farm bureaus; gaited horse organizations; trotting horse federations and organizations; other domestic and foreign horse industry organizations; veterinarians and veterinary associations; horse rescue and animal welfare advocacy organizations; horse owners, trainers, and farriers; small business owners; and the general public.

After responding to public requests to extend the proposal comment period,[18] we reviewed the comments and, on January 11, 2017, we submitted a final rule to the Office of the Federal Register (OFR) for publication. That rule was filed for public inspection, in advance of publication, on January 19, 2017. However, on January 20, 2017, the Chief of Staff of the President issued a memorandum instructing Federal agencies to immediately withdraw all regulations awaiting publication at the OFR.[19] In response to the memorandum, APHIS withdrew the rule from the OFR and it did not publish. The proposed rule on which the final rule was based was also subsequently withdrawn [20] from publication.

On August 13, 2019, the Humane Society of the United States and other non-governmental organizations filed a lawsuit. HSUS argued that the 2017 HPA final rule had been duly promulgated and could not be withdrawn without first providing public notice in the **Federal Register** and an opportunity for public comment. On July 27, 2020, the U.S. District Court for the District of Columbia dismissed the suit, holding that a rule becomes final upon publication in the **Federal Register**.

On July 22, 2022, the U.S. Court of Appeals for the D.C. Circuit reversed and remanded, ruling that APHIS had to

[15] USDA–OIG Audit Report, page 18.

[16] In a separate rulemaking, APHIS also published a proposal (76 FR 30864–30868, Docket No. APHIS–2011–0030) on May 27, 2011, to require HIOs or associations that license DQPs to assess and enforce minimum penalties for violations of the Act and regulations. A final rule (77 FR 33607–33619) was published June 7, 2012, and became effective 30 days later. These requirements are located in § 11.25 of the current regulations.

[17] Veterinary technicians are not mentioned in the USDA–OIG audit report, but we determined in the 2016 rulemaking that persons holding this credential from an accredited program and having adequate equine experience are qualified and may be considered for licensure to inspect horses.

[18] 81 FR 65307 (Docket No. APHIS–2011–0009), September 22, 2016.

[19] 82 FR 8346, January 20, 2017.

[20] December 13, 2021 (86 FR 70755, Docket No. APHIS–2011–0009).

provide notice and an opportunity for comment before withdrawing a rule that was available for public inspection, but not yet published in the **Federal Register**. *Humane Soc'y of the U.S.* v. *U.S. Dep't of Agric.,* 41 F.4th 564, 565 (D.C. Cir. 2022). The mandate was issued December 13, 2022.

On May 12, 2023, the U.S. District Court issued its decision on remand without vacatur, but ordered that the 2017 rule would take automatic effect if the agency failed to take appropriate remedial action: Either promulgate an updated version of the rule, or otherwise remedy the deficiency in the withdrawal of the 2017 rule by conducting notice and comment on the withdrawal. *Humane Soc'y of the U.S.* v. *U.S. Dep't of Agric.,* No. 19–cv–2458 BAH, 2023 WL 3433970 (D.D.C. May 12, 2023). APHIS signaled to the Court its intent to remedy the deficiency by proposing to withdraw the 2017 final rule through notice and comment processes, and a notice of proposed rulemaking to withdraw the 2017 rule was published in the **Federal Register** on July 21, 2023 (88 FR 47068–47071, Docket No. APHIS–2011–0009).

This current proposal incorporates steps taken in the 2017 HPA final rule to eliminate soring. In addition, it provides recent support and data emphasizing that the causes of soring are long-standing and endemic, and not simply aberrations that occurred in the past. To this end, we introduce into this proposal the Horse Protection program's latest inspection statistics and a recent study [21] by the National Academy of Sciences (NAS), discussed below, that analyzes the causes of soring and its diagnosis in light of the current regulations.

**National Academy of Sciences (NAS) Study**

The NAS study, published in 2021, concurs with the USDA–OIG audit report's recommendation that a regulatory change to the inspection component of the Horse Protection program is necessary to eliminate the conflicts of interest that encourage soring. The study was initiated in July 2017, when APHIS, the Tennessee Department of Agriculture, and the Tennessee Walking Horse Breeders Foundation jointly requested that NAS evaluate methods to detect soreness to help ensure that Horse Protection inspection protocols are based on sound scientific principles that can be applied consistently.

In the study, NAS examined the methods currently employed by DQPs and APHIS VMOs for detecting soreness in Tennessee Walking Horses and evaluated current inspector qualifications. NAS also highlighted emerging approaches for detecting soreness in horses and evaluated the role of the scar rule, a set of visual criteria in current § 11.3 used to determine if a horse has been sored. The committee that drafted the NAS study consisted of equine veterinarians and other professionals qualified to review the veterinary medical literature on hoof and pastern pain and skin changes and evaluate methods used to identify soreness in horses as defined in the Act and regulations for scientific validity. As part of their research, the committee reviewed USDA training materials and 61 DQP inspection videos provided by an HIO, and observed problems consistent with those cited in the OIG audit report 11 years earlier. The NAS committee confirmed, in brief, that due to both inadequate HIO training and industry conflicts of interest, DQPs were not consistently or correctly diagnosing sore horses. The committee noted that USDA's ''current horse inspection process for detecting soreness involves observation of the horse's movement and posture and palpation of the limbs, which is the gold standard for detecting local pain and inflammation,'' [22] and that performing these actions knowledgeably and without conflicts of interest is essential to determining whether a horse is sore.

Consistent with the findings of the USDA–OIG audit, the NAS committee concluded that some sored horses were not being identified during inspections. The committee's observation from evaluating the inspection videos was that DQPs are inconsistent in applying diagnostic techniques. During palpation, DQPs ''showed large variations in the technique used to palpate the forelimbs from the carpus to the fetlock—from an absent to a very cursory palpation of limited areas at the palmar surface of the distal limb, with minimal attention given to the dorsal surface of the limb.'' [23] DQPs were also at times observed in the videos gripping the leg too tightly, which may inhibit responses to limb palpation. By comparison, APHIS VMOs are required to practice a standard procedure that involves palpating the limb in a consistent pattern and pressure, resulting in more accurate soring diagnoses.

The NAS committee further observed that, in many instances, DQPs did not adequately observe the horse's movement and posture. For example, from its review of inspection videos, the committee noted that DQPs often did not require the horse to take enough steps to determine whether soring or lameness was present.

At most shows, inspections are performed by a DQP employed by an HIO; less often, by an APHIS VMO, or in some instances, by both. The NAS committee reviewed the training requirements for DQPs in the regulations and noted that not only are DQPs not required to be veterinarians, but that they receive instruction from trainers who are not required to be veterinarians. APHIS VMOs, by contrast, have veterinary degrees and receive extensive medical training in identifying dermatologic, physiological, and behavioral indications of soring in horses.

The NAS committee strongly recommended that the use of DQPs for inspections under the current regulations be discontinued and that only veterinarians, preferably with equine experience, be allowed to examine horses, as is done in other equine competitions.[24] The committee added that if APHIS continues to use third-party inspectors, they should be veterinarians or other equine industry professionals who are screened for potential conflicts of interest and trained by APHIS to properly inspect horses for soring. The committee also stated that consequences for performing substandard examinations should be strictly enforced, and that reports of substandard performance and enforcement warning letters should come from APHIS, not HIOs. We agree with these recommendations and propose in this rulemaking that qualified inspectors be screened and trained by APHIS, and that inspectors be veterinarians as availability allows. We discuss further below how we propose to amend the regulations consistent with these recommendations.

As we noted, the NAS committee also evaluated the scar rule criteria in § 11.3 as a means of diagnosing soring in horses. Since its 1979 inclusion in the regulations, interpretations of what the scar rule means and how to apply it have long led to disagreements among APHIS, veterinary organizations, and the gaited horse industry. As we noted, the NAS study resulted from a shared

[21] *A Review of Methods for Detecting Soreness in Horses*. Washington, DC: The National Academies Press, 2021: *https://doi.org/10.17226/25949.*

[22] NAS, A Review of Methods for Detecting Soreness in Horses, page 3.

[23] NAS, A Review of Methods for Detecting Soreness in Horses, page 31.

[24] NAS, A Review of Methods for Detecting Soreness in Horses, page 4.

desire by both the industry and APHIS that inspection protocols be based on sound scientific principles that can be applied consistently. The NAS committee analyzed the scar rule with this in mind, and based on their work made recommendations for revising the scar rule language that we believe will make it much easier to understand and apply and more accurate as a tool to diagnose soring. We discuss NAS analysis of the scar rule and explain how its findings have helped to shape our proposed changes to it under ''Dermatologic Changes and the Scar Rule.''

The NAS study is the latest major effort to evaluate from a scientific perspective the causes of soring, the current and emerging methods available to diagnose it, and the effectiveness of the current Horse Protection regulations to eliminate the practice. The evidence in the NAS and OIG reports and the Horse Protection program inspection data indicate that many DQPs lack either the correct training or the willingness, or both, to diagnose sored horses, with one outcome—soring persists as an incentive to gain competitive advantage and sored horses continue to appear at shows, exhibitions, sales, and auctions.

**Proposed Changes to the Regulations**

The changes we propose to make to 9 CFR part 11 include a comprehensive reorganization of the part. We have provided a derivation table below to show where we propose to move content currently in the regulations. Current sections are to the left. Sections where content will be moved and revised are listed on the right side of the table, along with new and removed sections:

| Existing regulations | Where addressed in proposed rule |
|---|---|
| § 11.1 Definitions | § 11.1 Definitions (revised). |
| § 11.2 Prohibitions concerning exhibitors | § 11.6 Prohibitions concerning exhibitors (revised). |
| § 11.3 Scar rule | § 11.6(a)(22) Prohibitions concerning exhibitors (revised). |
| § 11.4 Inspection and detention of horses | § 11.8 Inspection and detention of horses (revised). |
| § 11.5 Access to premises and records | § 11.9 Access to premises and records (revised). |
| § 11.6 Inspection space and facility requirements | § 11.10 Inspection space and facility requirements (revised). |
| § 11.6(c) (Non-interference with APHIS personnel) | § 11.3 Non-interference with APHIS representatives and HPIs (revised). |
| § 11.7 Certification and licensing of designated qualified persons (DQPs). | § 11.19 Authorization and training of Horse Protection Inspectors (new section added). (§ 11.7 would be reserved for future use but its content would be removed.) |
| | § 11.11 (new section added and reserved). |
| | § 11.12 (new section added and reserved). |
| § 11.20(a) Responsibilities and liabilities of management | § 11.13(a) Horse shows, horse exhibitions, horse sales, and horse auctions at which the management does not utilize an APHIS representative or Horse Protection Inspector. (new section added and revised). |
| § 11.20(b) Responsibilities and liabilities of management | § 11.13(b) Horse shows, horse exhibitions, horse sales, and horse auctions at which the management utilizes an APHIS representative or Horse Protection Inspector. (new section added and revised). |
| § 11.21 Inspection procedures for designated qualified persons (DQPs). | Section removed, as HIOs would no longer train DQPs in inspection procedures. |
| § 11.22 Records required and disposition thereof. | § 11.14 Records required and disposition thereof (new section added and revised). |
| § 11.22, § 11.24(a) Records required and disposition thereof; Reporting by management. (§ 11.24(b) is an obsolete requirement and not retained in proposed regulations). | § 11.14(a) Records required and disposition thereof (new section added and revised). |
| § 11.23(a) Inspection of records (§ 11.23(b) pertains to training DQPs and would not be retained in proposed regulations). | § 11.15 Inspection of records (new section added and revised). |
| | § 11.16 Reporting by management (new section added). |
| § 11.25 Minimum penalties to be assessed and enforced by HIOs that license DQPs. | Section removed. |
| § 11.40 Prohibitions and requirements concerning persons involved in transportation of certain horses. | § 11.17 Requirements concerning persons involved in transportation of certain horses (new section added and revised). |
| | § 11.18 Utilization of inspectors (new section added). |
| § 11.41 Reporting required of horse industry organizations or associations (pertains to HIOs and not retained in proposed regulations). | Section removed. |

Substantive changes we propose to make in part 11 include:

• Removing the requirement that DQPs be trained and licensed by HIOs and removing the term DQPs from the regulations. Instead, APHIS would screen and train qualified persons to be Horse Protection Inspectors, or HPIs. APHIS would authorize these applicants, preferably veterinarians, as HPIs after screening them for potential conflicts of interest and conducting training.

• Removing all regulatory requirements pertaining to HIOs, as HIOs would no longer have any regulatory responsibilities specific to them. APHIS would assume program administration and development, HPI training, and HPI disciplinary actions as necessary to enforce the Act and regulations. Services contracted between HIOs and event management, such as supplying judges and handling show logistics, would not be affected.

• Prohibiting any device, method, practice, or substance applied to any horse that can hide or mask evidence of soring. (Current prohibitions on other items and practices that can reasonably be expected to cause or contribute to soring would be retained in the regulations.)

• Prohibiting all action devices, pads, wedges, and substances on the limbs or feet of Tennessee Walking Horses and racking horses (with exceptions for approved therapeutic uses of pads, wedges, and substances). An action device is any boot, collar, chain, roller, beads, bangles, or other device which

encircles or is placed upon the lower extremity of the leg of a horse in such a manner that it can either rotate around the leg, or slide up and down the leg so as to cause friction, or which can strike the hoof, coronet band or fetlock joint.

- Replacing the scar rule with language that more accurately describes visible dermatologic changes indicative of soring, and removing the requirement that such changes be bilateral.
- Requiring the management of any horse show, exhibition, sale, or auction that elects to utilize an APHIS representative or HPI to choose and appoint an additional HPI if more than 100 horses are entered in the event.
- Requiring the management of any horse show, exhibition, sale, or auction that elects to utilize an APHIS representative or HPI to inspect horses to have at least one farrier physically present if more than 100 horses are entered in the event, or if there are 100 or fewer horses to have a farrier on call within the local area to be present if requested by an APHIS representative or HPI. Farriers would not be required for shows that do not utilize an inspector.
- Adding new reporting and recordkeeping requirements for management of all horse shows, exhibitions, sales, and auctions covered under the Act. These include retaining records for 90 days of any horse allowed to show under therapeutic treatment, informing APHIS and reporting event information at least 30 days in advance of the event, and notifying APHIS of changes to event information at least 15 days in advance of the event. These requirements are intended to prevent disqualified persons and horses from participating in HPA-covered events and to give APHIS sufficient time to schedule an APHIS representative to inspect at the event, if requested.

To restructure part 11, we propose to reserve current §§ 11.2 and 11.7 and remove §§ 11.20, 11.21, 11.22, 11.23, 11.24, 11.25, 11.40, and 11.41 from the regulations. Requirements for event management recordkeeping, records inspection, and reporting included in §§ 11.20, 11.22, 11.23, and 11.24, as well as requirements for transportation of horses in § 11.40, would be included in new sections we propose.

Our proposed changes to the regulations are detailed below.

**Definitions**

We would make changes to several terms and definitions in § 11.1 that reflect our proposed changes to the Horse Protection program.

We would amend the definition of *action device* by including ''beads'' and ''bangles'' to the illustrative list of devices included under the definition. We are including these devices because they can encircle the leg and move with the horse, striking the skin or creating friction.

We would revise the definition for *Administrator* by adding U.S. mail and email addresses for sending mail to the Administrator of APHIS.

We would remove the definition for *APHIS Show Veterinarian* and revise the definition of *APHIS representative* to mean any employee or official of APHIS. The definition of *APHIS Show Veterinarian* currently means the APHIS veterinarian responsible for the immediate supervision and conduct of the Department's activities under the Act at any horse show, horse exhibition, horse sale or horse auction.

The current definition of *APHIS representative* is any employee of APHIS, or any officer or employee of any State agency who is authorized by the Administrator to perform inspections or any other functions authorized by the Act, including the inspection of the records of any horse show, horse exhibition, horse sale or horse auction. We propose to revise this term to mean ''any employee or official of APHIS.'' APHIS representatives would include qualified full-time and intermittent VMOs employed and trained by APHIS to inspect horses for soring. HPIs would not be considered to be APHIS representatives under this proposed definition because they are not employees of APHIS and not compensated by the Agency, but rather by the show management that contracts their services.

We would add a definition for the term *custodian,* which would mean any person who presents a horse for inspection at any horse show, exhibition, sale, or auction. We note that a person acting as custodian may typically perform additional roles, such as owner, exhibitor, seller, or transporter. Also, the custodian would have to be able to provide required information about the horse as required in part 11. We are proposing adding this term in order to define the term *custodian* more clearly.

We propose to add the term *day(s*) to § 1.1 and define it to mean business days, *i.e.,* days other than weekends and Federal holidays. In several instances, the regulations require the submission of reports or records with a period of days, and we wish to clarify that weekends and Federal holidays are not included within that day count.

The current definition of *Designated Qualified Person* is ''a person meeting the requirements specified in § 11.7 of this part who has been licensed as a DQP by a horse industry organization or association having a DQP program certified by the Department and who may be appointed and delegated authority by the management of any horse show, horse exhibition, horse sale or horse auction under section 4 of the Act to detect or diagnose horses which are sore or to otherwise inspect horses and any records pertaining to such horses for the purposes of enforcing the Act.''

We are proposing to remove the term *Designated Qualified Person or DQP* and its definition, as well as all regulatory requirements in the regulations pertaining to them. We propose instead that APHIS will screen, train, and authorize persons qualified to conduct inspections of horses, devices, and records for the purposes of determining compliance with the Act at horse shows, exhibitions, sales, and auctions. We propose to refer to these qualified persons as Horse Protection Inspectors (HPIs), which would be authorized by APHIS pursuant to proposed § 11.19 and appointed by management of the event. Accordingly, we propose to include a definition for *Horse Protection Inspector* in the regulations, included below.

We would add the term *event manager* and define it to mean the person who has been delegated primary authority by a sponsoring organization for managing a horse show, exhibition, sale, or auction. An individual event manager would need to be designated even if the event is managed by a team of persons. We are proposing this definition in order to clarify management responsibility.

The term *horse industry organization or association* is currently defined as ''an organized group of people, having a formal structure, who are engaged in the promotion of horses through the showing, exhibiting, sale, auction, registry, or any activity which contributes to the advancement of the horse.'' We would remove the term *horse industry organization or association* and its definition, as we propose to remove all regulatory requirements under the Act pertaining to these groups, including requirements for certification of DQP programs, recordkeeping, and other requirements assigned to them. As we note above, HIOs supply other services to shows and events not subject to regulation, including registering participants and coordinating event logistics, supplying show judges, and promoting events. Under this proposal they could continue contracting with events to perform these services.

We would add the term *Horse Protection Inspector* (HPI) to mean a person meeting the qualifications in proposed § 11.19 whom the Administrator has authorized as an HPI and who may be appointed and delegated authority by the management of any horse show, horse exhibition, horse sale or horse auction under section 4 of the Act to detect or diagnose horses which are sore or to otherwise inspect horses and any records pertaining to such horses for the purposes of detecting or diagnosing soring. Under proposed § 11.16(a)(6), event management wishing to have an APHIS representative conduct inspections at their event are required to notify APHIS at least 30 days in advance of the event.

The current regulations define *inspection* to mean ''the examination of any horse and any records pertaining to any horse by use of whatever means are deemed appropriate and necessary for the purpose of determining compliance with the Act and regulations. Such inspection may include, but is not limited to, visual examination of a horse and records, actual physical examination of a horse including touching, rubbing, palpating and observation of vital signs, and the use of any diagnostic device or instrument, and may require the removal of any shoe, pad, action device, or any other equipment, substance or paraphernalia from the horse when deemed necessary by the person conducting such inspection.'' To emphasize that any means of determining compliance with the Act and regulations must be approved by APHIS, we would revise the definition of *inspection* to include the words ''any visual, physical, and diagnostic means approved by APHIS to determine compliance with the Act and regulations.'' The proposed definition would follow the current definition in that such inspection ''may include, but is not limited to, visual inspection of a horse and review of records, physical examination of a horse, including touching, rubbing, palpating, and observation of vital signs, and the use of any diagnostic device or instrument, and may require the removal of any shoe or any other equipment, substance, or paraphernalia from the horse when deemed necessary by the professional conducting such inspection.''

We propose to add a definition for *local area,* which we would define as the area within a 10-mile radius of the horse show, exhibition, sale, or auction. We would add this term in conjunction with proposed § 11.13(b)(2), which would require event management to have a farrier on call within the local area if requested by an APHIS representative or HPI appointed by management and 100 or fewer horses are entered in the horse show, exhibition, sale, or auction. When over 100 horses are entered in an event, management would be required to have a farrier onsite unless they elected to enforce the HPA without recourse to an inspector. We invite comments on this definition as to whether it is reasonable with respect to the geographical distribution of farriers, as well as comments on the costs associated with having a farrier at the shows and on call.

The term *lubricant* in the current definitions means ''mineral oil, glycerine or petrolatum, or mixtures exclusively thereof, that is applied to the limbs of a horse solely for protective and lubricating purposes while the horse is being shown or exhibited . . . .'' We would remove the definition for *lubricant* and prohibit the use of any substances on the limbs of all Tennessee Walking Horses and racking horses. Most substances applied to horses at shows and exhibitions, such as skin and hair conditioners, are not implicated in soring, but they can be used to diminish signs of soring. As we explain under the proposed changes to prohibitions concerning exhibitors, a strong association exists between applications of substances and soring in these particular breeds.

We propose to retain and revise the current definition of *management,* which means ''any person or persons who organize, exercise control over, or administer or are responsible for organizing, directing, or administering any horse show, horse exhibition, horse sale or horse auction and specifically includes, but is not limited to, the sponsoring organization and show manager.'' We would remove ''show manager'' from this definition, as we propose removing that term elsewhere in the regulations, and replace it with ''event manager,'' a term which, as we note above, we propose adding to the regulations.

A definition of *participate* would be added to § 1.1 to mean engaging in any activity, either directly or through an agent, beyond that of a spectator in connection with a horse show, horse exhibition, horse sale, or horse auction, and includes, without limitation, transporting, or arranging for the transportation of, horses to or from equine events, personally giving instructions to exhibitors, being present in the warm-up or inspection areas or in any area where spectators are not allowed, and financing the participation of others in equine events.

*Person* in the regulations means ''any individual, corporation, company, association, firm, partnership, society, organization, joint stock company, or other legal entity.'' We propose to revise the definition by adding ''State or local government agency'' to the list of illustrative examples. We are proposing this change to highlight that State and local government agencies also fall under the definition of *person* in the regulations.

As currently defined in the regulations, *Regional Director* means ''the APHIS veterinarian who is assigned by the Administrator to supervise and perform official duties of APHIS under the Act in a specified State or States.'' We propose removing the term from § 11.1 because APHIS representatives performing Horse Protection duties are no longer organized and managed by region.

*Sponsoring organization* in the current regulations means ''any person under whose immediate auspices and responsibility a horse show, horse exhibition, horse sale, or horse auction is conducted.'' We propose to revise the current definition to mean ''any person or entity whose direction supports and who assumes responsibility for a horse show, horse exhibition, horse sale, or horse auction that has, is, or will be conducted.'' We are making this change to clarify that an ''entity'' is also included under the definition, and to ensure that any person or entity supporting and assuming responsibility for such an event also falls under the definition. Our proposed revision also clarifies that the sponsoring organization's responsibility applies whether the event in question has already occurred or is yet to occur.

We also propose to add a definition for the term *therapeutic treatment* to mean the treatment of disease, injury, or disorder by or under the supervision of a person licensed to practice veterinary medicine in the State in which such treatment was prescribed. We are proposing to define this term to ensure that therapeutic practices applied to any horse covered under the regulations are administered or overseen by qualified veterinarians only.

**Prohibitions Concerning Exhibitors**

Current § 11.2, ''Prohibitions concerning exhibitors,'' lists general and specific prohibitions for any device, method, practice, or substance used on any horse at any horse show, exhibition, or horse sale or auction if such use causes or can reasonably be expected to cause such horse to be sore. We propose to move those prohibitions from § 11.2

to a revised § 11.6 and reserve § 11.2 for future use.

**Non-Interference With APHIS Representatives**

Current § 11.3 contains the ''scar rule,'' which refers to the presence of certain types of lesions on the horse's pastern and fore pastern suggesting that a horse has been sored. Horses that do not meet the scar rule criteria are considered to be sore and are subject to all prohibitions of the Act.

We propose to remove the scar rule from this section and include the revised language in proposed § 11.6(a)(22). A full discussion of the proposed changes to the scar rule is included under ''Dermatologic Changes and the Scar Rule,'' below.

The language we propose to add to revised § 11.3 is based on current § 11.6(c) and amended to prohibit persons from assaulting, resisting, opposing, impeding, intimidating, threatening, or interfering with APHIS representatives or HPIs, or in any way influencing attendees of a horse show, exhibition, sale, or auction to do the same. Persons guilty of such violations may be held criminally liable and referred to the U.S. Department of Justice for prosecution. These proposed amendments strengthen regulatory protections for the safety of both APHIS representatives and HPIs appointed by management and engaged in duties at the events listed, as well as the safety of horses and attendees.

**Prohibitions for Disqualified Persons**

Section 11.4 of the current regulations includes requirements regarding inspection of horses by APHIS representatives, as well as detention of horses for inspection if an APHIS representative has probable cause to believe that a horse is sore. We propose to revise § 11.4 to include provisions regarding the status of persons whom USDA has disqualified from showing, exhibiting, selling, or auctioning horses. Provisions for inspection and detention of horses, which currently comprise this section, would be moved to a new § 11.8.

The proposed text for § 11.4 would indicate that any person disqualified from participating in any horse show, exhibition, sale, or auction shall not show, exhibit, or enter any horse, directly or indirectly through any agent, employee, corporation, partnership, or other device, and shall not judge, manage, or otherwise participate in events covered by the Act within the period during which the disqualification is in effect. We would add this provision to the regulations to ensure that prohibitions are in place to address attempts by disqualified persons to continue participating in events listed above either directly or indirectly through the aid of other identities or persons.

**Appeal of Inspection Report**

Section 11.5 currently includes requirements for the management of any horse show, exhibition, or horse sale or auction to provide APHIS representatives with unlimited access to the grandstands and all other premises of any horse show, exhibition, or horse sale or auction, including any adjacent areas under their direction, for the purpose of inspecting horses or records. Management must also provide an adequate, safe, and accessible area for the visual inspection and observation of horses. This section also requires persons having custody of any horse at any horse show, exhibition, or horse sale or auction to admit any APHIS representative or DQP appointed by management to all areas of barns, compounds, horse vans, horse trailers, stables, or other grounds or related areas at any horse show, exhibition, or horse sale or auction, for the purpose of inspecting any such horse at reasonable times.

We propose changing the heading of § 11.5 to read ''Appeal of inspection report'' and moving provisions for access to premises and records to a new § 11.9. Revised § 11.5 would provide that any horse owner, trainer, exhibitor, custodian or transporter may appeal inspection report findings all or in part to the Administrator. The appeal would require a written statement contesting the inspection finding(s) and include any documentation or other information in support of the appeal. The appeal would have to be received by the Administrator, preferably by electronic mail, or by U.S. mail,[25] within 21 business days of receipt of the inspection report. The Administrator would send a final decision, either via electronic mail or U.S. mail, to the person requesting the appeal.

We note that in current § 11.25, each HIO is required to provide a process in its rulebook, subject to APHIS approval, for alleged violators of the regulations to appeal penalties resulting from inspections. However, as HIOs would no longer play a role in inspections, proposed § 11.5 includes a process for alleged violators to appeal penalties resulting from inspections conducted by APHIS representatives or HPIs appointed by management.

*Pre-Show Review of a Finding of Soring*

In response to the 2016 proposed HPA rule, APHIS received some comments raising due process concerns. The comments included a request that APHIS develop and implement a pre-show process whereby owners and trainers may contest and seek immediate review of a finding that a horse is sore from a decision-maker, and the suggestion that when USDA finds that a horse is sore after being passed by a DQP, the horse should be allowed to be shown until there is a final decision in the matter.

The HPA vests in management the responsibility to disqualify or prohibit a horse from being shown, exhibited, sold, or auctioned following a determination by an inspector that the horse is sore. *See* 15 U.S.C. 1823(a). Specifically, the statute and regulations require management to (among other acts) disqualify a horse in instances where (1) the horse is sore or (2) management is notified by a DQP or APHIS representative that the horse is sore. *Id.;* see § 11.20(b)(1) of the regulations (management ''shall immediately disqualify'' a horse identified by the DQP to be sore or otherwise known by management to be sore). Given this nexus between management's decision and an inspector's findings, and in light of the due process concerns raised in comments on the 2016 proposed rule, we seek additional public comment on potential ways to resolve disputes arising from a determination of soring following inspection, including possible options for resolving such disputes before a show takes place.

We are concerned that the suggestions by commenters on the 2016 proposed rule are not consistent with the intent or language of the Act itself. For instance, if a horse determined by an inspector to be sore is allowed to be shown until a final decision is made, this could undermine Congress's two primary goals in enacting the Act: To eliminate the cruel and inhumane practice of horse soring and to ensure fair competition at horse shows and exhibitions by not permitting sored horses to unfairly compete with horses that are not sore. *See* 15 U.S.C. 1822. Moreover, it would directly contradict paragraph (a) of section 1823 of the Act, which requires that ''[t]he management of any horse show or horse exhibition shall disqualify any horse from being shown or exhibited (1) which is sore or (2) if the management has been notified by [an inspector] that the horse is sore.''

[25] Email address: *horseprotection@usda.gov.* Appeals may also be sent via U.S. mail to APHIS, 2150 Centre Ave., Bldg. B, MS 3W–11, Fort Collins, CO 80547.

Section 1824 of the Act underscores that management must disqualify such horses by listing the failure to do so as an ''unlawful act'' under the Act. Section 1825 of the Act authorizes fines, imprisonment and civil penalties for violations of section 1824. Finally, Congress found that ''horses shown or exhibited which are sore, where such soreness improves the performance of such horse, compete unfairly with horses which are not sore.'' 15 U.S.C. 1822(2).

In addition to these statutory concerns, the process envisioned by past commenters, or other lengthy processes that could not be completed before a scheduled show or exhibition, as they are currently operated, could strongly incentivize owners to contest findings of soring in order to delay as long as possible any possible disqualification. This could undermine the intent and requirements of the Act for the reasons discussed above.

One possible solution could be to conduct the inspections far enough in advance of the exhibition or show to allow for an opportunity to be heard before the event. However, given the current structure of horse shows and exhibitions, as well as the need to ensure that horses are not sored following an inspection and before a show, this proposal would require significant internal changes and cooperation from the horse industry. Most horse shows and exhibitions are 1-day events that are set up during the day and take place in the early evening. Inspections take place approximately 30 minutes before the horse enters the arena, and immediately following the inspection, the horse enters a supervised warm-up area and does not leave that area until the horse enters the arena to perform. This is to ensure that the horse's conditions do not change following its inspection and before the horse enters the show ring. Under the current structure, there is insufficient time to conduct a review process between the inspection and the horse being exhibited or shown, and it would require a significant change in show and exhibition practices, and possible restructuring of the industry itself, to allow such a process to take place. It would also entail a significant reallocation of existing APHIS resources. We may need to deploy more inspectors to shows, have them arrive earlier, develop monitoring protocols to ensure horses are not sored following inspection but before the event, and provide both personnel and direct and indirect support costs to the review process.

To that end, in order to assess the feasibility of conducting inspections in advance of a show or exhibition in a manner that would afford a pre-show review process while still ensuring that the horse is not subsequently sored after inspection, we request specific public comment on the following:

- Could pre-show inspections still take place in the same physical area as the show or exhibition? If not, where should they take place?
- How early should pre-show inspections take place, in order to ensure time for a review process?
- How should the health and safety of the horse be monitored after the inspection takes place in order to ensure that the horse is not subsequently sored? Who would be responsible for monitoring to ensure that the horse is not subsequently sored?
- What type of review process would be afforded to contest a finding that a horse is sore? Who would decide these matters? What parties should be involved? Do the parties need to be physically present at the site of the show or exhibition?
- What timing mechanisms would need to be in place to ensure the review process can be completed in time for the horse to show, if the initial inspection is overturned? What actions should occur in the event that the review process is not completed before the show or exhibition?
- How would any pre-show review process implicate or interact with the existing reinspection process currently located in section 11.4(h), as proposed for amendment and relocation at section 11.8(h)?

In addition to the alternative that we have identified to address the issue, we acknowledge that there may be other means of addressing the issue that we are not aware of. To that end, we request public comment regarding other possible alternatives, including consideration of regulatory bodies, statutory authorities, or incentives or disincentives, including the withholding or forfeiture of prize money, that could be applied to address the issue.

**Prohibited Items and Practices**

Current § 11.2 contains prohibitions on the use of certain action devices, equipment, pads, substances, and practices on horses at any horse show, exhibition, sale or auction covered under the Act.

The prohibitions are intended to pertain to the devices, practices, and substances that are used either to sore horses directly or contribute to the act of soring (an example of the latter being a hoof pad that hides a sharp object). Reaction to the pain caused by soring results in the exaggerated chest-high gait prized in certain classes at Tennessee Walking horse and racking horse shows. Chains and other devices, especially those that are heavy or have sharp or rough edges, can inflict pain and exacerbate soring through repeated strikes to the leg while the horse performs, particularly if irritating substances have also been applied to the skin. Pads that cause a horse's foot to strike the ground at an unnatural angle can also induce pain and soring over time, as can heavy pads and horseshoes. Substances can be used to mask the pain a sore horse feels long enough to pass inspection, while dyes and other substances can hide lesions and other signs of soring on the skin. As reflected in the inspection statistics presented above, soring is diagnosed almost exclusively at events featuring Tennessee Walking horses and racking horses that perform in pads and action devices. By comparison, APHIS and DQP inspections at flat-shod events in which horses do not wear pads and action devices rarely find soring violations.

We note that the current regulations do not prohibit all devices—for example, in § 11.2(b), certain rollers, chains, and bell boots weighing 6 ounces or less are permitted, as are certain types of pads. In proposed § 11.6(b), we allow for the restricted use of some items so that events featuring breeds other than Tennessee Walking Horses and racking horses may continue using them. APHIS recognizes that action devices and pads are sometimes used for purposes that do not cause soring during training of Morgans, American Saddlebreds, and many other gaited breeds. Applying light chains or other devices on the pastern, for example, creates a sensory, or proprioceptive, reaction that can stimulate front and rear hoof height without pain, and that on rear hooves can increase the range of motion.[26] While all horse breeds are subject to provisions of the Act, soring imparts little to no advantage to competitors at these shows, as the gaits on which most breeds are evaluated are noticeably distinct from the exaggerated ''big lick'' step featured at many Tennessee Walking horses and racking horse events.[27]

[26] Clayton, Hilary, ''Rehabilitation for Horses.'' Paper presented at American Association of Equine Practitioners, July 2014.

[27] We acknowledge that many owners of Tennessee Walking horses and racking horses show their horses in ''flat shod'' classes, meaning they do not use the action devices and thick pads associated

The restrictions on pads, devices, and activities listed in current § 11.2(b) make no distinction between breeds that are often diagnosed as sore—Tennessee Walking Horses and racking horses—and other gaited breeds that are not known to be sored. As currently permitted under § 11.2(b), many breeds perform in light chains under six ounces and low pads that elevate the heel by less than an inch. We considered prohibiting all non-therapeutic pads, action devices, substances, and other practices for all breeds at all covered events, but in doing so we would unfairly conflate those breeds that do not sore for competitive advantage with those that do.

Accordingly, we propose to revise § 11.6(b) by including a more restrictive list of prohibitions specific to Tennessee Walking Horses and racking horses. We base our reasons for establishing prohibitions specific to these breeds on several points. As we have noted above, our records show that the clear majority of horses diagnosed by APHIS representatives and DQPs as being sore are Tennessee Walking Horses and racking horses, specifically those that participate in pads and action devices in certain competitions favoring a high-stepping, accentuated gait. Insofar as APHIS directs most of its compliance inspections toward Tennessee Walking Horse and racking horse events, it follows that our records would show that almost all noncompliances we report are among these two breeds. However, based on our informed knowledge about the practices of all breeds performing or exhibiting in the United States, we know that soring in breeds other than Tennessee Walking Horses and racking horses confers no significant performance advantage and is therefore rarely if ever practiced. APHIS-Animal Care officials remain updated on the activities of all breed organizations and investigate any allegations or reports suggesting that violations of the Act are occurring within any breed. We invite public comment on any observations persons may have regarding soring in other breeds.

Further, APHIS has observed from its experience in administering and enforcing the Act and regulations (including through compliance inspections, investigations, enforcement of alleged violations, oversight of industry-based inspection programs, and outreach to the horse industry) that a relationship continues to exist between the use of certain permitted devices and instances of soring, notably among Tennessee Walking Horses and racking horses, when used alone or in conjunction with prohibited substances.

We acknowledge that at many, if not most, shows featuring Tennessee Walking Horses and racking horses, the majority of entrants are exhibiting or performing with so called ''flat-shod'' horses (those that do not normally use the pads and action devices this proposed rule would seek to prohibit). Some shows featuring Tennessee Walking Horses and racking horses are entirely flat-shod in nature and already prohibit pads and action devices. We note that in 2022, almost 35,000 flat shod entries were inspected by DQPs and APHIS representatives combined, with a compliance rate above 99 percent. We do not consider such shows to be high risk with respect to noncompliance with the Act and regulations.

*Action Devices, Boots, Collars*

Under § 11.2(b), the regulations currently allow the use of a chain or other action device on each limb of a horse if the device weighs 6 ounces or less. *Action device* is currently defined as ''a boot, collar, chain, roller, or other device which encircles or is placed upon the lower extremity of the leg of a horse in such a manner that it can either rotate around the leg, or slide up and down the leg so as to cause friction, or which can strike the hoof, coronet band or fetlock joint.'' In the Definitions section, we proposed adding beads and bangles to the illustrative list of action devices, as these devices encircle the leg, and strike the leg or create friction during movement.

Equine veterinarians on the NAS study committee noted that abnormal skin changes seen on the pasterns of Tennessee Walking Horses are not observed on other breeds of horses such as Arabians, American Saddlebreds, and Morgans, which sometimes train with action devices but do not usually wear them when competing. Moreover, action devices used on other breeds typically are of lower weight than those used on Tennessee Walking Horses and racking horses. The committee also noted that Tennessee Walking Horses are often trained with action devices weighing in excess of the 6-ounce action devices currently allowed for competition and concluded that the use of heavier or more cumbersome devices in training may be more likely to contribute to the formation of skin lesions.[28]

NAS' observations regarding action devices and their role in soring are consistent with those of an older but still relevant study [29] conducted at the Auburn University School of Veterinary Medicine from 1978 to 1982, which evaluated the effects of acute and chronic inflammatory responses on the front and hind limbs of horses. The findings of that study suggest a strong relationship between soring and the combined use of action devices and substances. Horses were exercised for 2–3 weeks wearing 2-, 4-, and 6-ounce chains, after which it was determined that the use of such chains for a duration of 2 to 3 weeks ''did not produce any harmful effects to the horses' legs, with exception to some loss of hair from 6-ounce chains in the pastern areas.'' However, in another phase [30] of the study, it was determined that the combined use of prohibited substances and chains on the pasterns of horses caused lesions, tissue damage, and visible alterations of behavior consistent with soring. Although this phase of the study used 10-ounce chains, 4 ounces heavier than what is currently allowed, if a horse may be trained sore using 10-ounce chains (or other weight and/or substance combinations) and then shown in 6-ounce chains, the use of a 6-ounce chain may reasonably be expected to cause the horse to experience pain while walking, trotting, or otherwise moving.[31]

Historically, prohibited substances such as caustic irritants have been applied to the pasterns of some gaited breeds, most commonly Tennessee Walking Horses and racking horses, until the skin is sensitive and painful to the touch. This process typically takes several days and completed before the horse enters the event grounds. When the horse wears a chain or other action device while performing, it strikes the treated skin, causing pain and a high stepping reaction. Our observations from administering and enforcing the Act have indicated that soring can and does occur in Tennessee Walking Horses and racking horses with the use

with soring and required as a condition of entry in performance classes.

[28] *A Review of Methods for Detecting Soreness in Horses,* page 81 (see footnote 21).

[29] Thermography in Diagnosis of Inflammatory Processes in Horses in Response to Various Chemical and Physical Factors: Summary of the Research from September 1978 to December 1982. Submitted to the U.S. Department of Agriculture by Dr. Ram C. Purohit, Associate Professor, School of Veterinary Medicine, Auburn University. The study is available at the regulations.gov address included under **ADDRESSES** or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT** above.

[30] Phase 7, ''Simultaneous Use of Chemical and Chains for Soring Horses''.

[31] The NAS study (page 81) also indicated that heavier chains and other action devices are typically used when training Tennessee Walking Horses.

of prohibited substances and/or action devices such as chains and rollers of nearly any weight, including the 6-ounce weight limit currently in the regulations.

Under proposed § 11.6(a), ''General Prohibitions for All Horses,'' we would continue to prohibit any action device, method, practice, or substance to be used on any horse at any horse event covered under the Act if such use causes or can reasonably be expected to cause such horse to be sore or is otherwise used to mask previous and/or ongoing soring.

Proposed § 11.6(b) lists prohibitions that apply to all horses at covered events but which allow for some devices used by some breeds for purposes unrelated to soring, as discussed above.

Under § 11.6(c)(1), we would prohibit all action devices on Tennessee Walking Horses and racking horses, and in paragraph (c)(2) prohibit all artificial extension of the toe length unless the horse has been prescribed and is receiving therapeutic treatment using artificial extension of the toe length. In proposed paragraph (c)(3) we would prohibit all pads and wedges on any Tennessee Walking Horse or racking horse at any horse show, exhibition, sale, or auction, unless the horse has been prescribed and is receiving therapeutic treatment using pads or wedges as approved in writing by a licensed veterinarian. Finally, in proposed paragraph (c)(4), we would prohibit all substances on the extremities above the hoof of any Tennessee Walking Horse or racking horse entered for the purpose of being shown or exhibited, sold, auctioned, or offered for sale in or on the grounds of any horse show, horse exhibition, or horse sale or auction. Explanations for each of these prohibitions is provided below.

In prior rulemakings, APHIS has received a range of comments from members of the gaited horse industry, veterinary professional organizations, animal advocates, and the general public regarding the purposes and effects of such devices, and whether there are minimum weights below which such devices will not cause lesions that constitute soring. Our experience with enforcing the Act indicates that soring can be induced when action devices are used alone or in combination with prohibited substances. We welcome public comment, supported with scientific data or other rigorous evidence, on the effects of action devices used alone or in combination with other training methods.

*Pads, Toe Extensions*

Section 11.2(b)(8) of the current regulations prohibits pads or other devices on yearling horses (horses up to 2 years old) that elevate or change the angle of such horses' hooves in excess of 1 inch at the heel. Altering the angulation of a horse's feet and legs can cause painful lameness, soreness, and inflammation by transferring concussive impact and weight-bearing pressures to joints and other parts of the horse not normally subjected to these forces. Elevating the foot using stacked hoof pads, or ''performance packages,'' can also cause an increase in tension in the tendons leading to inflammation, as can extra weight on the horse's foot. Additionally, elevating only the front feet, as is typically done in Tennessee Walking Horse and racking horse performance-class competitions using pads, ''causes an unnatural angulation of the back and body of the horse, and changes the alignment of the shoulder muscles, the vertebrae, and the pelvis, all of which are then subject to stress, irritation, and inflammation.'' (See 53 FR 14780 (April 26, 1988)).

Research undertaken in the above-cited Auburn study indicated that raising a horse's heels through the use of pads alone resulted in swollen flexor tendons and signs of inflammation. The same study also found the ability to detect pressure soring (*i.e.,* the illegal application or use of bolts, screws, blocks, hoof packing material, and other methods of pressure) through visual and physical inspection of the soles of horses' hooves is limited because pads obscure the solar surface of the foot.

Under proposed § 11.6(c)(3), we would prohibit all pads and wedges on any Tennessee Walking Horse or racking horse at any horse show, exhibition, sale, or auction, unless the horse has been prescribed and is receiving therapeutic treatment involving the use of pads or wedges as approved in writing by a licensed veterinarian. APHIS' experience at Tennessee Walking Horse and racking horse events indicates that soring continues to occur through the use of performance packages that can introduce unnatural angulations of the foot or hide signs of pressure shoeing. However, we would not have this specific provision become effective until 270 days after promulgation of a final rule, as it takes approximately 6 to 8 months for a padded horse to become acclimated to being flat-shod (*i.e.,* walking and performing without pads).

We invite comments on whether this is an appropriate timeframe for transitioning to a prohibition on pads, but underscore that this prohibition is necessary in order for APHIS to enforce the provisions of the Act. APHIS inspection data shows that of the alleged HPA violations documented at events from FY 2017 through 2021, 94 percent involved horses wearing pads.[32] This is not to imply that pads were directly responsible for soring these horses. Rather, the performance classes in which soring confers the greatest benefit (an unnatural high-stepping gait) require that the horse wear pads.

In proposed § 11.6(b)(9) and (13), we would continue to allow the restricted use of pads at shows without Tennessee Walking Horses and racking horses, provided that the pads or other devices on horses up to 2 years old that elevate or change the angle of such horses' hooves are not in excess of 1 inch at the heel, and would also continue to allow the use of pads made of leather, plastic, or a similar pliant material.

In proposed § 11.6(c)(2), we would also prohibit all artificial extensions of toe length on Tennessee Walking horses and racking horses, unless the horse has been prescribed and is receiving therapeutic treatment. Toe extensions can be used to sore horses by increasing stress on certain tendons and ligaments. However, similar to what we indicated regarding pads, prohibition of artificial extensions would not become effective until 270 days after promulgation of a final rule, as it takes approximately 6 to 8 months to take the steps needed to re-acclimate a Tennessee Walking horse or racking horse accustomed to going in such extensions to walking and performing without them. As the practice has non-soring uses in other breeds, such as to make safe adjustments to a horse's gait, we will retain the provision in § 11.2(b)(11) to allow artificial extension of the toe length on horses other than Tennessee Walking horses or racking horses, whether accomplished with pads, acrylics or any other material or combinations thereof, provided that it not exceed 50 percent of the natural hoof length as measured from the coronet band, at the center of the front pastern along the front of the hoof wall, to the distal portion of the hoof wall at the tip of the toe.

*Substances*

Under the general prohibitions in current § 11.2(a), a substance must not be used on any horse at any covered event, regardless of breed, if such use causes or can reasonably be expected to cause such horse to be sore.

[32] Inspection data compiled by APHIS Horse Protection program from FY 2017 through 2021.

Numerous substances are used on horses at shows, exhibitions, and sales events for legitimate purposes, among them shampoos, polishes, conditioners, oils, and insect repellents, as well as lubricants that allow action devices to slide on the leg with less friction. For this reason, the specific prohibitions in current § 11.2(b) do not include substances. However, as we mentioned above, at Tennessee Walking horse and racking horse events, we have observed from our experience enforcing the regulations (including through compliance inspections, investigations, enforcement actions, and industry oversight and outreach) that chains, rollers, and similar devices are sometimes used with caustic substances to induce painful lesions and inflammation. Other prohibited substances sometimes detected on horses include masking and numbing agents that temporarily block the pain of soring so inspectors cannot detect pain upon inspection. Specifically, local anesthetic agents such as benzocaine and lidocaine are used to deter detection of soring upon evaluation, as well as dyes and paints to cover evidence of soring.

Even lotions such as skin softeners and conditioners are implicated in soring at Tennessee Walking horse and racking horse events. While these substances do not directly cause soring, their intended use is to diminish the effects of soring. Such substances are used so that when soring is induced, the skin is softer and does not react as badly, thus decreasing the chance of inflammation and a subsequent scar rule violation.

Current § 11.2(c) prohibits all substances on the extremities above the hoof of any Tennessee Walking Horse or racking horse while being shown, exhibited, or offered for sale at any covered event, except lubricants such as glycerin, petrolatum, and mineral oil, or mixtures of these. Moreover, these lubricants must be furnished by event management and can only be applied after inspection.

However, data collected by APHIS from 2017 through 2022 [33] indicates that, in each of those years, substantial numbers of horses tested by APHIS were positive for prohibited substances, with nearly all of them being Tennessee Walking horses and racking horses. In FY 2018, among horses that wore performance packages (action devices and pads), 144 horses were positive out of 194 tested, and over the 6-year period the average rate of positives was more than 40 percent.[34] Furthermore, during this 6-year period, masking and numbing agents constituted about 36 percent of the prohibited substances detected on all horses tested. Of the horses testing positive for prohibited substances, about 90 percent wore performance packages while being shown or exhibited in performance classes. The data from this period shows that the Tennessee Walking Horse and racking horse communities continue to use prohibited substances to induce, hide, or mask soring despite the current ban.

Therefore, in proposed § 11.6(c)(4), we would prohibit all substances on the extremities above the hoof of any Tennessee Walking Horse or racking horse entered for the purpose of being shown or exhibited, sold, auctioned, or offered for sale in or on the grounds of any horse show, exhibition, sale, or auction, regardless of the substance's composition. Lubricants would no longer be allowed to be used with action devices as we also propose to prohibit such devices on these breeds. Given the wide range of substances that can induce or numb pain, or otherwise hide evidence of soring, we consider a prohibition of all substances at shows with Tennessee Walking Horses and racking horses to be the best means to reduce incidences of soring in accordance with the HPA.

*Stewarding*

In proposed new paragraph (b)(21), we would prohibit stewarding of any breed of horse during inspection for soreness. Stewarding involves the use of whips, cigarette smoke, or other threatening actions or paraphernalia to distract a horse from feeling leg pain when palpated during inspection or to otherwise impede the inspection process.

We would also prohibit holding of reins less than approximately 18 inches from the bit shank. The earlier-cited NAS study committee's observation of 61 inspection videos revealed numerous incidents of stewarding during the standing inspection that were not dealt with by the inspector, including holding the reins closer than 18 inches from the bit, often just below or on the shank. In some cases, the committee observed that the horse was restrained with constant tension, often with the reins held in an upward direction, or the reins were pulled sharply. The committee noted that these restraint tactics can create a distraction during the palpation procedure by inducing pain in the oral cavity.[35]

*Dermatologic Changes and the Scar Rule*

Under current § 11.3 of the regulations, all horses [36] subject to the ''scar rule'' that do not meet certain criteria are considered sore and are subject to all prohibitions of section 5 of the Act. Paragraph (a) states that ''the anterior and anterior-lateral surfaces of the fore pasterns (extensor surface) must be free of bilateral granulomas, other bilateral pathological evidence of inflammation, and, other bilateral evidence of abuse indicative of soring including, but not limited to, excessive loss of hair.'' A footnote is also appended to paragraph (a). It defines ''granuloma'' as ''any one of a rather large group of fairly distinctive focal lesions that are formed as a result of inflammatory reactions caused by biological, chemical, or physical agents.''

Paragraph (b) of the scar rule states that ''the posterior surfaces of the pasterns (flexor surface), including the sulcus or 'pocket' may show bilateral areas of uniformly thickened epithelial tissue if such areas are free of proliferating granuloma tissue, irritation, moisture, edema, or other evidence of inflammation.''

In paragraph (a)(2) of § 11.21, the requirements for inspection of horses by DQPs include an examination to determine whether the horse meets the scar rule criteria. Paragraph (a)(2) states that ''[w]hile carrying out the procedures set forth in this paragraph, the DQP shall also inspect the horse to determine whether the provisions of § 11.3 of this part are being complied with, and particularly whether there is any evidence of inflammation, edema, or proliferating granuloma tissue.''

The scar rule is not a part of the Horse Protection Act. In its current form, the scar rule was proposed in 1978 and added to the regulations in 1979.[37] According to the 1978 proposal, the scar rule was initially developed in 1974 by representatives of the horse industry and the Department as part of the industry's self-policing program against

[33] HIO collected samples are included in FY 2020 through FY 2022 data and were funded by APHIS.

[34] See Table 3 presented above in the section ''Evaluation of the Horse Protection Program.''

[35] A Review of Methods for Detecting Soreness in Horses, page 7 (see footnote 21).

[36] The regulation states that it applies to all horses born on or after October 1, 1975, but as this now includes every living horse it no longer needs to be part of the regulations.

[37] The proposal was published in the **Federal Register** on April 28, 1978 (43 FR 18514–18531) and the final rule was published on April 27, 1979 (44 FR 25172–25184) .

soring.[38] The proposal notes that as a result of that program, a distinction between the types of scars found on younger and older horses gradually emerged; younger horses ''do not bear the scars, granulomas, and callouses indicative of soring that are often found on older horses.'' [39] The Department therefore stated in the proposal that it ''believes it will benefit all concerned parties by adopting and enforcing a national uniform criteria for applying the 'scar rule'.'' [40]

The Department added that the scar rule it was proposing would allow for normal changes in the skin due to friction and permit thickening of the epithelial layer of the skin in the pastern area, comparing it to ''a callous on a workman's hands,'' and would also allow for moderate loss of hair on the pastern caused by the friction caused by an action device.[41] Notably, the proposal emphasized that the scar rule must be applied bilaterally and that the scarring must be identical on both legs, so that horses bearing scars from accidental injury to one leg are not unfairly penalized as being sore, being that ''[t]he chances are extremely remote that any horse would ever injure both forelegs in an identical manner with resulting identical scars in the anterior or posterior pastern area of each foreleg.'' [42]

In 2001, APHIS issued a guide [43] regarding how to apply the scar rule during inspections. The scar rule as currently written requires that for a horse to be in compliance with the scar rule, there must be no proliferating granuloma tissue, irritation, moisture, edema, or other evidence of inflammation indicative of soring visible in highly specific locations on or near the anterior pasterns. The guide emphasized that ''[b]ecause of the difference between what is allowed on the front and back of the pastern, it is important to know where the boundaries of the anterior and posterior surfaces are located,'' and provided specific instructions for determining the boundaries for purposes of determining regulatory compliance. Once the boundaries are determined, the anterior and posterior surfaces of the horse's pasterns must be determined to be entirely free of scars indicative of soring but the posterior surface of the pastern is allowed to show uniformly thickened skin that is free of inflammation, with no redness, swelling, pain, or oozing. The guide also emphasized that for there to be a scar rule violation, skin abnormalities must be found on both front pasterns, although they do not have to be identical in appearance or location to be a violation.

The 2001 guide indicates that APHIS' understanding of scarring had evolved since 1978, such that the Agency now understood that a horse need not bear identical scars on both pasterns in order to be bilaterally scarred. Its issuance also indicates that APHIS believed guidance was warranted at the time to ensure that inspections for violations of the scar rule were correctly and uniformly conducted.

Despite the issuance of the 2001 guide, and the development of subsequent training that supplanted the guide, the scar rule itself remains unchanged in practice from its inclusion in the regulations 44 years ago. Since that time, however, advances in veterinary science as well as technical innovations in imaging and diagnostics have improved our understanding of how soring occurs and our ability to detect it. (As the NAS study notes, even the term ''scar rule'' has become something of a misnomer, with the obvious bilateral soring lesions and scars seen prior to passage of the Act in 1970 only rarely observed today.)

However, as technical advancements during the intervening period have improved our ability to detect soring, so too have technical advancements improved violators' ability to evade detection of scarring during inspections. APHIS, veterinary organizations, and the horse industry continue to see violators developing new ways to obscure the gross dermatologic indicia of soring, leaving little or no visible lesions on the leg and making it difficult to disqualify a horse under the scar rule as currently written. Violators, for example, have used lasers to smooth out irregularly thickened skin or evidence of chronic inflammation on one pastern of a horse that has been sored bilaterally, leaving only one leg with obvious signs of soring (unilateral), thus allowing the horse to avoid being disqualified under the current bilateral requirement of the scar rule. Requiring that lesions be bilateral in order for a horse to be considered sore under the scar rule has made it less effective against the innovations devised to evade it. In short, it is now clear to the Agency that a horse need not gross dermatologic indicia of soring bilaterally in order for the horse to be sore.

Further, although the existing scar rule specifies regions on the limb (extensor and flexor surfaces, sulcus) on which the scarring must occur for a violation of the scar rule to occur, as the issuance of the 2001 guide illustrates, the boundaries of the regions may not always be clearly and uniformly understood in the absence of guidance. Moreover, an abnormality indicative of soring is not enforceable as a scar rule violation if it appears outside these regions.

The NAS study also found the term ''granuloma'' to be imprecise in its regulatory use as one of the visible signs of soring during a gross inspection. The study notes that medically, the term is defined as ''an inflammatory lesion composed of specific types of leukocytes arranged in a particular way,'' and indicates that only a microscopic evaluation of the tissue in question will establish the presence of granulomatous inflammation.[44] This stands in contrast to the regulatory definition within the scar rule itself, which defines ''granuloma'' much more broadly as ''any one of a rather large group of fairly distinctive focal lesions that are formed as a result of inflammatory reactions caused by biological, chemical, or physical agents.'' The regulatory definition of the term includes lesions and other effects of inflammation caused by soring that are visible to the naked eye upon inspection of the limb. The medical definition of ''granuloma'' describes pathology that can only be viewed microscopically. The study suggested that the scar rule be revised to limit evidence to dermatologic conditions that are observable during gross examination (an examination by an inspector that involves palpating the horse, observing its movements, and looking for visible (not microscopic) abnormalities on the skin indicative of soring).

Given the foregoing considerations, we propose updating the scar rule. Accordingly, what had been known as the scar rule would be moved to proposed paragraph (b)(22) ofproposed § 11.6, and would be updated to the following: ''The forelimbs and hindlimbs of the horse must be free of dermatologic conditions that are indicative of soring. Examples of such dermatologic conditions include, but are

[38] *See also In Re: F. Dale Rowland & Denise Rowland., 52 Agric. Dec. 1103, 1126 (U.S.D.A. Aug. 25, 1993)* (citing Horse Protection Enforcement, 1979: Annual Report of the Secretary of Agriculture to the President of the United States Senate and the Speaker of the House of Representatives (July 1980) at 4).

[39] 43 FR 18514–18531, page 18519.

[40] *Idem.*

[41] *Idem.*

[42] *Idem.*

[43] USDA–APHIS, Understanding the Scar Rule, February 2001. This guide was removed from Agency circulation (and its website) when the Agency updated its training materials on the scar rule.

[44] *A Review of Methods for Detecting Soreness in Horses,* page 83.

not limited to, irritation, moisture, edema, swelling, redness, epidermal thickening, loss of hair (patchy or diffuse) or other evidence of inflammation. Any horse found to have one or more of the dermatologic conditions set forth herein shall be presumed to be 'sore' and be subject to all prohibitions of section 6 (15 U.S.C. 1825) of the Act.''

As to the likelihood of accidental abrasions and other skin irregularities being confused for soring, changes in the skin due to soring are fairly distinctive when compared to accidental injuries. When horses are repeatedly sored, the skin on their pasterns will develop thickening that usually is in a ridge pattern and diffuse around the posterior and/or anterior pasterns. An injury is usually a discrete, well-demarcated cut or scar that can be differentiated from the skin changes seen with soring.

In our proposed change to the scar rule, we removed all references to scars and scarring, which is supported by the NAS study's conclusion that ''scars have not been documented microscopically in Tennessee Walking Horses that have been found to be sore. A scar is an area of tissue where the normal components and organization of the tissue have been lost and replaced by fibrous connective tissue.'' [45]

We also propose removing all requirements that violations of the proposed § 11.6(b)(22) be bilateral in nature given the ability of violators to obscure signs of soring on at least one limb. We also note that it has long been the Agency's understanding, as evidenced in the 2001 guide, that soring may result in dermatologic indicia that is not uniform. Notwithstanding the current scar rule's language, we consider this proposed revision to be consistent with the Act itself. In the definition of ''sore'' in Section 2 of the Act (15 U.S.C. 1821), a horse is considered sore if the agents and other devices listed in the definition and used in the soring are applied, inflicted, injected, or used to or on ''any limb of a horse.'' This definition, which is fundamental to understanding the Act's requirements regarding soring, clearly allows for diagnoses of soring regardless of the number of limbs involved. Therefore, a horse may be sore if a single limb has been subjected to the use of one of the devices, substances, or practices enumerated in the statutory definition of the term ''sore.''

The Agency acknowledges that section 6 of the Act (15 U.S.C. 1825(d)) states that ''[i]n any civil or criminal action to enforce this chapter or any regulation under this chapter a horse shall be presumed to be a horse which is sore if it manifests abnormal sensitivity or inflammation in both of its forelimbs or both of its hindlimbs.'' However, APHIS considers this provision to mean that a horse must be considered presumptively sore during enforcement actions if it manifests such bilateral sensitivity or inflammation. It does not preclude the Agency from considering a horse sored based on evidence of unilateral soring; again, such an interpretation would cut against the definition of *sore* within the Act and render the clause ''any limb of the horse'' to be without meaning.[46]

Regarding our proposal to remove terms describing specific regions of the limb in the revision, we note that the definition of ''sore'' in the Act also supports this change. The definition accounts for soring being applied, inflicted, injected, or used on any limb of a horse without limiting it to any specific regions of the limb. Moreover, APHIS has found evidence of soring that can be identified through gross examination outside of these specific regions, and, as the 2001 guide illustrates, these regions may not be readily identified in all cases without guidance.

We also propose to remove references to ''granulomas'' and ''proliferating granuloma tissue.'' Although the current footnoted definition of ''granuloma'' in § 11.3 describes visible lesions and inflammation as scar rule violations, we are removing the term to prevent continued confusion with its medical definition as elaborated on in the NAS study.

Finally, we would remove the reference to ''uniformly thickened epithelial tissue'' on the flexor surface of the pasterns and cite the NAS study as support for this change. The NAS committee reviewed an unpublished but peer-reviewed evaluation (''Stromberg report'') [47] of 136 microscopic biopsies of skin samples taken from 68 Tennessee Walking Horses that had been disqualified for violations of the scar rule during the Tennessee Walking Horse National Celebration events of 2015 and 2016. The evaluation, conducted by two veterinary anatomic pathologists,[48] examined 136 pastern biopsies (right and left pastern from each horse). Their evaluation of the biopsies indicated abnormal findings of variable epidermal hyperplasia in the form of acanthosis (thickening of the stratum spinosum layer of the epidermis) and variable degrees of hyperkeratosis (thickening of the stratum corneum layer of the epidermis). However, they concluded that beyond these abnormalities, there was no evidence of scar tissue or granulomatous inflammation in the biopsies and therefore concluded there was no basis or proof of a scar rule violation.

The pathologists subsequently provided 24 pairs of the pastern samples from their study to Dr. Pamela E. Ginn, a NAS study committee member and board-certified veterinary pathologist, for further review. While Dr. Ginn's initial observations on reviewing the pastern biopsies are similar to those documented by Drs. Stromberg and Cassone in the Stromberg report, Dr. Ginn interprets the significance of the lesions differently. Drawing from her evaluation, the NAS committee reports that the changes of hyperkeratosis and acanthosis, which were prominent in the biopsy specimens, do not normally occur without a previously inflicted injury on the pasterns. While these changes are recognized as secondary, chronic lesions, and do not provide clear evidence of the initial injury to the skin leading to these changes, they correlate with the grossly detectable lesions of irregular epidermal thickening known as lichenification, a pathologic change most often caused by rubbing, scratching, or other repeated trauma to the skin.[49] In other words, while the Stromberg report found no granuloma in the tissue microscopically and therefore concluded that there was no evidence of a violation, Dr. Ginn's evaluation on behalf of NAS found other pathological changes indicative of repeated trauma that correlate to an unnatural thickening of the skin visible on gross examination. Furthermore, NAS' evaluation found that the absence of granulomatous and scar tissue does not rule out a scar rule violation.

[45] *A Review of Methods for Detecting Soreness in Horses,* page 84.

[46] See *Duncan* v. *Walker*, 533 U.S. 167, 174 (2001) (''It is our duty 'to give effect, if possible, to every clause and word of a statute.'' (quoting *United States* v. *Menasche*, 348 U.S. 528, 538–39 (1955) (quoting *Montclair* v. *Ramsdell*, 107 U.S. 147, 152 (1883))).

[47] Stromberg, P. 2017. *Summary report about soring in Tennessee walking horses.* Unpublished manuscript: *https://www.nationalacademies.org/documents/embed/link/LF2255DA3DD1C41C0A42D3BEF0989ACAECE3053A6A9B/file/D3016359C83283E8AABAF73D5E24301E7BA78A03B4B3?noSaveAs=1.* The manuscript was provided to the NAS committee by a member of the Tennessee Walking Horse industry.

[48] Dr. Paul Stromberg, of the Ohio State University, and Dr. Lynne Cassone, of the University of Kentucky.

[49] *A Review of Methods for Detecting Soreness in Horses,* page 82.

The NAS study recommended that the scar rule language should reflect what inspectors see on sored horses during gross examination. We agree with these conclusions and have proposed a set of diagnostic criteria that retains the visual elements of the scar rule detectable by gross examination.

Finally, we wish to note that APHIS does not entirely agree with the NAS study in its evaluation of the scar rule. While the study has provided APHIS with findings instrumental to our proposed changes to the scar rule, we disagree with NAS' statement regarding its enforceability, excerpted here:

> The language of the scar rule is based on the assumptions that certain lesions exist microscopically, that those lesions can be detected by gross clinical dermatologic exam, and that the terms used in the scar rule were used appropriately. In addition, it is assumed that the rule can be interpreted and applied in a consistent manner by APHIS veterinary medical officers VMOs and DQPs tasked with examining horses for scar rule violations. None of these assumptions hold true today, and therefore the rule as written is not enforceable.[50]

We hold that the current scar rule is in fact enforceable. One of the NAS study's primary bases for considering the scar rule ''unenforceable'' is that it relies on a definition of ''granuloma'' that differs from the commonly accepted medical definition. The use of a regulatory term of art with a defined definition that is different from its ordinary meaning is, however, a well-established and defensible regulatory practice. Additionally, while we agree with the study that, without training and guidance, inspectors could differ in identifying regions of a horse covered by the scar rule, the study ignores the remedial measures that can be used to address this possible discrepancy, such as the issuance of the 2001 guide referenced above. Again, the use of guidance to address issues of possible inconsistent interpretation of the regulations is a well-accepted and long-standing regulatory practice that does not render the regulations themselves ''unenforceable.'' Finally, as we stated above, NAS indicated that the pathological changes found in the biopsy specimens they examined correlate with grossly detectable lesions of irregular epidermal thickening known as lichenification, most often caused by repeated trauma. We note that the grossly detectable (*i.e.,* visible upon gross examination) lichenification is actually equivalent to the non-uniformly thickened epithelial tissue APHIS inspectors document during inspections for soring.

In short, although the APHIS Horse Protection program and the NAS study use different terminology, both agree that microscopic, pathological changes to the skin indicative of soring correlate with a visible thickening detectable on gross examination. Such an examination obviously does not reveal microscopic changes in pathology indicative of soring, but it does not need to do so because of the visible changes that correlate with this pathology.

*Other Proposed Changes to Prohibitions Concerning Exhibitors*

Below is a table outlining other prohibitions for any horse at any horse show, horse exhibition, or horse sale or auction that we would move from current § 11.2 to proposed § 11.6.

| *Prohibitions concerning exhibitors in current § 11.2* | *Location in proposed § 11.6 and substantive changes* |
|---|---|
| **General prohibitions** | |
| Paragraph (a) | Paragraph (a), with proposed additional language specifically prohibiting substances or practices that ''mask previous and/or ongoing soring.'' Certain substances can hide or cause skin lesions, and practices such as stewarding or otherwise distracting a horse during inspection can mask behavioral evidence of pain. |
| **Specific prohibitions** | |
| Paragraph (b)(1) (Certain beads, bangles, rollers) | Paragraph (b)(2). |
| Paragraph (b)(2) (Chains weighing more than 6 ounces) | Paragraph (b)(3). |
| Paragraph (b)(3) (Chains not of uniform size, or twisted or doubled chains). | Paragraph (b)(4). |
| Paragraph (b)(4) (Chains with drop links) | Paragraph (b)(5). |
| Paragraph (b)(5) (More than one action device per limb of horse) | Paragraph (b)(1). |
| Paragraph (b)(6) (Chains, rollers with rough edges) | Paragraph (b)(6). |
| Paragraph (b)(7)(i) (Boots, collars with sharp edges) | Paragraph (b)(7). |
| Paragraph (b)(7)(ii) (Boots, collars weighing more than 6 ounces) | Paragraph (b)(8). |
| Paragraph (b)(8) (Pads changing the angle of hoof in excess of 1 inch at the heel.). | Paragraph (b)(9). |
| Paragraph (b)(9) Any weight on yearling horses, except a keg or similar conventional horseshoe, and any horseshoe on yearling horses that weighs more than 16 ounces. | Paragraph (b)(10). |
| Paragraph (b)(10) Artificial extension of the toe length, whether accomplished with pads, acrylics or any other material that exceeds 50 percent of the natural hoof length. | Paragraph (b)(11). |
| Paragraph (b)(11) (Toe length that does not exceed the height of the heel by 1 inch or more.). | Paragraph (b)(12). |
| Paragraph (b)(12) Pads that are not made of leather, plastic, or other pliant material. | Paragraph (b)(13). |
| Paragraph (b)(13) Any object or material inserted between the pad and the hoof other than acceptable hoof packing. | Paragraph (b)(14). |
| | Proposed additional prohibition on acrylic and hardening substances as hoof packing. These substances, when hardened, can cause hoof pain upon stepping. |

[50] *A Review of Methods for Detecting Soreness in Horses*, page 82.

| *Prohibitions concerning exhibitors in current § 11.2* | *Location in proposed § 11.6 and substantive changes* |
|---|---|
| Paragraph (b)(14) Single or double rocker-bars on the bottom surface of horseshoes which extend more than 1½ inches back from the point of the toe. | Paragraph (b)(15). |
| Paragraph (b)(15) (Metal hoof bands placed less than 1½ inch below the coronet band). | Paragraph (b)(16). |
| Paragraph (b)(16) (Metal hoof bands that can be easily and quickly loosened or tightened by hand). | Paragraph (b)(17). |
| Paragraph (b)(17) (Action device or any other device that strikes the coronet band of the foot of a horse, except soft bell boots). | Paragraph (b)(18). |
| Paragraph (b)(18) (Shoeing a horse, or trimming a horse's hoof in a manner that will cause such horse to suffer). | Paragraph (b)(19). |
| | Proposed additional prohibition on paring of frog or bruising of hoof. These actions can cause the hoof to be overly sensitive to pain. |
| Paragraph (b)(19) (Lead or other weights attached to the outside of the hoof wall, the outside surface of the horseshoe, or any portion of the pad except the bottom surface within the horseshoe). | Paragraph (b)(20). |
| | Paragraph (b)(21) Proposed new paragraph to prohibit stewarding (described above). |
| | Paragraph (b)(22) Proposed new paragraph on dermatologic changes (described above). |

In proposed § 11.6(d), we include time restrictions on workouts and performances for 2-year-old Tennessee Walking Horses and racking horses. These restrictions are moved from current § 11.2(d). We would prohibit show or exhibition workouts or performances of 2-year-old Tennessee Walking Horses and racking horses, as well as working exhibitions of 2-year-old Tennessee Walking Horses and racking horses (horses eligible to be shown or exhibited in 2-year-old classes) at horse sales or auctions, that exceed a total of 10 minutes continuous workout or performance without a minimum 5-minute rest period between the first such 10-minute period and the second such 10-minute period, and more than two such 10-minute periods per performance, class, or workout.

We would also include the horse-related information requirements under § 11.2(e) in proposed § 11.6(e). These requirements currently prohibit failing to provide information or providing any false or misleading information required by the Act or regulations or requested by APHIS representatives, by any person that enters, owns, trains, shows, exhibits, transports or sells or has custody of, or direction or control over any horse shown, exhibited, sold, or auctioned, or entered for the purpose of being shown, exhibited, sold, or auctioned at any horse show, exhibition, sale, or auction.

We would require that this provision apply to requests by HPIs appointed by management as well as APHIS representatives. This information includes, but is not limited to, information concerning the name, any applicable registration name and number, markings, sex, age, and legal ownership of the horse; the name and address of the horse's training and/or stabling facilities; the name and address of the owner, trainer, rider, custodian, any other exhibitor, or other legal entity bearing responsibility for the horse; the class in which the horse is entered or shown; the exhibitor identification number; and any other information reasonably related to the identification, ownership, control, direction, or supervision of any such horse. In determining whether a horse is sore, it is important for an inspector, whether an APHIS representative or an HPI, to have access to these records, especially if a question of material fact arises regarding whether an observable condition on the horse is the result of soring or some other condition, malady, or infirmity known to the horse's owner and its custodians. We would add to paragraph (e) that failure to provide the information requested may result in termination under § 11.13.

**Inspection and Detention of Horses**

Section 11.4(a) currently includes the requirement that each horse owner, exhibitor, trainer, or other person having custody of, or responsibility for, any horse at any horse show, exhibition, or sale or auction allow any APHIS representative to reasonably inspect such horse at all reasonable times and places the APHIS representative may designate. We would move this requirement to proposed § 11.8(a) and include HPIs appointed by management to make such a designation.

We would also retain the requirement in current § 11.4(b), in which an APHIS representative must notify the owner, exhibitor, trainer, or other person having custody of or responsibility for a horse at any horse show, exhibition, or sale or auction that APHIS desires to inspect the horse, and that it must not be moved from the horse show, exhibition, or sale or auction until such inspection has been completed and the horse has been released by an APHIS representative. We would include this requirement in proposed § 11.8(b) and add that HPIs may also make the notification that APHIS desires to inspect the horse. We would retain the provision that only an APHIS representative could officially release the horse as this is decision is made on behalf of the Department.

Paragraph (c) of proposed § 11.8 would state that for the purpose of inspection, testing, or taking of evidence, APHIS representatives may detain for a period not to exceed 24 hours any horse, at any horse show, exhibition, or sale or auction, which is sore or which an APHIS representative has probable cause to believe is sore. Such detained horse may be marked for identification and any such markings must not be removed by any person other than an APHIS representative. This requirement is moved from current § 11.4(c). We do not propose to provide HPIs with this authority as it is an official decision to detain property, in which the APHIS representative is acting on behalf of the Department.

In proposed § 11.8(d), we would include requirements for detained horses, moved from current § 11.4(d), which state that detained horses are required to be kept under the supervision of an APHIS representative or secured under an official USDA seal or seals in a horse stall, horse trailer, or other facility with limited access. In addition, APHIS must have at least one representative present in the immediate detention area when a horse is being held in detention. The official USDA

seal or seals may not be broken or removed by any person other than an APHIS representative, unless the life or well-being of the horse is in danger by fire, flood, windstorm, or other dire circumstances that are beyond human control, the horse needs immediate veterinary care that its life may be in peril before an APHIS representative can be located, or the horse has been detained for the maximum 24-hour detention period, and an APHIS representative is not available to release the horse. As with the proposed provision on detaining horses, we also consider detaining a horse to be an official decision requiring an APHIS representative to act on behalf of the Department.

In proposed § 11.8(e), we would include from current § 11.4(e) the requirement that the owner, exhibitor, trainer, or other person having custody of or responsibility for any horse detained by APHIS for further inspection, testing, or the taking of evidence be allowed to feed, water, and provide other normal custodial and maintenance care, such as walking and grooming, for the detained horse. This would be allowed provided that such care is rendered under the direct supervision of an APHIS representative. Additionally, the regulations would allow any non-emergency veterinary care of the detained horse provided that the use, application, or injection of any drugs or other medication for therapeutic or other purposes is rendered by a veterinarian in the presence of an APHIS representative and the identity and dosage of the drug or other medication and its purpose is furnished in writing to the APHIS representative prior to its use, application, or injection. The use, application, or injection of such drug or other medication must be approved by the APHIS representative. This would be an official oversight function limited to officials acting on behalf of the Department. Further, in retaining this requirement from the current regulations, we would replace the term ''APHIS Show Veterinarian'' in § 11.4(e)(2) with ''APHIS representative'' for the reasons explained above under ''Definitions.''

We would also move to § 11.8(f) the requirement from current § 11.4(f) that APHIS must inform the owner, trainer, exhibitor, or other person having immediate custody of or responsibility for any horse allegedly found to be in violation of the Act or the regulations of such alleged violation or violations before the horse is released by an APHIS representative. An HPI would be able to inform the person of this information, although the decision to release the horse from detention would have to be made by an APHIS representative.

Current § 11.4(g) requires that the owner, trainer, exhibitor, or other person having immediate custody of or responsibility for any horse that an APHIS representative determines must be detained for examination, testing, or taking of evidence, be informed after such determination is made and must allow the horse to be immediately put under the supervisory custody of APHIS or secured under official USDA seal until the completion of the examination, testing, or gathering of evidence, or until the 24-hour detention period expires. We propose to retain this requirement and include it in § 11.8(g), but to replace ''examination'' with ''inspection'' wherever it is used to make the terminology more consistent with its use in other parts of the regulations.

Current § 11.4(h) contains provisions for requesting re-inspection and testing by persons having custody of or responsibility of horses allegedly found to be in violation of the Act or regulations. Proposed § 11.8(h), moved from § 11.4(h), contains provisions for re-inspection and testing and would extend authority to HPIs for certain actions not requiring an official decision or determination. Paragraph (h) would state that the owner, trainer, exhibitor, or other person having custody of or responsibility for any horse allegedly found to be in violation of the Act or regulations, and who has been notified of such alleged violation by an APHIS representative or HPI as stated in proposed § 11.8(f), may request re-inspection and testing of the horse within a 24-hour period. A re-inspection can only occur under the following conditions: (1) A request is made to an APHIS representative immediately after the horse has been inspected by the representative or an HPI appointed by management and before the horse has been removed from the inspection facilities; (2) an APHIS representative determines that sufficient cause for re-inspection and testing exists; and (3) the horse is maintained under APHIS supervisory custody as prescribed in paragraph (d) of the section until such re-inspection and testing has been completed. We would replace the term ''APHIS Show Veterinarian'' with ''APHIS representative'' throughout § 11.8(h) for the reasons explained above under ''Definitions.'' We would also use the terms ''inspection'' and ''re-inspection'' rather than ''examination'' and ''re-examination'' for consistency with the regulations. In addition, proposed paragraph (i) would require that the owner, exhibitor, trainer, or other person having custody of, or responsibility for, any horse being inspected is required to render such assistance, as the APHIS representative or HPI may request, for purposes of the inspection.

**Access to Premises and Records**

Inspector access to premises and records is necessary to ensuring that event management and participants are in compliance with the Act and regulations. In proposed § 11.9, we would include requirements for managers to provide access to premises and records for inspection and for exhibitors to provide access to barns, vans, trailers, stalls, and other locations of horses at any horse show, exhibition, sale, or auction. We would also extend all access to premises and records for the purposes of inspection to HPIs appointed by management. These requirements would be moved from current § 11.5.

Paragraph (a)(1), moved from § 11.5(a)(1), would state that the management of any horse show, exhibition, or sale or auction shall, without fee, charge, assessment, or other compensation, provide APHIS representatives and HPIs appointed by management with unlimited access to the grandstands, sale ring, barns, stables, grounds, offices, and all other areas of any horse show, exhibition, or sale or auction, including any adjacent areas under their direction, control, or supervision for the purpose of inspecting any horses, or any records required to be kept by regulation or otherwise maintained.

Proposed paragraph (a)(2) would state that the management of any horse show, exhibition, sale or auction shall, without fee, charge, assessment, or other compensation, provide APHIS representatives and HPIs appointed by management with an adequate, safe, and accessible area for the visual inspection and observation of horses. This requirement is moved from § 11.5(a)(2).

In proposed § 11.9(b)(1), we would include the requirement from current § 11.5(b)(1) that each horse owner, trainer, exhibitor, or other person having custody of or responsibility for any horse at any horse show, exhibition, or sale or auction shall, without fee, charge, assessment, or other compensation, admit any APHIS representative or HPI appointed by management to all areas of barns, compounds, horse vans, horse trailers, stables, stalls, paddocks, or other show, exhibition, or sale or auction grounds or related areas at any horse show, exhibition, sale, or auction, for the

purpose of inspecting any such horse, at any and all times.

Under proposed § 11.9(b)(2), moved from current § 11.5(b)(2), each owner, trainer, exhibitor, or other person having custody of or responsibility for, any horse at any horse show, exhibition, or sale or auction shall promptly present his or her horse for inspection upon notification, orally or in writing, by any APHIS representatives or HPIs appointed by management, that the horse has been selected for inspection for the purpose of determining whether such horse is in compliance with the Act and regulations.

These proposed requirements in § 11.9 would not include references to DQPs, a role which we propose to remove from the regulations and replace with HPIs.

**Inspection Space and Facility Requirements**

Section 11.6 currently contains horse inspection space and facility requirements for management of a horse show, exhibition, sale, or auction. Under the requirements, management must provide sufficient space and facilities for APHIS representatives to perform their duties as prescribed by the Act and regulations. These requirements include ensuring that APHIS representatives and HPIs appointed by management who inspect horses are provided with a safe area (for example, a well-defined inspection area where inspectors are free from potential harm) to conduct inspections and protection from the elements, and that there are separate waiting areas for horses awaiting inspection and horses that the inspector determines should be detained. As noted in the NAS study, designating an inspection area that has as few distractions as possible will reduce the effect of the environment on the horse's response to pain during examination.[51] We would retain these requirements under proposed § 11.10.

In proposed § 11.10(a)(1), moved from current § 11.6(a), we propose adding that the management of every horse show, exhibition, sale, or auction is required to provide, when requested by APHIS representatives or HPIs appointed by management, without fee, charge, assessment, or other compensation, sufficient, well-lit space and facilities in a convenient location to the horse show, exhibition, sale, or auction arena, so they may carry out their duties under the Act and regulations, whether or not management has received prior notification or otherwise knows that such show, exhibition, sale, or auction may be inspected by APHIS. We added to this provision that the HPI can also make such requests.

In proposed § 11.10(a)(2), event management would need to provide protection from the elements of nature, such as rain, snow, sleet, hail, and windstorms for the inspection area and other areas in which APHIS representatives and HPIs appointed by management carry out their duties. In current § 11.6(b), this requirement is contingent on whether an APHIS representative requests it, but the proposed revision would require that protection from the elements be available to all inspectors at all times, including HPIs. Protection from the elements is needed in order to facilitate accurate inspections.

Proposed § 11.10(a)(3), moved from § 11.6(c), would require that event management provide a means to control crowds or onlookers in order that APHIS representatives and HPIs appointed by management may carry out their duties safely and without interference. This requirement is intended to protect inspectors (whether APHIS representatives or HPIs appointed by management), staff, and spectators, as well as horses.

Inspection for soreness in horses sometimes requires the use of radiography and other technological equipment that must be connected to an electrical power source. Proposed § 11.10(a)(4), moved from § 11.6(d), would require that an accessible, reliable, and convenient 110-volt electrical power source be available at the horse show, exhibition, sale, or auction site. This provision has been amended so that a site without electrical power is no longer an option needing to be requested by APHIS. If fixed electrical service is not available, event management would be required to provide other means for electrical power such as a portable electric generator.

Finally, § 11.10(a)(5) would require appropriate areas to be provided adjacent to the inspection area for designated horses to wait before and after inspection, as well as an area to be used for detention of horses. An appropriate area would be one with sufficient space for the horses and separated from onlookers. This requirement is moved from current § 11.6(e), amended to include separation from onlookers.

We would add to proposed § 11.10(b) a provision that, except for the other persons listed below, only a management representative, HPIs appointed by management, and APHIS representatives be allowed in the warm-up and inspection area. Each horse in the designated warm-up area may be accompanied by no more than three individuals, including the person having immediate custody of or responsibility for the horse, the trainer, and the rider. Each horse in the inspection area may only be accompanied by the person having immediate custody of or responsibility for the horse. No other persons would be allowed in the warm-up or inspection areas without prior approval from an APHIS representative or HPI appointed by management.

We are proposing this provision because our experience has shown that people congregating in designated inspection and warm-up areas can impede the ability of inspectors and APHIS representatives to perform their duties, and could be used to attempt to intimidate inspectors or event officials. Another safety concern is having large groups of people massed in an area where multiple horses are warming up.

**Responsibilities and Liabilities of Management**

Under § 11.20 of the current regulations, the management of a horse show, exhibition, sale or auction that does not appoint a DQP to conduct inspections is responsible for identifying all horses that are sore or otherwise in violation of the Act or regulations, and must disqualify or disallow any horses which are sore or otherwise in violation from participating or competing in any horse show, exhibition, sale, or auction. If event management does not appoint qualified inspectors, management can be held liable for the failure to disqualify a sore horse from participating in a covered event.[52] If management appoints a DQP to conduct inspections, management can only be found liable for violations of the Act and regulations if they fail to disqualify a horse that the DQP identifies as a sore horse and notifies management accordingly.

Under this proposal, HPIs would replace the current role played by DQPs. Management could also request that an APHIS representative conduct inspections instead of an HPI. Under proposed § 11.16(a)(6), management of a covered horse show, exhibition, sale, or auction would have to contact APHIS at least 30 days in advance of the event and announce their intention either to request an APHIS representative or appoint an HPI to conduct inspections, or to have no inspector, or to request a

[51] *A Review of Methods for Detecting Soreness in Horses,* page 69.

[52] 15 U.S.C. 1824(3).

variance if no APHIS representative or HPI is available.

In proposed § 11.13(a), we would include requirements from current § 11.20(a), in that the management of any horse show, exhibition, sale or auction which does not utilize an APHIS representative or HPI is responsible for identifying all horses that are sore or otherwise in violation of the Act or regulations, and must disqualify or prohibit any horses which are sore or otherwise in violation of the Act or regulations from participating or competing in any horse show, exhibition, sale, or auction.

Under proposed § 11.13(a), horses entered for sale or auction at a horse sale or horse auction must be, as appropriate, identified as sore or otherwise in violation of the Act or regulations prior to the sale or auction and, as required by law, prohibited from entering the sale or auction ring. Sore horses or horses otherwise in violation of the Act or regulations that have been entered in a horse show or exhibition for the purpose of show or exhibition must be identified and disqualified prior to the show or exhibition. Any horses found to be sore or otherwise in violation of the Act or regulations during actual participation in the show or exhibition must be removed from further participation immediately (*e.g.,* prior to the horse placing in the class or the completion of the exhibition). Finally, all horses that placed first in each class or event would need to be inspected after the event to determine if such horses are sore or otherwise in violation of the Act or regulations.

We acknowledge concerns that management of some events may forego appointing an APHIS representative or HPI to inspect horses, but in doing so they are legally liable for any sored horses participating in the horse show, exhibition, sale, or auction. Shows without inspectors are more likely to be attended and inspected by APHIS representatives, particularly if APHIS determines the event poses a higher risk of sored horses participating. We noted above that shows featuring Tennessee Walking Horses and racking horses performing in pads and action devices have historically posed a much higher risk of soring, and accordingly we would focus our resources on them. Events featuring horses of other breeds, particularly those shown or performing without pads and action devices, pose a very low risk of soring. We invite comments on which horse events covered under the Act APHIS should focus on with respect to compliance risks, particularly events that choose to forego an inspector.

If event management requests an APHIS representative be appointed to conduct inspections on a certain date and no such representatives are available, event management could instead choose and appoint an HPI to inspect horses. If management determines that no HPIs are available on the desired date, management could request that APHIS consider granting a variance to proceed with the show or sale without an inspector, as proposed in § 11.16(a)(6).

When management requests an APHIS representative to inspect an event, the Agency would choose the representative. If management opts to appoint an HPI, management would choose the HPI from a list maintained on the APHIS Horse Protection website.

Proposed § 11.13(b) includes requirements moved from current § 11.20(b), and lists provisions for horse shows, exhibitions, sales, and auctions at which management utilizes an APHIS representative or HPI to conduct inspections. Proposed paragraph (b)(1) would state that the management of any horse show, exhibition, sale, or auction that utilizes an APHIS representative or HPI must not take any action which may interfere with or influence the APHIS representative or HPI in carrying out their duties.

In paragraph (b)(2), we would require that the management of any horse show, exhibition, sale, or auction that utilizes an HPI to inspect horses shall appoint at least 2 HPIs when more than 100 horses are entered. We note that in current § 11.20(c), 2 DQPs are required for inspections when more than 150 horses are entered in an event. We determined that limiting the number of horses to 100 or fewer for one HPI in this proposal would allow that individual to inspect horses more thoroughly and manageably. Additionally, we considered the fact that relatively few horse events covered under the Act involve the participation of 100 or more horses and the vast majority would therefore only require one inspector.

In paragraph (b)(3) of proposed § 11.13, we would require the management of any horse show, exhibition, sale, or auction that utilizes an APHIS representative or HPI to inspect horses to have at least one farrier physically present if more than 100 horses are entered in the event. If 100 or fewer horses are entered in the horse show, exhibition, sale, or auction the management would have to, at minimum, have a farrier on call within the local area to be present, if requested by an APHIS representative or HPI appointed by management. Because we would continue to allow the use of pads and wedges for therapeutic treatment of Tennessee Walking Horses and racking horses, it is necessary for management to make a farrier available to assist with inspections of horses at horse shows, exhibitions, sales, and auctions in case a pad or wedge needs to be removed as part of an inspection.

Under proposed paragraph (b)(4) of § 11.13, management is required to prevent tampering with any part of a horse's limbs or hooves in such a way that could cause a horse to be sore after an APHIS representative or HPI appointed by management has completed inspection and before participating in a show, exhibition, sale, or auction.

The current regulations in § 11.20(b)(1) provide a means for event management to notify the Department regarding a DQP when they consider the performance of the DQP to be inadequate or otherwise unsatisfactory. Under proposed § 11.13(b)(5), we would provide a similar opportunity for management to address concerns regarding the performance of an HPI utilized to conduct inspections. If management is dissatisfied with the performance of a particular HPI, management would need to notify, in writing, the Administrator as to why they believe the performance of the HPI was inadequate or otherwise unsatisfactory. It is in the best interests of management to notify APHIS as soon as possible so that the Agency can gather relevant information and interview witnesses before recollections are lost to time. If the Agency determines the HPI's performance was inadequate or otherwise unsatisfactory, this could be addressed prior in a timely manner.

Current § 11.20(b)(1) also requires that ''[m]anagement which designates and appoints a DQP shall immediately disqualify or disallow from being shown, exhibited, sold, or auctioned any horse identified by the DQP to be sore or otherwise in violation of the Act or regulations or any horse otherwise known by management to be sore or in violation of the Act or regulations.'' Under proposed § 11.13(b)(6), we would similarly require that management that utilizes an APHIS representative or HPI would have to immediately disqualify or prohibit from showing, exhibition, sale, offering for sale, or auction of any horse identified by the APHIS representative or HPI appointed by management to be sore or otherwise in violation of the Act or regulations and any horse otherwise known by management to be sore or otherwise in violation of the Act or regulations.

Under proposed § 11.13(c)(1), management at horse shows, exhibitions, sales, and auctions would be required to ensure that no devices or substances prohibited under proposed § 11.6 are present in the horse warm-up area. This provision would ensure that such devices are not being used for any purposes contributing to soring in the warm-up area. Paragraph (c)(2) would require that management review the orders of the Secretary disqualifying persons from showing or exhibiting any horse, or judging or managing any horse show, exhibition, sale, or auction, and disallow the participation of any such person in any such event for the duration of the period of termination.

Management would also be required to verify the identity of all horses entered in the show, exhibition, sale, or auction under proposed § 11.13(c)(3), with acceptable methods of identification being: (1) A description sufficient to identify the horse, including, but not limited to, name, age, breed, color, gender, distinctive markings, and unique and permanent forms of identification when present (*e.g.,* brands, tattoos, cowlicks, or blemishes); or (2) electronic identification that complies with ISO standards; [53] or (3) an equine passport issued by a State government and accepted in the government of the State in which the horse show, exhibition, or sale or auction will occur. Verifying the identity of horses is critical to ensuring that a horse disqualified for an HPA violation does not participate in the event in question.

**Records Required**

Under proposed § 11.14(a), moved from current § 11.22(a), management of any horse show, exhibition, sale, or auction that contains Tennessee Walking Horses or racking horses would be required to maintain all records for a minimum of 90 days following the closing date of the show, exhibition, sale, or auction.[54] Records also would be required to contain the dates and place of the event, as well as the name and address of the sponsoring organization, event management, and each show judge, as applicable. In addition, management would be required to keep a copy of each class or sale sheet containing the names of horses, the registration number of the horse (if applicable), names and addresses of horse owner, the exhibition number and class number or sale number assigned to each horse, the show class or sale lot number, and the name and address of the person paying the entry fee and entering the horse in the show, exhibition, sale, or auction. Copies of the official program would also need to be kept, if such a program has been prepared, as well as a copy of the official scoring cards for each show containing Tennessee Walking Horses and racking horses, to include the place each horse finished in the class. Management would also be required to maintain records showing the name and any applicable registration name and number of each horse, as well as the names and addresses of the owner, the trainer, the custodian, the exhibitor and the location of the home barn or other facility where the horse is stabled.

Records required to be kept by event management in proposed § 11.14(a) would also include those of horses disqualified from participating, which are currently required to be kept by management and submitted to APHIS under § 11.24(a). These records are required to contain the name, exhibition number and class number, or assigned sale number, and the registration name and number (if applicable) for each horse disqualified or prohibited by management from being shown, exhibited, sold or auctioned, and the reasons for such action, as well as the name and address of the person designated by the management to maintain the records required. Finally, if management has appointed an HPI to conduct inspections at the event, the name and address of each HPI appointed to conduct the inspections would be required.

In the current regulations, there are no recordkeeping requirements for horses under the care of a licensed veterinarian and requiring therapeutic treatment using pads or other restricted or prohibited advices. Proposed § 11.14(b) would require that the management of any horse show, exhibition, or sale or auction that allows any horse to be shown, exhibited or sold with devices, pads, substances, applications, or other items restricted under proposed § 11.6 for therapeutic treatment must maintain the following information for each horse receiving the therapeutic treatment for a period of at least 90 days following the closing date of the horse show, exhibition, sale, or auction: (1) The name, exhibition number and class number, or assigned sale number, and the registration name and number (if applicable) for each horse receiving therapeutic treatment; (2) the name, address, and phone number of the licensed veterinarian providing the therapeutic treatment; (3) the State and license number of the licensed veterinarian providing the therapeutic treatment; and (4) the name and address and phone number of the licensed veterinarian's business. Finally, the records would also need to contain a description of the disease, injury, or disorder for which the treatment is given, to include at minimum the starting date of treatment, prescription or design of the treatment plan, and expected length of treatment, including an estimate of when it is anticipated to be discontinued. We are applying this recordkeeping requirement to all horses participating in events covered under the Act to ensure that any such horses under therapeutic care involving restricted or prohibited items in proposed§ 11.6 are receiving legitimate veterinary treatment and are not being sored.

**Inspection of Records**

Under proposed § 11.15, moved from current § 11.23(a), the management of any horse show, exhibition, sale, or auction would be required to permit any APHIS representative or HPI appointed by management, upon request, to examine and make copies of all records pertaining to any horse that are required in the regulations or otherwise maintained during business hours or agreed upon times. In addition, a room, table, or other facilities necessary for proper examination and copying of such records would need to be made available to the APHIS representative or HPI appointed by management.

**Reporting by Management**

Proposed § 11.16(a) requires that the management of any horse show, horse exhibition, horse sale, or horse auction notify the Administrator of the event by mail, fax, or email not less than 30 days before it occurs and submit the following information: (1) The name and address (including street address and ZIP Code) of the horse show, exhibition, sale, or auction; (2) the name, address, phone number (and email address, if available) of the event manager; (3) the date(s) of the horse show, horse exhibition, horse sale, or horse auction; (4) a copy of the official horse show, exhibition, sale, or auction program, if any such program has been prepared; and (5) anticipated or known number of entries.

Also, paragraph (a)(6) would require event management to provide information on whether they are requesting an APHIS representative to perform inspections at the horse show, horse exhibition, horse sale, or horse auction; or, if not, whether they have chosen and appointed an HPI to inspect

[53] An international standard for regulating the radio frequency identification (RFID) of animals.

[54] These information collection activities will be scheduled for merger into 0579–0056 upon publication of a final rule.

horses or have no inspector. If neither an APHIS representative nor an HPI is available on the date of the event, event management may request a variance. Variances would have to be submitted in writing by mail, fax, or electronic means such as email to the Deputy Administrator of Animal Care at least 15 days before the event and state the reason for requesting the variance. Finally, paragraph (a)(7) would require management to provide information regarding whether they will allow any horse to be shown, exhibited or sold with prohibitions under section § 11.6 for therapeutic treatment.

The 30-day notice requirement is not currently in the regulations, and has been proposed to give APHIS advance notice of the event and sufficient time to arrange for an APHIS representative to be present to inspect horses, if requested by event management. APHIS would also reserve the right to attend and conduct inspections at such events unannounced.

Proposed § 11.16(b) requires that at least 15 days before any horse show, exhibition, sale, or auction is scheduled to begin, the management of the event must notify APHIS of any changes to the information required to be submitted to APHIS under proposed § 11.16(a) by mail, fax, or email. We included this provision so that APHIS would have knowledge of any changes to the event, such as a change in the number of horses participating or the addition of show classes, that could potentially affect inspections and compliance. We assume that no changes have occurred to the submitted information unless we receive notification to the contrary.

Under paragraph (c) of proposed § 11.16, within 5 days following the conclusion of any horse show, exhibition, sale, or auction that contains Tennessee Walking Horses or racking horses, the management of such an event is required to submit to APHIS the records required by § 11.14 by mail, fax, or email. Event information already submitted in accordance with § 11.16(a) (information to be submitted at least 30 days before the event) would not need to be submitted again.

Under paragraph (d) of proposed § 11.16, management of any horse show, exhibition, sale, or auction which does *not* include Tennessee Walking Horses and racking horses would be required to submit the following information to APHIS within 5 days following the conclusion of the event: Any case where a horse was prohibited by management from being shown, exhibited, sold or auctioned because it was found to be sore or otherwise in violation of the Act or regulations. Information would include at a minimum the name, exhibition number and class number, or assigned sale number, and the registration name and number (if applicable) for each horse disqualified or prohibited by management from being shown, exhibited, sold or auctioned, and the reason(s) for such action. We invite comment on the timing and nature of these recordkeeping and records retention requirements.

**Transportation Requirements**

Under proposed § 11.17, moved from current § 11.40, we would require that each person who ships, transports, or otherwise moves, or delivers or receives for movement, any horse with reason to believe such horse may be shown, exhibited, sold or auctioned at any horse show, exhibition, sale, or auction, must allow and assist in the inspection of such horse at any such horse show, exhibition, sale, or auction to determine compliance with the Act and regulations. The person would also need to furnish to any APHIS representative or HPI appointed by management upon their request the following information: (1) Name and address of the horse owner and of the shipper, if different from the owner or trainer; (2) name and address of the horse trainer; (3) name and address of the carrier transporting the horse and of the driver of the means of conveyance used; (4) origin of the shipment and date thereof; and (5) destination of the shipment.

**Utilization of Inspectors**

We would include the provision in proposed § 11.18(a) that the management of any horse show, horse exhibition, horse sale, or horse auction may utilize an APHIS representative or an HPI to detect and diagnose a horse which is sore or to otherwise inspect horses for compliance with the Act or regulations.

In proposed § 11.18, paragraph (b), we would include the requirement that if management elects to utilize an HPI to detect and diagnose horses which are sore or to otherwise inspect horses for compliance with the Act or regulations, the HPI must currently be authorized by APHIS pursuant to § 11.19 of the regulations to perform this function.

In proposed paragraph (c), we would include the provision that the management of any horse show, exhibition, sale, or auction must not utilize any person to detect and diagnose horses which are sore or to otherwise inspect horses for the purpose of determining compliance with the Act and regulations, if that person has not been authorized by APHIS or if that person has been disqualified by the Secretary, after notice and opportunity for a hearing, in accordance with section 4 (15 U.S.C. 1823) of the Act, to make such detection, diagnosis, or inspection.

We would include a provision in proposed paragraph (d) providing that, after the effective date of the final rule, assuming this rulemaking is finalized, only APHIS representatives and HPIs as defined in § 11.1 must be utilized by management to detect and diagnose horses which are sore or otherwise inspect horses for compliance with the Act or regulations. Any DQPs seeking to continue inspecting or other persons wishing to become inspectors after the effective date of this rule must apply to APHIS and meet eligibility qualifications for authorization included in proposed § 11.19.

**Authorization and Training of Horse Protection Inspectors**

Under the current regulations in § 11.7, HIOs operating APHIS-certified DQP programs are responsible for selecting, training, evaluating, licensing, and disciplining DQPs. When an HIO requests certification of its DQP program, APHIS requires the HIO to submit criteria it intends to use to select DQP applicants, as well as training plans, standards of conduct expected of DQPs, and other materials listed in § 11.7(b).

We propose to have APHIS assume the training and authorization of inspectors, which involves removing and reserving § 11.7 and proposing new requirements for inspectors in a new § 11.19. Based on the conclusions of the USDA–OIG audit and the NAS study discussed above, as well as our own observations made in the course of administering the Horse Protection program, we determined that the current regulations delegating DQP training and licensing responsibilities to HIOs were not addressing the conflicts of interest and inadequate training resulting in a failure to diagnose sored horses, and that APHIS having a direct regulatory role in these functions would best achieve the aim of eliminating soring.

Section 11.7(a) of the current regulations lists the basic qualifications required of DQPs. In brief, persons are eligible to be licensed as DQPs if they are: (1) licensed veterinarians with equine experience, or (2) farriers, horse trainers, or other knowledgeable horsemen whose experience and training qualify them for positions as HIO stewards or judges and who have been formally trained and licensed as DQPs by an APHIS-certified HIO.

DQPs are not evaluated and licensed by APHIS for their suitability as

inspectors. These tasks are performed by HIOs that APHIS has certified based on the criteria in § 11.7(b). Certified HIOs must maintain and enforce DQP training requirements and standards of conduct and are responsible for ensuring that DQPs follow all regulatory requirements pertaining to them throughout § 11.7.

Proposed § 11.19 includes the qualifications required of persons who are applying to APHIS as HPI candidates. Applicants would be required to show that they meet all qualifications in two tiers, designated as Tier 1 and Tier 2. As we explain below, an applicant must meet the Tier 1 requirement as a prerequisite to be further evaluated under Tier 2 requirements. We invite comment on the clarity of the proposed process, and/or the utility of a tiered process for evaluating HPI applicants as proposed, including suggestions for simplifying it or replacing it with an altogether different process.

Prior to authorization, APHIS would ensure that inspectors are sufficiently trained and qualified to perform inspections and, once authorized, that they observe all standards of conduct and perform their duties consistent with enforcing the Act and regulations. All applicants would be required to submit an HPI application to APHIS using guidance provided on the APHIS Horse Protection Program website.[55]

Paragraph (a)(1) of proposed § 11.19 lists the qualifications of Tier 1, which would require that the applicant be a veterinarian, except that veterinary technicians and persons employed by State and local government agencies to enforce laws or regulations pertaining to animal welfare may also be authorized if APHIS determines that there is an insufficient pool of veterinarians among HPIs and applicants to be HPIs.

Unlike the current DQP eligibility qualifications in § 11.7(a), proposed Tier 1 includes no provision for HPI eligibility for farriers, horsemen, and other laypersons with industry experience. As expressed by the USDA–OIG audit report and NAS study and supported by all major veterinary organizations, licensed veterinarians with equine experience are best qualified to detect soring in horses. Among other advantages, their medical training in anatomy and physiology affords them the ability to discern signs of soring in a horse that may be missed by experienced inspectors who lack such intensive training. In addition, licensed veterinarians in the United States are bound by their profession to ethical codes of conduct established by the American Veterinary Medical Association (AVMA) and supported by other veterinary organizations. Under the AVMA principles for veterinary medical ethics, veterinarians are required to avoid conflicts of interest that put financial or other considerations ahead of animal welfare and the best interests of the animal involved. For these reasons, we are proposing the Tier 1 veterinary requirement.

However, we acknowledge that given the number and geographical distribution of veterinarians in the United States, there may be an insufficient number of such veterinarians with equine experience applying to be authorized as HPIs, with several commenters on the 2016 proposed rule raising the same concern. Other public comments we received rightly noted that veterinarians, when available, could charge more for their time than could veterinary technicians or other qualified non-governmental persons, resulting in higher costs that may be prohibitive for smaller horse shows and exhibitions. Under this proposal, shows and sales opting to appoint an APHIS representative would incur no such costs.

The Act itself does not mandate that ''persons qualified to detect and diagnose a horse which is sore'' have formal veterinary training, and accordingly some commenters on the 2016 rule contended that many experienced veterinary technicians and DQPs are as sufficiently able as veterinarians to diagnose sored horses. We partially agree, insofar as degreed and accredited veterinary technicians possess a level of medical training that, when combined with APHIS training, can qualify them to be authorized as HPIs. We also believe that making authorization available to qualified veterinary technicians under proposed Tier 1, if needed, would result in a sufficient pool of candidates applying to be HPIs, given that we are also proposing to allow management to request inspection directly by APHIS representatives. As a result, we would not seek applications from persons lacking formal veterinary medical or technical credentials regardless of their experience as DQPs. By considering veterinary technicians and qualified State and local animal control officials[56] as conditions dictate, we would maintain a sufficient number of trained HPIs to meet demand without compromising the levels of inspection accuracy and integrity we hope to achieve.

If an applicant meets the qualifications in Tier 1, APHIS would then evaluate whether a candidate meets the qualifications listed in Tier 2, which we include in proposed paragraph (a)(2). Guidance explaining details of these qualifications would be posted to the APHIS Horse Protection website.

Under proposed paragraph (a)(2)(i) of the Tier 2 qualifications, APHIS would require the applicant to demonstrate sufficient knowledge and experience of equine husbandry and science and applicable principles of equine science, welfare, care, and health to determine that the applicant can consistently identify equine soring and soring practices. The current regulations do not specifically require that inspectors demonstrate this knowledge during evaluation of their application. While an HIO could establish this application requirement as part of its certified DQP program, APHIS cannot confirm that the HIO is actually enforcing the requirement under the current regulations.

In proposed paragraph (a)(2)(ii), we would require that an HPI applicant not have been found to have violated any provision of the Act or the regulations in this part occurring after July 13, 1976,[57] or has been assessed any fine or civil penalty, or has been the subject of a disqualification order in any proceeding involving an alleged violation of the Act or regulations occurring after July 13, 1976. This requirement is similar to one currently under DQP licensing requirements for HIOs in § 11.7(c)(4). As other requirements in paragraph (c) pertain to HIOs, they are no longer necessary.

Under proposed paragraph (a)(2)(iii), we would require that the applicant, as well as the applicant's immediate family and employer, not participate in the showing, exhibition, sale, or auction of horses or act as a judge or farrier, or be an agent of management. The current regulations in § 11.7(d)(7)(i) prohibit a DQP from exhibiting, selling, auctioning, or purchasing any horse sold at any horse show, sale, or auction at which he or she has been appointed to inspect horses, and paragraph (d)(7)(ii) prohibits a DQP from inspecting horses at any horse show, exhibition, sale or auction in which a

[55] *https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/hpa.*

[56] State and local animal control officials authorized to perform inspections would not be doing so as governmental officials, but as individuals meeting the qualifications for authorization.

[57] On this date, the revision to the Horse Protection Act establishing the Secretary to prescribe requirements for the appointment of persons qualified to detect and diagnose soring was promulgated as Public Law 94–360.

horse or horses owned by a member of the DQP's immediate family or the DQP's employer are competing or being offered for sale. This proposal broadens the scope of prohibited industry relationships for inspectors and evaluates such conflicts of interest at the application stage, rather than apply them after the inspector has already been authorized to conduct inspections.

Under proposed paragraph (a)(2)(iv), we would require that the applicant must not have been disqualified by the Secretary from performing diagnosis, detection, and inspection under the Act, which is similar to the current requirement in paragraph (c)(6) in which HIOs must not license such persons.

In paragraph (a)(2)(v) of proposed § 11.19, we would require that the applicant must not have acted in a manner that calls into question the applicant's honesty, professional integrity, reputation, practices, and reliability relative to possible authorization as an HPI. We believe that such in-depth screening to determine an applicant's suitability is only possible if APHIS directs the application process and decides whether to authorize a person to conduct inspections.

Applicants screened under Tier 2 would not be considered to be authorized as HPIs if any of the following sources of evidence in proposed paragraph (a)(2)(V) raises questions about their suitability.

Under proposed paragraph (a)(2)(v)(A), we would review criminal conviction records, if any, that may indicate the applicant lacks the honesty, integrity, and reliability to appropriately and effectively perform HPI duties.

Proposed paragraph (a)(2)(v)(B) would allow APHIS to review records of the person's actions while participating in Federal, State, or local veterinary programs when those actions reflect on the honesty, reputation, integrity, and reliability of the applicant.

Under proposed paragraph (a)(2)(v)(C), APHIS would review judicial determinations in any type of litigation adversely reflecting on the honesty, reputation, integrity, and reliability of the applicant.

Finally, under proposed paragraph (a)(2)(v)(D), APHIS would review any other evidence reflecting on the honesty, reputation, integrity, and reliability of the applicant to perform HPI duties.

Current § 11.7(b) contains several specific training requirements that HIOs are required to provide to DQPs. As APHIS would train all HPIs to perform inspection duties, we propose to include in paragraph (b) of § 11.19 the requirement that all applicants selected as candidates will complete a formal training program administered by APHIS prior to authorization. APHIS would train HPIs using professionally recognized, science-based approaches to detecting soring, many of which are discussed in the above-mentioned NAS study. Continual training of HPIs as APHIS determines to be necessary would be a condition of maintaining authorization to inspect horses. Additional details of the training program would be available on the APHIS Horse Protection website.

In proposed § 11.19, paragraph (c), we would state that APHIS will maintain a list of all HPIs on the APHIS Horse Protection website. The list would also be available by writing to APHIS via email or U.S. mail. Event management would appoint an HPI of their choosing from the list.

As current paragraphs (e), (f), and (g) of § 11.7 pertain to requirements based on HIO licensure of DQPs, these would not be retained in the regulations. However, paragraph (f) provides a process for canceling a DQP license and for appealing such a cancellation. We consider it necessary in accordance with the Act to provide similar means in this proposal for HPIs to appeal disqualification of their authorization. As APHIS would have sole responsibility for granting or denying applications for HPI authorization, we would extend the appeals process to apply to denials of applications for authorization.

In proposed § 11.19, we are including an appeals process for any applicant whose application for authorization has been denied. We are also including a process for authorized HPIs who are being disqualified from inspecting horses to receive notice and opportunity for a hearing before a final decision for disqualification is rendered. We propose that APHIS may deny an applicant for any of the reasons outlined in paragraph (a). We also propose that APHIS may permanently disqualify an HPI, after notice and opportunity for a hearing, who fails to inspect horses in accordance with the procedures prescribed by APHIS or otherwise fails to perform duties necessary for APHIS to enforce the Act and regulations.

We propose in paragraph (d)(1) that APHIS may deny an application to be authorized as an HPI for any of the reasons outlined in paragraph (a) of § 11.19. In such instances, the applicant would be provided written notification of the grounds for the denial. The applicant may appeal the decision, in writing, within 30 days after receiving the written denial notice. The appeal would need to state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. As soon as practicable, the Administrator would grant or deny the appeal, in writing, stating the reasons for the decision.

We propose in paragraph (d)(2) that APHIS may permanently disqualify any HPI who fails to inspect horses in accordance with the procedures prescribed by APHIS or otherwise fails to perform duties necessary for APHIS to enforce the Act and regulations, after notice and opportunity for a hearing. Requests for hearings and the hearings themselves would be in accordance with the Uniform Rules of Practice for the Department of Agriculture in subpart H of part 1, subtitle A, of 7 CFR.

**Alternatives Considered**

Consistent with Executive Orders 12866 and 13563, APHIS has considered other alternatives to this proposed action.

As we have noted, APHIS has implemented numerous program-based initiatives within the current regulatory regime in its attempt to eliminate soring, including ensuring that DQPs receive the training needed to inspect horses responsibly and accurately. From the 2010 issuance of the OIG audit report to the present, APHIS' efforts to curb soring have included issuing enforcement warning letters to HIOs and DQPs, increasing oversight of DQP inspections, and sending VMOs to observe events having a higher likelihood of sored horses being present. APHIS has also worked to build trust with the industry by funding joint trainings with HIOs on proper inspection procedures, arranging clinics for the public to learn about inspections and ask questions, and transitioning primary enforcement to DQPs such that VMOs would not re-inspect a horse that a DQP finds noncompliant. In addition, APHIS has funded prohibited substance testing and limited the number of rule updates to HIOs between show seasons so that DQPs are not overly burdened with new information.

However, given the rates of noncompliance found in inspections between 2017 and 2022, our programmatic attempts to strengthen the program under the current regulations have not produced meaningful reductions in the number of sored horses appearing in shows and other HPA-covered events, nor has increased enforcement significantly deterred the practice. Even when DQPs have the skills needed to accurately diagnose horses for soring, which many demonstrate in the presence of APHIS

representatives, conflicts of interest within the Tennessee Walking Horse and racking horse communities continue to encourage soring. These conflicts undercut all programmatic alternatives that we have attempted within the current regulatory regime.

We acknowledge that some regulations are in place to address these conflicts. Under paragraph (d) of § 11.7, HIOs operating an APHIS-certified DQP program are required to promulgate standards of conduct, including prohibiting DQPs from inspecting at events at which horses owned by them are participating. This applies also to members of their family or their employers. However, even if the HIO reliably enforces these standards, conflicts of interest extend well beyond those of family and employer, to business and other relationships among persons active in the industry who consider soring their horses a means to gain competitive advantage.

Through this proposed rule, we would amend the regulations to transfer from HIOs to APHIS the task of screening, training, and authorizing qualified persons to inspect horses for soring. By so doing, APHIS would be better positioned to ensure that inspectors are screened for conflicts of interest and could take immediate disciplinary action if an inspector fails to follow Agency and professional codes of ethical conduct. Also, APHIS could directly deliver to inspectors the proper training needed to conduct science-based inspections for soreness as supported in the NAS committee report.

While we believe the amendments in the 2017 HPA final rule that we are proposing to withdraw could serve as an effective alternative for remedying the problems with enforcement and compliance, and ultimately help to eliminate soring, we consider this latest proposal to be the preferable alternative. Among other changes, both rulemakings move responsibility for training and authorizing inspectors under direct APHIS oversight, and both prohibit the pads, devices, substances, and actions that have long been used to sore Tennessee Walking Horses and racking horses.

However, unlike the previous rulemaking, this one draws upon the findings of the recent NAS study to revise the scar rule so that its criteria more accurately describe the dermatological changes associated with soring. Also, by affording event management the option of appointing an APHIS official instead of an HPI to conduct inspections, this proposed rulemaking relieves costs for smaller events choosing to appoint an inspector.

For events that use inspectors, this proposal would require one inspector for every 100 horses participating, while the 2017 final rule only requires one inspector for every 150 horses. This proposal also requires that a farrier be present if more than 100 horses are participating and requires that a farrier be on call if there are 100 or fewer horses. The smaller numbers provide inspectors and farriers with a more manageable workload by which they can thoroughly inspect and diagnose sore horses.

This proposal also sets new management requirements to maintain information for 90 days on the therapeutic use of pads, substances, and other prohibited items on horses at events covered under the Act, and requires that management of any covered event notify APHIS at least 30 days before it begins.

The 2017 final rule limits this requirement to events featuring Tennessee Walking horses and racking horses. These requirements allow APHIS to establish a broader record of events covered under the Act, allowing for adjustments to enforcement should noncompliance with the Act become an issue in current or emerging horse breeds.

Finally, we note that a discussion of the rationale for proposing to withdraw the 2017 HPA final rule is contained in the proposed withdrawal itself.

We believe the changes proposed in this document represent the best alternative option that would satisfactorily accomplish the stated objectives and minimize impacts on small entities. However, we welcome comments from the public on these and other alternatives.

## Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. A summary of the economic analysis is included below. Copies of the full analysis are also available on the *Regulations.gov* website (see under **ADDRESSES** in this document for a link to *Regulations.gov*) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The Horse Protection Act (HPA, or Act, 15 U.S.C. 1821 *et seq.*) prohibits sored horses from participating in horse exhibitions, sales, shows, or auctions covered under the Act. Soring is the practice of intentionally injuring a horse's front feet and limbs to cause pain so intense that the horse lifts its legs quickly to relieve the pain when its hooves strike the ground, thereby producing a distinctive high-stepping gait.

In September 2010, USDA's Office of Inspector General (OIG) released an audit of the Animal Plant and Health Inspection Service's (APHIS) enforcement of the HPA. In addition, a 2021 National Academy of Sciences (NAS) study examined methods used to inspect horses for soreness and made recommendations. The proposed rule is in response to several findings and recommendations contained in that audit and in the NAS study, as well as in response to data independently obtained by the Agency. The objective of the proposed rule is more effective enforcement of the HPA.

The principal proposed amendment to the Horse Protection regulations is that APHIS would screen, train and authorize qualified persons to conduct inspections at horse shows, horse exhibitions, horse sales, and horse auctions to ensure compliance with the HPA. APHIS would authorize applicants, preferably veterinarians, as Horse Protection Inspectors (HPI) [58] after screening them for potential conflicts of interest and conducting training. APHIS would also develop a process for denying an application or disqualifying a person authorized to inspect horses who does not meet our qualifications or who otherwise fails in duties or conduct under the Act or regulations. We also propose that event management may elect instead to have an APHIS representative conduct inspections. The proposed rule would remove all regulatory responsibilities and requirements for horse industry organizations and associations (HIOs).

[58] The term Designated Qualified Persons or DQPs, would be replaced by HPIs, or horse protection inspectors, under the proposed rule.

Currently, horse shows either assume responsibility for conducting preshow inspections for evidence of soring or contract with an APHIS-certified HIO to provide DQPs to conduct inspections. However, the OIG audit discovered conflicts of interest between DQPs, the HIOs that license and hire them, and organizers of the shows and exhibitions that contract with HIOs to provide DQPs. The OIG audit noted that at times DQPs fail to inspect horses adequately or to issue violations in accordance with the regulations. Concurring with the findings of the OIG audit, the NAS study committee concluded that some horses experiencing soreness are not being identified during inspections and strongly recommended that use of DQPs for inspections under the current program be discontinued.

Inspection data compiled by APHIS from fiscal year (FY) 2017 to 2022 show that inconsistencies persist in the number of violations detected by APHIS officials and those issued by DQPs inspecting horses. During this period, APHIS attended about 16 percent of all HPA-covered events featuring Tennessee Walking Horses, racking horses, and other breeds at which horse industry DQPs conducted inspections, performance as well as flat-shod classes. While APHIS attended only a fraction of the events at which DQPs were appointed to inspect horses, APHIS consistently reported higher rates of noncompliance at these events based on its VMO inspection findings. Most horses inspected by APHIS officials at these events were chosen at random, although APHIS chose to inspect some horses for which a suspicion of soring was warranted.

Designated Qualified Persons consistently reported higher rates of noncompliance when APHIS officials were in attendance than when they were not. In FY 2021, for example, if only horses wearing ''performance packages'' (*i.e.,* a padded horse) are considered, APHIS officials detected 158 instances of noncompliance with the HPA out of the 398 horses APHIS inspected at the 17 events attended, resulting in close to a 40 percent rate of noncompliance for performance horses. In contrast, of the 207 events attended and inspected only by DQPs during the same period, DQPs detected just 321 instances of noncompliance with the HPA out of the 11,825 performance horses they inspected, recording only a 1.9 percent rate of noncompliance when APHIS officials were not present and 7.1 percent when they were. Also notable is that the rate of noncompliance detected for horses wearing performance packages was significantly and consistently higher than that detected for flat-shod horses.

In addition, the proposed rule would also prohibit non-therapeutic pads and action devices at all events involving Tennessee Walking Horses and racking horses, as these items are used to induce or hide soring. The proposed rule would also update the scar rule by including language that better describes visible dermatologic changes and stating that the changes do not have to be bilateral.

An additional amendment to the rule would also require a farrier to be present at shows with 100 or more horses and on-call for shows with fewer than 100 horses if the management of the shows utilize an AHPIS representative or HPI. We welcome public comments on the costs associated with having a farrier at the shows and on-call. Also, for horse shows that utilize an HPI or APHIS representative, if there are more than 100 horses participating in the show, there must be an additional HPI.

The prohibition of pads and action devices does not impose costs on show management or participants. Of these proposed amendments to the Horse Protection regulations, only the amendments requiring a farrier to be present at a show of more than 100 horses, or on call if fewer than 100 horses are participating, may result in additional costs such as record keeping for show management and participants.

Given that event managers may choose to have an APHIS inspector at no cost to them, the proposed rule would impose no additional required costs to horse show management in terms of inspectors.

Currently, horse shows either assume responsibility for conducting preshow inspections for evidence of soring or contract with an APHIS-approved Horse Industry Organization (HIO) to provide Designated Qualified Persons to conduct inspections. HIOs may be able to pass this cost on to the exhibitors and participants in the show. Under the proposed rule, if an APHIS inspector is used, they would no longer have to bear the costs associated with having inspectors at the shows. This could potentially result in cost savings to the HIOs and the exhibitors. The cost of having inspectors at the shows varies by region and ranges from $350 to $23,000 with the average being $700 to $800 per show.

Conversely, it is possible that HPIs will charge more for their inspections than DQPs currently do. The rate that HPIs will charge for their services under the proposed rule, as compared to the current rate of compensation for DQPs mentioned above, is unknown because the rate is negotiated between the inspectors and the management that contracts for their services, and thus not within APHIS' purview. Management may also be able to pass the costs of having inspectors at the shows on to the exhibitors. We welcome public comments to the extent that there may be additional costs or cost savings associated with this proposed rule.

Based on the estimates of an expert elicitation [59] commissioned by APHIS, the cost of services provided per show by veterinarians, farriers, and inspectors ranges from a few hundred to several thousand dollars. Because this analysis was conducted several years ago, we use the consumer price index (CPI) to convert the costs to 2021 dollars. APHIS believes these estimates to be reasonably accurate. However, we acknowledge that there is some level of uncertainty, as the structure of the industry may have changed. In addition, we do not know the impact that the pandemic may have had on the industry. We welcome comments which would provide better insight and detailed information on the components of the costs, if applicable. The incidence of the costs to the show of the farrier would depend on their ability to pass the costs along to participants or other entities involved with the shows. In addition, many of the entities may already have farriers present at shows, auctions, and sales. Many, if not most, of the entities that may be affected by this proposed rule are small.

The proposed rule would result in foregone revenue for most current DQPs, who would not meet APHIS' requirements for HPIs under the terms of the proposed rule. As noted above, the average cost of having inspectors at shows is $700 to $800 per show. With 59 currently authorized DQPs and 300 shows on average per year, this suggests that DQP income is supplemental, rather than a primary source of revenue, for most DQPs. Additionally, APHIS anticipates 30 new initial applications from parties interested in becoming HPIs under the proposed requirements. For new HPIs who were not previously DQPs, this rule would result in new income. We request public comment on this matter.

While the proposed rule would result in better enforcement of the HPA, implementation of the proposed changes would result in additional costs to APHIS in terms of conducting inspections, screening, and training potential HPIs. We expect that APHIS

[59] *Expert Elicitation in Support of the Economic Analysis of the Tennessee Walking and Racking Horse Industry;* RTI International, November 2012 3040 Cornwallis Road, Research Triangle Park, NC 27709.

costs would increase by approximately $6.4 million. This assumes that APHIS inspectors would attend approximately 300 shows per year. Over the last 5 years, there have been an average of 226 shows per year. In addition, the industry and APHIS may incur additional recordkeeping costs of $47,000 and $127,000, respectively. Training costs would include renting a training horse and employee travel. The average 3-day horse rental is $450 and the travel cost per employee is $1,900. APHIS would not charge a fee for training; however, the participants may have to pay their travel expenses to and from training and lodging. If funds are available, APHIS would pay travel expenses and other costs associated with attending training.

The benefits of the proposed rule are expected to justify the costs. The proposed changes to the Horse Protection regulations would promote the humane treatment of Tennessee Walking Horses and racking horses by more effectively ensuring that those horses that participate in exhibitions, sales, shows, or auctions covered by the HPA are not sored. This qualitative benefit, enhancing animal welfare, is likely to result in greater public confidence that the animals are being treated humanely.

The proposed rule is not expected to adversely impact the communities in which shows are held because Tennessee Walking Horse and racking horse shows are expected to continue. Owners are motivated to show their prized horses and are likely to continue participating in shows. Better enforcement of the HPA is expected to also benefit shows and participants by improving the reputation of the Tennessee Walking Horse and racking horse industry. Participation in events may increase if the proposed rule were to result in increased confidence by owners that individuals who intentionally sore horses to gain a competitive advantage are likely to be prevented from participating. Management of horse shows, exhibitions, sales, and auctions would also benefit from no longer having to bear the costs of compensating inspectors if they use APHIS inspectors.

In an attempt to eliminate soring, APHIS considered several alternatives to the proposed rule. These include programmatic changes such as increased training, issuing enforcement warning letters to HIOs and DQPs, increasing oversight of DQP inspections, and sending VMOs to observe events having a higher likelihood of sored horses being present. APHIS has also worked to build trust with the industry by funding joint trainings with HIOs on proper inspection procedures, arranging clinics for the public to learn about inspections and ask questions, and transitioning primary enforcement to DQPs such that VMOs would not re-inspect a horse that a DQP finds noncompliant. In addition, APHIS has funded prohibited substance testing and limited the number of rule updates to HIOs between show seasons so that DQPs are not overly burdened with new information. These non-regulatory solutions have not meaningfully decreased detections of soring, however.

One alternative that we also considered was to eliminate the use of non-APHIS inspectors and to limit inspectors to APHIS VMOs. While this approach would address conflicts of interest and allow APHIS to have a direct role in managing inspections, we determined that the availability of inspectors could be subject to number of VMOs available at any given time and their geographic distribution. Further, section 4 (15 U.S.C. 1823) of the Act provides for ''the appointment by the management of any horse show, horse exhibition, or horse sale or auction of persons qualified to detect and diagnose a horse which is sore . . .,'' which precludes assigning an inspector to an event and eliminating any element of choice for event management. Under this proposal, management would be able to choose to appoint an APHIS representative or an APHIS-authorized inspector.

Another alternative considered was implementing our 2017 final rule to revise the HPA regulations. However, we consider this proposed rule preferable to that rule for several reasons. Among them, this rule provides that management may request direct APHIS inspection of a show at no cost to management, an option not provided for in the 2017 final rule despite comments that HPIs could be cost-prohibitive for smaller shows.

We invite public comments on these and other alternatives that may achieve the desired policy objective of the proposed rule.

The entities affected by this rule are likely small by Small Business Administration standards. We invite public comments on the potential impacts on the entities that may be affected by this rule.

## Executive Order 13175

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

APHIS has determined that this proposed rule does not, to our knowledge, have tribal implications that require formal tribal consultation under Executive Order 13175. To engage Tribal nations on this rulemaking, APHIS hosted a tribal webinar to discuss the proposed rule, with four attendees participating and no tribal comment. If a Tribe requests consultation, APHIS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

## Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

## Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

## Paperwork Reduction Act

Many of the activities described in this proposed rule are currently approved under OMB control number 0579–0056, including the requirement that the management of any event that contains Tennessee Walking Horses or racking horses maintain for at least 90 days following the closing date of the event all pertinent records in § 11.22(a), and that within 5 days following the conclusion of any event containing Tennessee Walking Horses or racking horses, event management must submit to APHIS the information required by § 11.22(a) for each horse excused or disqualified by management or its representatives. In addition, there are seven new information collection and reporting activities. Therefore, in accordance with section 3507(d) of the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the new activities and their burden associated with this proposed rule have been submitted to OMB as a new information collection for approval. After a final rule is published, this information collection request will be scheduled for merger into 0579–0056 in the future.

Written comments and recommendations for the proposed information collection should be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review-Open for Public Comments'' or by using the search function. Please send a copy of your comments to: (1) Docket No. APHIS–2022–0004, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, Room 404–W, 14th Street and Independence Avenue SW, Washington, DC 20250.

Administering the Horse Protection Act (HPA) requires the use of several information collection activities that are currently approved under 0579–0056. The proposed changes to the regulations result in the creation of new reportable activities, as previously mentioned. These activities and any additional ones announced in the final rule resulting from public comment will be scheduled for merger into 0579–0056 after OMB approval.

The seven new activities in this proposed rule change are as follows:

- § 11.13(b)(5)—Event managers will be permitted to submit unsatisfactory performance notices against HPIs performing inspections. APHIS estimates there will be 5 responses per year with 1 hour of burden per response.
- § 11.14(b)—Managers of any horse show, horse exhibition, horse sale, or horse auction that allows any horse to be shown, exhibited or sold with prohibitions for therapeutic treatment will be required to maintain certain information for each horse receiving the therapeutic treatment for a period of at least 90 days following the closing date of a show, exhibition, sale, or auction. Based on the APHIS Horse Protection program's knowledge of the frequency of therapeutic treatments used on horses participating in prior covered events, APHIS estimates there will be 50 responses per year with 1 hour of burden per response. Managers will not have to maintain such records if no horses undergoing therapeutic treatments are in the event.
- § 11.16(a)—Managers of any such show, exhibition, sale, or auction will be required to provide the Administrator information of the event by mail, fax, or electronic means such as email at least 30 days before any horse show, horse exhibition, horse sale, or horse auction is scheduled to begin. Such notification would have to include information about the show, information about the anticipated or known number of entries and whether management will allow any horse to be shown, exhibited, or sold with prohibitions under proposed § 11.6 for therapeutic treatment. Finally, the notification will include a request to appoint an APHIS representative if one is needed. This requirement has been added to give APHIS advance notice of the event and sufficient time to arrange for an APHIS representative to be present to inspect horses, if requested by management. APHIS estimates there will be 450 shows per year with 30 minutes of burden per response.
- § 11.16(a)(6)—If neither an APHIS representative nor an HPI is available on the date of the horse show, horse exhibition, horse sale, or horse auction, event management may request a variance. It must be submitted by mail, fax, or electronic means such as email to the Deputy Administrator of Animal Care. APHIS estimates there will be 20 requests per year with 1 hour of burden per request.
- § 11.16(b)—Managers of any such show, exhibition, sale, or auction will be required to provide any changes to the event information submitted to the Administrator at least 15 days before the event is to begin. APHIS estimates there will be 300 shows per year with 30 minutes of burden per response.
- § 11.16(c)—Event managers of any horse show, horse exhibition, horse sale, or horse auction that contains Tennessee Walking Horses or racking horses must submit to APHIS within 5 days after the event's conclusion the information required to be maintained by § 11.14. Event information already submitted to APHIS under § 11.16(a) does not need to be sent again. APHIS estimates there will be 300 shows per year with 30 minutes of burden per response.
- § 11.19(a)—APHIS will authorize and train Horse Protection Inspectors. Prospective candidates must submit an application to APHIS and will be evaluated using a 2-tier system of qualifications. APHIS estimates there will be 30 applicants per year with an estimated 1 hour of burden per application.

The proposed changes to the regulations in 9 CFR part 11 authorized by the HPA also include removing regulatory requirements for horse industry organizations and associations and eliminating the role of Designated Qualified Persons as inspectors at horse shows, exhibitions, sales, and auctions. The burden for these will be transferred Horse Protection Inspectors authorized and trained by APHIS. Activities related to event schedules are event-driven so the total number of estimated responses and burden hours will remain unchanged.

We are soliciting comments from the public and others concerning our proposed information collection and recordkeeping requirements. These comments will help us:

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

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses).

*Estimate of burden:* Public burden for this collection of information is estimated to average 0.55 hours per response.

*Respondents:* Managers of horse shows, exhibitions, sales, or auctions; veterinarians.

*Estimated annual number of respondents:* 530.

*Estimated annual number of responses per respondent:* 3.

*Estimated annual number of responses:* 1,155.

A copy of the information collection may be viewed on the *Regulations.gov* website or in our reading room. (A link to *Regulations.gov* and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) Information about the information collection process may be obtained from Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483. APHIS will respond to any information collection-related comments in the final rule. All comments will also become a matter of public record.

E-Government Act Compliance

The Animal and Plant Health Inspection Service 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. APHIS estimates that all of the total responses can be processed electronically by email or fax. Respondents are free to maintain required records as best suited for their organization. Details about specific forms for reportable activities can be found in the information collection request supporting statement.

For assistance with E-Government Act compliance related to this proposed rule, please contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483, or the person listed under **FOR FURTHER INFORMATION CONTACT**.

**List of Subjects in 9 CFR Part 11**

Animal welfare, Horses, Reporting and recordkeeping requirements.

Accordingly, we propose to revise 9 CFR part 11 to read as follows:

## PART 11—HORSE PROTECTION REGULATIONS

Sec.

11.1 Definitions.
11.2 [Reserved]
11.3 Non-interference with APHIS representatives and HPIs.
11.4 Owners, trainers, exhibitors, custodians, transporters, and any other person who has been disqualified.
11.5 Appeal of inspection report.
11.6 Prohibitions concerning exhibitors.
11.7 [Reserved]
11.8 Inspection and detention of horses.
11.9 Access to premises and records.
11.10 Inspection space and facility requirements.
11.11–11.12 [Reserved]
11.13 Responsibilities and liabilities of management.
11.14 Records required and disposition thereof.
11.15 Inspection of records.
11.16 Reporting by management.
11.17 Requirements concerning persons involved in transportation of certain horses.
11.18 Utilization of inspectors.
11.19 Authorization and training of Horse Protection Inspectors.

**Authority:** 15 U.S.C. 1823–1825 and 1828; 7 CFR 2.22, 2.80, and 371.7.

### § 11.1 Definitions.

For the purpose of this part, unless the context otherwise requires, the following terms shall have the meanings assigned to them in this section. The singular form shall also impart the plural.

*Act* means the Horse Protection Act of 1970 (Pub. L. 91–540) as amended by the Horse Protection Act Amendments of 1976 (Pub. L. 94–360), 15 U.S.C. 1821 *et seq.,* and any legislation amendatory thereof.

*Action device* means any boot, collar, chain, roller, beads, bangles, or other device which encircles or is placed upon the lower extremity of the leg of a horse in such a manner that it can either rotate around the leg, or slide up and down the leg so as to cause friction, or which can strike the hoof, coronet band or fetlock joint.

*Administrator* means the Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator. Mail for the Administrator should be sent to the Animal and Plant Health Inspection Service, Animal Care/Horse Protection, 2150 Centre Avenue, Building B, Mailstop 3W11, Fort Collins, CO 80526–8117. Electronic mail for the Administrator should be sent to *horseprotection@usda.gov.*

*Animal and Plant Health Inspection Service (APHIS)* means the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

*APHIS representative* means any employee or official of APHIS.

*Custodian* means any person who has initial control of and presents a horse for inspection at any horse show, exhibition, sale, or auction. The custodian must be able to provide information about the horse that is required by this part.

*Day(s)* means business days, *i.e.,* days other than weekends and Federal holidays.

*Department* means the United States Department of Agriculture (USDA).

*Event manager* means the person who has been delegated primary authority by a sponsoring organization for managing a horse show, horse exhibition, horse sale, or horse auction.

*Exhibitor* means:

(1) Any person who enters any horse, any person who allows his or her horse to be entered, or any person who directs or allows any horse in his or her custody or under his or her direction, control or supervision to be entered in any horse show or horse exhibition;

(2) Any person who shows or exhibits any horse, any person who allows his or her horse to be shown or exhibited, or any person who directs or allows any horse in his or her custody or under his or her direction, control, or supervision to be shown or exhibited in any horse show or horse exhibition;

(3) Any person who enters or presents any horse for sale or auction, any person who allows his or her horse to be entered or presented for sale or auction, or any person who allows any horse in his or her custody or under his or her direction, control, or supervision to be entered or presented for sale or auction in any horse sale or auction; or

(4) Any person who sells or auctions any horse, any person who allows his or her horse to be sold or auctioned, or any person who directs or allows any horse in his or her custody or under his or her direction, control, or supervision to be sold or auctioned.

*Horse* means any member of the species *Equus caballus.*

*Horse exhibition* means a public display of any horses, singly or in groups, but not in competition. The term does not include events where speed is the prime factor, rodeo events, parades, or trail rides.

*Horse Protection Inspector* (HPI) means a person meeting the qualifications in § 11.19 whom the Administrator has authorized as an HPI and who may be appointed by management or a representative of management of any horse show, horse exhibition, horse sale or horse auction under section 4 of the Act (15 U.S.C. 1823) to detect or diagnose horses which are sore or to otherwise inspect horses and any records pertaining to such horses for the purposes of detecting or diagnosing soring.

*Horse sale or horse auction* means any event, public or private, at which horses are sold or auctioned, regardless of whether or not said horses are exhibited prior to or during the sale or auction.

*Horse show* means a public display of any horses, in competition, except events where speed is the prime factor, rodeo events, parades, or trail rides.

*Inspection* means any visual, physical, and diagnostic means approved by APHIS to determine compliance with the Act and regulations. Such inspection may include, but is not limited to, visual examination of a horse and review of records, physical examination of a horse, including touching, rubbing, palpating, and observation of vital signs, and the use of any diagnostic device or instrument, and may require the removal of any shoe or any other equipment, substance, or paraphernalia from the horse when deemed necessary by the professional conducting such inspection.

*Local area* means an area within a 10-mile radius of the horse show, horse exhibition, horse sale, or horse auction.

*Management* means any person or persons who organize, exercise control

over, or administer or are responsible for organizing, directing, or administering any horse show, horse exhibition, horse sale or horse auction and specifically includes, but is not limited to, the sponsoring organization and event manager.

*Participate* means engaging in any activity, either directly or through an agent, beyond that of a spectator in connection with a horse show, horse exhibition, horse sale, or horse auction, and includes, without limitation, transporting, or arranging for the transportation of, horses to or from equine events, personally giving instructions to exhibitors, being present in the warm-up or inspection areas or in any area where spectators are not allowed, and financing the participation of others in equine events.

*Person* means any individual, corporation, company, association, firm, partnership, society, organization, joint stock company, State or local government agency, or other legal entity.

*Secretary* means the Secretary of Agriculture or anyone who has heretofore or may hereafter be delegated authority to act in his or her stead.

*Sore* when used to describe a horse means:

(1) An irritating or blistering agent has been applied, internally or externally, by a person to any limb of a horse;

(2) Any burn, cut, or laceration has been inflicted by a person on any limb of a horse;

(3) Any tack, nail, screw, or chemical agent has been injected by a person into or used on any limb of a horse;

(4) Any other substance or device has been used by a person on any limb of a horse or a person has engaged in a practice involving a horse, and, as a result of such application, infliction, injection, use, or practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving, except that such term does not include such an application, infliction, injection, use, or practice in connection with the therapeutic treatment of a horse by or under the supervision of a person licensed to practice veterinary medicine in the State in which such treatment was given.

*Sponsoring organization* means any person or entity whose direction supports and who assumes responsibility for a horse show, horse exhibition, horse sale, or horse auction that has, is, or will be conducted.

*State* means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Northern Mariana Islands or the Trust Territory of the Pacific Islands.

*Therapeutic treatment* means relating to the treatment of disease, injury, or disorder by or under the supervision of a person licensed to practice veterinary medicine in the State in which such treatment was prescribed.

**§ 11.2 [Reserved]**

**§ 11.3 Non-interference with APHIS representatives and HPIs.**

No person shall assault, resist, oppose, impede, intimidate, threaten, or interfere with APHIS representatives or HPIs appointed by management, or in any way influence attendees of a horse show, horse exhibition, horse sale, or horse auction or other individuals to do the same.

**§ 11.4 Owners, trainers, exhibitors, custodians, transporters, and any other person who has been disqualified.**

Any person who has been disqualified by the Secretary from participating in any horse show, horse exhibition, horse sale, or horse auction shall not show, exhibit, or enter any horse, directly or indirectly through any agent, employee, corporation, partnership, or other device, and shall not judge, manage, or otherwise participate in events covered by the Act within the period during which the disqualification is in effect.

**§ 11.5 Appeal of inspection report.**

Any horse owner, trainer, exhibitor, custodian or transporter may appeal all or part of the inspection findings in an inspection report to the Administrator. To appeal, the horse owner, trainer, exhibitor, custodian or transporter must send a written statement contesting the inspection finding(s) and include any documentation or other information in support of the appeal. To receive consideration, the appeal must be received [1] by the Administrator, preferably by electronic mail, to *horseprotection@usda.gov* within 21 business days of the date the horse owner, trainer, exhibitor, custodian or transporter received the inspection report that is the subject of the appeal. The Administrator will send a final decision, in writing via either electronic mail or postal mail, to the person requesting the appeal.

**§ 11.6 Prohibitions concerning exhibitors.**

(a) *General prohibitions for all horses.* Notwithstanding the provisions of this section, no action device, method, practice, or substance shall be used with respect to any horse at any horse show, horse exhibition, horse sale, or horse auction if such use causes or can reasonably be expected to cause such horse to be sore or is otherwise used to mask previous and/or ongoing soring.

(b) *Prohibited devices, equipment, and practices.* The use of the following action devices, equipment, or practices on any horse, at any horse show, exhibition, sale, or auction is prohibited:

(1) More than one action device permitted under this section on any limb of a horse.

(2) All beads, bangles, rollers, and similar devices, with the exception of rollers made of lignum vitae (hardwood), aluminum, or stainless steel, with individual rollers of uniform size, weight and configuration, provided each such device may not weigh more than 6 ounces, including the weight of the fastener.

(3) Chains weighing more than 6 ounces each, including the weight of the fastener.

(4) Chains with links that are not of uniform size, weight, and configuration; and chains that have twisted links or double links.

(5) Chains that have drop links on any horse that is being ridden, worked on a lead, or otherwise worked out or moved about.

(6) Chains or lignum vitae, stainless steel, or aluminum rollers which are not smooth and free of protrusions, projections, rust, corrosion, or rough or sharp edges.

(7) Boots, collars, or any other devices, with protrusions or swellings, or rigid, rough, or sharp edges, seams or any other abrasive or abusive surface that may contact a horse's leg.

(8) Boots, collars, or any other devices that weigh more than 6 ounces, except for soft rubber or soft leather bell boots and/or quarter boots that are used as protective devices.

(9) Pads or other devices on horses up to 2 years old that elevate or change the angle of such horses' hooves in excess of 1 inch at the heel.

(10) Any weight on horses up to 2 years old, except a keg or similar conventional horseshoe, and any horseshoe on horses up to 2 years old that weighs more than 16 ounces.

(11) Artificial extension of the toe length, whether accomplished with pads, acrylics, or any other material or combinations thereof, that exceeds 50 percent of the natural hoof length, as measured from the coronet band, at the center of the front pastern along the front of the hoof wall, to the distal portion of the hoof wall at the tip of the toe. The artificial extension shall be

[1] Appeals may also be sent by U.S. mail to APHIS, 2150 Centre Ave, Bldg. B, MS 3W–11, Fort Collins, CO 80547.

measured from the distal portion of the hoof wall at the tip of the toe at a 90-degree angle to the proximal (foot/hoof) surface of the shoe.

(12) Toe length that does not exceed the height of the heel by 1 inch or more. The length of the toe shall be measured from the coronet band, at the center of the front pastern along the front of the hoof wall to the ground. The heel shall be measured from the coronet band, at the most lateral portion of the pastern, at a 90-degree angle to the ground, not including normal caulks at the rear of a horseshoe that do not exceed ¾ inch in length. That portion of caulk at the rear of a horseshoe in excess of ¾ of an inch shall be added to the height of the heel in determining the heel/toe ratio.

(13) Pads that are not made of leather, plastic, or a similar pliant material.

(14) Any object or material inserted between the pad and the hoof other than acceptable hoof packing, which includes pine tar, oakum, live rubber, sponge rubber, silicone, commercial hoof packing, or other substances used to maintain adequate frog pressure or sole consistency. Acrylic and other hardening substances are prohibited as hoof packing.

(15) Single or double rocker-bars on the bottom surface of horseshoes which extend more than ½ inches back from the point of the toe, or which would cause, or could reasonably be expected to cause, an unsteadiness of stance in the horse with resulting muscle and tendon strain due to the horse's weight and balance being focused upon a small fulcrum point.

(16) Metal hoof bands, such as used to anchor or strengthen pads and shoes, placed less than ½ inch below the coronet band.

(17) Metal hoof bands that can be easily and quickly loosened or tightened by hand, by means such as, but not limited to, a wing-nut or similar fastener.

(18) Any action device or any other device that strikes the coronet band of the foot of the horse except for soft rubber or soft leather bell boots that are used as protective devices.

(19) Shoeing a horse, trimming a horse's hoof, or paring the frog or sole in a manner that will cause such horse to suffer, or can reasonably be expected to cause such horse to suffer pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving. Bruising of the hoof or any other method of pressure shoeing is also prohibited.

(20) Lead or other weights attached to the outside of the hoof wall, the outside surface of the horseshoe, or any portion of the pad except the bottom surface within the horseshoe. Pads may not be hollowed out for the purpose of inserting or affixing weights, and weights may not extend below the bearing surface of the shoe. Hollow shoes or artificial extensions filled with mercury or similar substances are prohibited.

(21) The use of whips, cigarette smoke, or other stewarding actions or paraphernalia to distract a horse or to otherwise impede the inspection process during an examination, including but not limited to, holding the reins less than 18 inches from the bit shank is prohibited.

(22) The forelimbs and hindlimbs of the horse must be free of dermatologic conditions that are indicative of soring. Examples of such dermatologic conditions include, but are not limited to, irritation, moisture, edema, swelling, redness, epidermal thickening, loss of hair (patchy or diffuse) or other evidence of inflammation. Any horse found to have one or more of the dermatologic conditions set forth herein shall be presumed to be ''sore'' and be subject to all prohibitions of section 6 (15 U.S.C. 1825) of the Act.

(c) *Specific prohibitions for Tennessee Walking Horses and racking horses.* (1) All action devices are prohibited on any Tennessee Walking Horse or racking horse at any horse show, horse exhibition, horse sale, or horse auction.

(2) All artificial extension of the toe length is prohibited on any Tennessee Walking Horse or racking horse at any horse show, horse exhibition, horse sale, or horse auction, unless such horse has been prescribed and is receiving therapeutic treatment using artificial extension of the toe length as approved in writing by a licensed veterinarian.

(3) All pads and wedges are prohibited on any Tennessee Walking Horse or racking horse at any horse show, exhibition, sale, or auction, unless such horse has been prescribed and is receiving therapeutic treatment using pads or wedges as approved in writing by a licensed veterinarian.

(4) All substances are prohibited on the extremities above the hoof of any Tennessee Walking Horse or racking horse entered for the purpose of being shown or exhibited, sold, auctioned, or offered for sale in or on the grounds of any horse show, horse exhibition, or horse sale or auction.

(d) *Competition restrictions—2-Year-old horses.* Horse show or horse exhibition workouts or performances of 2-year-old Tennessee Walking Horses and racking horses and working exhibitions of 2-year-old Tennessee Walking Horses and racking horses (horses eligible to be shown or exhibited in 2-year-old classes) at horse sales or horse auctions that exceed a total of 10 minutes continuous workout or performance without a minimum 5-minute rest period between the first such 10-minute period and the second such 10-minute period, and, more than two such 10-minute periods per performance, class, or workout are prohibited.

(e) *Information requirements—horse related.* Failing to provide information or providing any false or misleading information required by the Act or regulations or requested by APHIS representatives or HPIs appointed by management, by any person that enters, owns, trains, shows, exhibits, transports or sells or has custody of, or direction or control over any horse shown, exhibited, sold, or auctioned or entered for the purpose of being shown, exhibited, sold, or auctioned at any horse show, horse exhibition, horse sale, or horse auction is prohibited and may result in disqualification under § 11.13. Such information shall include, but is not limited to: Information concerning the name, any applicable registration name and number, markings, sex, age, and legal ownership of the horse; the name and address of the horse's training and/or stabling facilities; the name and address of the owner, trainer, rider, custodian, any other exhibitor, or other legal entity bearing responsibility for the horse; the class in which the horse is entered or shown; the exhibitor identification number; and, any other information reasonably related to the identification, ownership, control, direction, or supervision of any such horse.

**§ 11.7 [Reserved]**

**§ 11.8 Inspection and detention of horses.**

(a) For the purpose of effective enforcement of the Act: Each horse owner, exhibitor, trainer, or other person having custody of, or responsibility for, any horse at any horse show, horse exhibition, horse sale, or horse auction, shall allow any APHIS representative or HPI appointed by management to inspect such horse at all reasonable times and places the APHIS representative or HPI may designate. Such inspections may be required of any horse which is stabled, loaded on a trailer, being prepared for show, exhibition, or sale or auction, being exercised or otherwise on the grounds of, or present at, any horse show, horse exhibition, or horse sale or horse auction, whether or not such horse has or has not been shown, exhibited, or sold or auctioned, or has or has not been entered for the purpose of being shown

or exhibited or offered for sale or auction at any such horse show, horse exhibition, or horse sale or horse auction. APHIS representatives and HPIs appointed by management will not generally or routinely delay or interrupt actual individual classes or performances at horse shows, horse exhibitions, or horse sales or auctions for the purpose of examining horses, but they may do so in extraordinary situations, such as but not limited to, lack of proper facilities for inspection, refusal of management to cooperate with inspection efforts, reason to believe that failure to immediately perform inspection may result in the loss, removal, or masking of any evidence of a violation of the Act or the regulations, or a request by management that such inspections be performed by an APHIS representative.

(b) When any APHIS representative or HPI appointed by management notifies the owner, exhibitor, trainer, or other person having custody of or responsibility for a horse at any horse show, horse exhibition, or horse sale or horse auction that APHIS desires to inspect such horse, it shall not be moved from the horse show, horse exhibition, or horse sale or horse auction until such inspection has been completed and the horse has been released by an APHIS representative.

(c) For the purpose of inspection, testing, or taking of evidence, APHIS representatives may detain for a period not to exceed 24 hours any horse, at any horse show, horse exhibition, or horse sale or horse auction, which is sore or which an APHIS representative has probable cause to believe is sore. Such detained horse may be marked for identification and any such identifying markings shall not be removed by any person other than an APHIS representative.

(d) Detained horses shall be kept under the supervision of an APHIS representative or secured under an official USDA seal or seals in a horse stall, horse trailer, or other facility to which access shall be limited. It shall be the policy of APHIS to have at least one representative present in the immediate detention area when a horse is being held in detention. The official USDA seal or seals may not be broken or removed by any person other than an APHIS representative, unless:

(1) The life or well-being of the detained horse is immediately endangered by fire, flood, windstorm, or other dire circumstances that are beyond human control.

(2) The detained horse is in need of such immediate veterinary attention that its life may be in peril before an APHIS representative can be located.

(3) The horse has been detained for a maximum 24-hour detention period, and an APHIS representative is not available to release the horse.

(e) The owner, exhibitor, trainer, or other person having custody of or responsibility for any horse detained by APHIS for further inspection, testing, or the taking of evidence shall be allowed to feed, water, and provide other normal custodial and maintenance care, such as walking, grooming, etc., for such detained horse: *Provided,* That:

(1) Such feeding, watering, and other normal custodial and maintenance care of the detained horse is rendered under the direct supervision of an APHIS representative.

(2) Any non-emergency veterinary care of the detained horse requiring the use, application, or injection of any drugs or other medication for therapeutic or other purposes is rendered by a Doctor of Veterinary Medicine in the presence of an APHIS representative and, the identity and dosage of the drug or other medication used, applied, or injected and its purpose is furnished in writing to the APHIS representative prior to such use, application, or injection by the Doctor of Veterinary Medicine attending a horse. The use, application, or injection of such drug or other medication must be approved by the APHIS representative.

(f) It shall be the policy of an APHIS representative or HPI appointed by management to inform the owner, trainer, exhibitor, or other person having immediate custody of or responsibility for any horse allegedly found to be in violation of the Act or the regulations of such alleged violation or violations before the horse is released as determined by an APHIS representative.

(g) The owner, trainer, exhibitor, or other person having immediate custody of or responsibility for any horse or horses that an APHIS representative determines shall be detained for inspection, testing, or taking of evidence pursuant to paragraph (c) of this section shall be informed after such determination is made and shall allow said horse to be immediately put under the supervisory custody of APHIS or secured under official USDA seal as provided in paragraph (d) of this section until the completion of such inspection, testing, or gathering of evidence, or until the 24-hour detention period expires.

(h) The owner, trainer, exhibitor, or other person having custody of or responsibility for any horse allegedly found to be in violation of the Act or regulations, and who has been informed of such alleged violation by an APHIS representative or HPI appointed by management as stated in paragraph (f) of this section, may request re-inspection and testing of said horse within a 24-hour period: *Provided,* That:

(1) Such request is made to an APHIS representative immediately after the horse has been inspected by an APHIS representative or HPI appointed by management and before such horse has been removed from the inspection facilities;

(2) An APHIS representative determines that sufficient cause for re-inspection and testing exists; and

(3) The horse is maintained under APHIS supervisory custody as prescribed in paragraph (d) of this section until such re-inspection and testing has been completed.

(i) The owner, exhibitor, trainer, or other person having custody of, or responsibility for, any horse being inspected shall render such assistance, as the APHIS representative or HPI appointed by management may request, for the purposes of such inspection.

**§ 11.9 Access to premises and records.**

(a) *Management.* (1) The management of any horse show, horse exhibition, or horse sale or auction shall, without fee, charge, assessment, or other compensation, provide APHIS representatives and HPIs appointed by management with unlimited access to the grandstands, sale ring, barns, stables, grounds, offices, and all other areas of any horse show, horse exhibition, or horse sale or auction, including any adjacent areas under their direction, control, or supervision for the purpose of inspecting any horses, or any records required to be kept by regulation or otherwise maintained.

(2) The management of any horse show, horse exhibition, or horse sale or auction shall, without fee, charge, assessment, or other compensation, provide APHIS representatives and HPIs appointed by management with an adequate, safe, and accessible area for the visual inspection and observation of horses.

(b) *Exhibitors.* (1) Each horse owner, trainer, exhibitor, or other person having custody of or responsibility for any horse at any horse show, horse exhibition, or horse sale or auction shall, without fee, charge, assessment, or other compensation, admit any APHIS representatives and HPIs appointed by management to all areas of barns, compounds, horse vans, horse trailers, stables, stalls, paddocks, or other show, exhibition, or sale or auction grounds or related areas at any horse show, horse exhibition, or horse sale or auction, for the purpose of

inspecting any such horse, at any and all times.

(2) Each owner, trainer, exhibitor, or other person having custody of or responsibility for, any horse at any horse show, horse exhibition, or horse sale or auction shall promptly present his or her horse for inspection upon notification, orally or in writing, by any APHIS representatives or HPIs appointed by the management that said horse has been selected for inspection for the purpose of determining whether such horse is in compliance with the Act and regulations.

**§ 11.10 Inspection space and facility requirements.**

(a) The management of every horse show, horse exhibition, horse sale, or horse auction shall provide, without fee, charge, assessment, or other compensation, sufficient space and facilities for APHIS representatives and HPIs appointed by management to carry out their duties under the Act and regulations when requested to do so by APHIS representatives or HPIs appointed by management, whether or not management has received prior notification or otherwise knows that such show, exhibition, sale, or auction may be inspected by APHIS. With respect to such space and facilities, it shall be the responsibility of management to provide at least the following:

(1) Sufficient, well-lit space in a convenient location to the horse show, horse exhibition, horse sale, or horse auction arena, acceptable to APHIS representatives and HPIs appointed by management, in which horses may be inspected.

(2) Protection from the elements of nature, such as rain, snow, sleet, hail, windstorm, etc.

(3) A means to control crowds or onlookers in order that APHIS representatives and HPIs appointed by management may carry out their duties safely and without interference.

(4) An accessible, reliable, and convenient 110-volt electrical power source available at the show, exhibition, sale, or auction site.

(5) Appropriate areas adjacent to the inspection area for designated horses to wait before and after inspection, and an area to be used for detention of horses.

(b) Other than the persons noted below, only a management representative, HPIs appointed by management, and APHIS representatives are allowed in the warm-up and inspection areas. Each horse in the inspection area may only be accompanied by the person having immediate custody of or responsibility for the horse. Inspected horses shall be held in a designated area under the observation by a management representative and shall not be permitted to leave the designated area before showing. Each horse in the designated warm-up area may be accompanied by no more than three individuals, including the person having immediate custody of or responsibility for the horse, the trainer, and the rider. No other persons are allowed in the warm-up or inspection areas without prior approval from an APHIS representative or HPI appointed by management.

**§ 11.11–11.12 [Reserved]**

**§ 11.13 Responsibilities and liabilities of management.**

(a) *Horse shows, horse exhibitions, horse sales, and horse auctions at which the management does* not *utilize an APHIS representative or HPI.* The management of any horse show, exhibition, sale or auction which does not utilize an APHIS representative or appoint an HPI shall be responsible for identifying all horses that are sore or otherwise in violation of the Act or regulations, and shall disqualify or prohibit any horses which are sore or otherwise in violation of the Act or regulations from participating or competing in any horse show, horse exhibition, horse sale, or horse auction. Horses entered for sale or auction at a horse sale or horse auction must be inspected and, as appropriate, identified as sore or otherwise in violation of the Act or regulations prior to the sale or auction and, as required by the Act, prohibited from entering the sale or auction ring. Sore horses or horses otherwise in violation of the Act or regulations that have been entered in a horse show or horse exhibition for the purpose of show or exhibition must be identified and disqualified prior to the show or exhibition. Any horses found to be sore or otherwise in violation of the Act or regulations during actual participation in the show or exhibition, must be removed from further participation immediately (*e.g.,* prior to the horse placing in the class or the completion of the exhibition). All horses that placed first in each class or event at any horse show or horse exhibition shall be inspected after being shown or exhibited to determine if such horses are sore or otherwise in violation of the Act or regulations.

(b) *Horse shows, horse exhibitions, horse sales, and horse auctions at which the management utilizes an APHIS representative or HPI appointed by management.* (1) The management of any horse show, horse exhibition, horse sale, or horse auction that utilizes an APHIS representative or HPI appointed by management shall not take any action which will interfere with or influence the APHIS representative or HPI appointed by management in carrying out their duties.

(2) The management of any horse show, exhibition, sale, or auction that utilizes an HPI to inspect horses shall appoint at least 2 HPIs when more than 100 horses are entered.

(3) The management of any horse show, horse exhibition, horse sale, or horse auction that utilizes APHIS representatives or HPIs to inspect horses shall have at least one farrier physically present if more than 100 horses are entered in the event. If 100 or fewer horses are entered in the horse show, horse exhibition, horse sale, or horse auction, the management shall, at minimum, have a farrier on call within the local area to be present, if requested by an APHIS representative or HPI appointed by management.

(4) After an APHIS representative or HPI appointed by management has completed inspection, management must prevent tampering with any part of a horse's limbs or hooves in such a way that could cause a horse to be sore.

(5) If management is dissatisfied with the performance of a particular HPI, management should promptly notify, in writing, the Administrator as to why management believes the performance of the HPI was inadequate or otherwise unsatisfactory.

(6) Management that utilizes an APHIS representative or HPI shall immediately disqualify or prohibit from showing, exhibition, sale, offering for sale, or auction of any horse identified by the APHIS representative or HPI to be sore or otherwise in violation of the Act or regulations and any horse otherwise known by management to be sore or otherwise in violation of the Act or regulations. Should management fail to disqualify or prohibit from being shown, exhibited, sold or auctioned any such horse, the management is responsible for any liabilities arising from the showing, exhibition, sale, or auction of said horses.

(c) *Other responsibilities of management at horse shows, horse exhibitions, horse sales, and* horse *auctions.* (1) Ensure that no devices or substances prohibited under § 11.6 are present in the warm-up area.

(2) Review the orders of the Secretary disqualifying persons from showing or exhibiting any horse, or judging or managing any horse show, exhibition, sale, or auction and disallow the participation of any such person in any

horse show, exhibition, sale, or auction, for the duration of the period of disqualification.

(3) Verify the identity of all horses entered in the horse show, exhibition, sale, or auction. Acceptable methods of identification are as follows:

(i) A description sufficient to identify the horse, including, but not limited to, name, age, breed, color, gender, distinctive markings, and unique and permanent forms of identification when present (*e.g.,* brands, tattoos, cowlicks, or blemishes); or

(ii) Electronic identification that complies with ISO standards; or

(iii) An equine passport issued by a State government and accepted in the government of the State in which the horse show, horse exhibition, or horse sale or auction will occur.

**§ 11.14 Records required and disposition thereof.**

(a) The management of any horse show, exhibition, sale, or auction that contains Tennessee Walking Horses or racking horses shall maintain for a minimum of 90 days following the closing date of a horse show, horse exhibition, horse sale, or horse auction all records containing:

(1) The dates and place of the horse show, horse exhibition, horse sale, or horse auction.

(2) The name and address (including street address or post office box number, and ZIP Code) of the sponsoring organization.

(3) The name and address of the horse show, horse exhibition, horse sale, or horse auction management.

(4) The name and address (including street address or post office box number, and ZIP Code) of each show judge.

(5) A copy of each class or sale sheet containing the names of horses, the registration number of the horse (if applicable), the names and addresses (including street address or post office box number, and ZIP Code) of the horse owner, the exhibition number and class number unique to each horse, or sale number assigned to each horse, the show class or sale lot number, and the name and address (including street address or post office box number, and ZIP Code) of the person paying the entry fee and entering the horse in a horse show, horse exhibition, horse sale, or horse auction.

(6) A copy of the official horse show, horse exhibition, horse sale, or horse auction program, if any such program has been prepared.

(7) A copy of the official judge's or scoring card(s) for each horse show class containing Tennessee Walking Horses and racking horses to include the place each horse finished in the class.

(8) The name and any applicable registration name and number of each horse, as well as the names and addresses (including street address or post office box number, and ZIP Code) of the owner, the trainer, the custodian, the exhibitor and the location (including street address and ZIP Code) of the home barn or other facility where the horse is stabled.

(9) The name, exhibition number and class number, or assigned sale number, and the registration name and number (if applicable) for each horse disqualified or prohibited by management from being shown, exhibited, sold or auctioned, and the reasons for such action.

(10) Name and address (including street address or post office box number, and ZIP Code) of the person designated by the management to maintain the records required by this section.

(11) The name and address of each HPI appointed by management to conduct inspections at the event, if an HPI was appointed.

(b) The management of any horse show, horse exhibition, horse sale, or horse auction that allows any horse to be shown, exhibited or sold with devices, pads, substances, applications, or other items restricted under § 11.6 for therapeutic treatment must maintain the following information for each horse receiving the therapeutic treatment for a period of at least 90 days following the closing date of a show, exhibition, sale, or auction:

(1) The name, exhibition number and class number, or assigned sale number, and the registration name and number (if applicable) for each horse receiving therapeutic treatment.

(2) The name, address (including street address and ZIP Code), and phone number of the licensed veterinarian providing the therapeutic treatment.

(3) The state and license number of the licensed veterinarian providing the therapeutic treatment.

(4) The name and address (including street address and ZIP Code) and phone number of the licensed veterinarian's business.

(5) A description of the disease, injury, or disorder for which the treatment is given, to include at minimum:

(i) Start date of treatment.

(ii) Prescription or specific design and prescription (for example, as to the height, weight, and material of a therapeutic pad) of the treatment plan.

(iii) Expected length of treatment period and an estimation of when treatment will be discontinued.

**§ 11.15 Inspection of records.**

The management of any horse show, horse exhibition, horse sale, or horse auction shall permit any APHIS representative or HPI appointed by management, upon request, to examine and make copies of any and all records pertaining to any horse that are required in the regulations or otherwise maintained, during business hours, or such other times as may be mutually agreed upon. A room, table, or other facilities necessary for proper examination and copying of such records shall be made available to the APHIS representative or HPI appointed by management.

**§ 11.16 Reporting by management.**

(a) At least 30 days before any horse show, horse exhibition, horse sale, or horse auction is scheduled to begin, management must notify the Administrator of such event by mail, fax, or electronic means such as email. Such notification must include:

(1) The name and address (including street address and ZIP Code) of the horse show, exhibition, sale, or auction.

(2) The name, address, phone number (and email address, if available) of the event manager.

(3) The date(s) of the horse show, horse exhibition, horse sale, or horse auction.

(4) A copy of the official horse show, exhibition, sale, or auction program, if any such program has been prepared.

(5) Anticipated or known number of entries.

(6) Whether management requests an APHIS representative to perform inspections at the horse show, horse exhibition, horse sale, or horse auction; or, if not, whether management has chosen and appointed an HPI to inspect horses, or will have no inspector. If neither an APHIS representative nor an HPI is available on the date of the event, event management may request a variance. Variances must be submitted by mail, fax, or electronic means such as email to the Deputy Administrator of Animal Care at least 15 days before the event and state the reason for requesting the variance.

(7) Whether management will allow any horse to be shown, exhibited or sold with prohibitions under section § 11.6 for therapeutic treatment.

(b) At least 15 days before any horse show, horse exhibition, horse sale, or horse auction is scheduled to begin, the management of any such horse show, horse exhibition, horse sale, or horse auction must notify the Administrator of any changes to the information required under § 11.16(a) by mail, fax, or electronic means such as email.

(c) Within 5 days following the conclusion of any horse show, horse exhibition, horse sale, or horse auction that contains Tennessee Walking Horses or racking horses, the management of such show, exhibition, sale or auction shall submit to the Administrator the information required to be maintained by § 11.14 by mail, fax, or electronic means such as email. Event information already submitted to APHIS under paragraph (a) of this section does not need to be sent again.

(d) Within 5 days following the conclusion of any horse show, horse exhibition, horse sale, or horse auction which does not include Tennessee Walking Horses or racking horses, the management of such show, exhibition, sale or auction shall submit to the Administrator the following information: Any case where a horse was prohibited by management from being shown, exhibited, sold or auctioned because it was found to be sore or otherwise in violation of the Act or regulations. Information will include at a minimum the name, exhibition number and class number, or assigned sale number, and the registration name and number (if applicable) for each horse disqualified or prohibited by management from being shown, exhibited, sold or auctioned, and the reason(s) for such action.

**§ 11.17 Requirements concerning persons involved in transportation of certain horses.**

Each person who ships, transports, or otherwise moves, or delivers or receives for movement, any horse with reason to believe such horse may be shown, exhibited, sold or auctioned at any horse show, exhibition, sale, or auction, shall allow and assist in the inspection of such horse at any such horse show, horse exhibition, horse sale, or horse auction to determine compliance with the Act and regulations and shall furnish to any APHIS representative or HPI appointed by management upon their request the following information:

(a) Name and address (including street address or post office box number, and ZIP Code) of the horse owner and of the shipper, if different from the owner or trainer;

(b) Name and address (including street address or post office box number, and ZIP Code) of the horse trainer;

(c) Name and address (including street address or post office box number, and ZIP Code) of the carrier transporting the horse, and of the driver of the means of conveyance used;

(d) Origin of the shipment and date thereof; and

(e) Destination of shipment.

**§ 11.18 Utilization of inspectors.**

(a) The management of any horse show, horse exhibition, horse sale, or horse auction may elect to utilize an APHIS representative or HPI to detect and diagnose horses which are sore or to otherwise inspect horses for compliance with the Act or regulations.

(b) If management elects to utilize an HPI to detect and diagnose horses which are sore or to otherwise inspect horses for compliance with the Act or regulations, the HPI must currently be authorized by APHIS pursuant to § 11.19 to perform this function.

(c) The management of any horse show, horse exhibition, horse sale, or horse auction shall not utilize any person to detect and diagnose horses which are sore or to otherwise inspect horses for the purpose of determining compliance with the Act and regulations, if that person has not been authorized by APHIS or if that person has been disqualified by the Secretary, after notice and opportunity for a hearing, in accordance with section 4 (15 U.S.C. 1823) of the Act, to make such detection, diagnosis, or inspection.

(d) After [effective date of the final rule], only APHIS representatives and HPIs as defined in § 11.1 shall be utilized by management to detect and diagnose horses which are sore or otherwise inspect horses for compliance with the Act or regulations. Any other persons seeking to continue inspecting or to become inspectors after [EFFECTIVE DATE OF FINAL RULE] must apply to APHIS and meet eligibility qualifications for authorization included in § 11.19.

**§ 11.19 Authorization and training of Horse Protection Inspectors.**

APHIS will authorize HPIs after the successful completion of training by APHIS. The management of any horse show, exhibition, sale, or auction may appoint HPIs holding a current authorization to detect and diagnose horses that are sore or to otherwise inspect horses and any records pertaining to such horses for the purposes of determining compliance with the Act and regulations.

(a) *Authorization process.* All persons wishing to become HPIs must submit an application to APHIS. Guidance regarding submitting applications is found on the APHIS Horse Protection website. Applicants will be required to show that they meet the Tier 1 qualifications in paragraph (a)(1) of this section in order for the application to be evaluated. If the applicant meets the qualifications in paragraph (a)(1) of the section, the applicant will be further evaluated based on the Tier 2 qualifications in paragraph (a)(2) of this section. In order for APHIS to consider the applicant as a candidate to be an HPI, all qualifications must be met.

(1) *Tier 1 qualifications.* The applicant must be a licensed veterinarian, except that veterinary technicians and persons employed by State and local government agencies to enforce laws or regulations pertaining to animal welfare may also be authorized if APHIS determines that there is an insufficient pool of veterinarians among current HPIs and applicants to be HPIs.

(2) *Tier 2 qualifications.* (i) The applicant must demonstrate sufficient knowledge and experience of equine husbandry and science and applicable principles of equine science, welfare, care, and health for APHIS to determine that the applicant can consistently identify equine soring and soring practices.

(ii) The applicant must not have been found to have violated any provision of the Act or the regulations in this part occurring after July 13, 1976, or have been assessed any civil penalty, or have been the subject of a disqualification order in any proceeding involving an alleged violation of the Act or regulations occurring after July 13, 1976.

(iii) The applicant, as well as the applicant's immediate family and any person from whom the applicant receives a financial benefit, must not participate in the showing, exhibition, sale, or auction of horses or act as a judge or farrier, or be an agent of management.

(iv) The applicant must not have been disqualified by the Secretary from performing diagnosis, detection, and inspection under the Act.

(v) The applicant must not have acted in a manner that calls into question the applicant's honesty, professional integrity, reputation, practices, and reliability relative to possible authorization as an HPI. APHIS will base this on a review of:

(A) Criminal conviction records, if any, indicating that the applicant may lack the honesty, integrity, and reliability to appropriately and effectively perform HPI duties.

(B) Official records of the person's actions while participating in Federal, State, or local veterinary programs when those actions reflect on the honesty, reputation, integrity, and reliability of the applicant.

(C) Judicial determinations in any type of litigation adversely reflecting on the honesty, reputation, integrity, and reliability of the applicant.

(D) Any other evidence reflecting on the honesty, reputation, integrity, and reliability of the applicant.

(b) *Training.* All applicants selected as candidates will complete a formal training program administered by APHIS prior to authorization. Continual training as APHIS determines to be necessary is a condition of maintaining authorization to inspect horses.

(c) *Listing.* APHIS will maintain a list of all HPIs on the APHIS Horse Protection website. The list is also available by contacting APHIS by email or U.S. mail.[1]

(d) *Denial of an HPI application and disqualification of HPIs*—(1) *Denial.* APHIS may deny an application for authorization of an HPI for any of the reasons outlined in paragraph (a) of this section. In such instances, the applicant shall be provided written notification of the grounds for the denial. The applicant may appeal the decision, in writing, within 30 days after receiving the written denial notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

(2) *Disqualification.* APHIS may permanently disqualify any HPI who fails to inspect horses in accordance with the procedures prescribed by APHIS or otherwise fails to perform duties necessary for APHIS to enforce the Act and regulations, after notice and opportunity for a hearing. Requests for hearings and the hearings themselves shall be in accordance with the Uniform Rules of Practice for the Department of Agriculture in subpart H of part 1, subtitle A, of 7 CFR.

[1] Send email to *horseprotection@usda.gov,* or U.S. mail to USDA/APHIS/AC, 2150 Centre Ave. Building B, Mailstop 3W11, Fort Collins, CO 80526–8117.

Done in Washington, DC, this 15th day of August 2023.

**Jennifer Moffitt,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 2023–17814 Filed 8–17–23; 8:45 am]

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Part III

## Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey of Puerto Rico in the Northwest Atlantic Ocean; Notice

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XD216]**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey of Puerto Rico in the Northwest Atlantic Ocean

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

**ACTION:** Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

**SUMMARY:** NMFS has received a request from the Lamont-Doherty Earth Observatory of Columbia University (L–DEO) for authorization to take marine mammals incidental to a marine geophysical survey. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

**DATES:** Comments and information must be received no later than September 20, 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.harlacher@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/permit/incidental-take-authorizations-under-marine-mammal-protection-act/incidental-take-authorizations-research-and-other-activities.* In case of problems accessing these documents, please call the contact listed below.

*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 *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act/incidental-take-authorizations-research-and-other-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:** Jenna Harlacher, 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.

Accordingly, NMFS plans to adopt the National Science Foundation's (NSF) Environmental Assessment (EA), as we have preliminarily determined that it includes adequate information analyzing the effects on the human environment of issuing the IHA. NSF's draft EA is available at *https://www.nsf.gov/geo/oce/envcomp.*

## Summary of Request

On April 27, 2023, NMFS received a request from L–DEO for an IHA to take marine mammals incidental to a marine geophysical survey of the Puerto Rico Trench and the southern slope of Puerto Rico in the northwest Atlantic Ocean. The application was deemed adequate and complete on July 27, 2023. L–DEO's request is for take of 27 marine mammal species by Level B harassment, and for a subset of 5 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 Proposed Activity

### *Overview*

Researchers from the Woods Hole Oceanographic Institution (WHOI), University of Texas Institute of Geophysics (UTIG), and University of Puerto Rico Mayaguez (UPRM), with funding from the U.S. National Science Foundation (NSF) and in collaboration with the United States Geological Survey (USGS) and researchers from the GEOMAR Helmholtz Centre for Ocean Research (GEOMAR) in Kiel, Germany, propose 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 proposed surveys (high and low energy surveys) would occur in the Puerto Rico Trench and the southern slope of Puerto Rico in the northwestern Atlantic Ocean during fall 2023. The proposed survey would occur within the U.S. Exclusive Economic Zone (EEZ) around Puerto Rico and the U.S. Virgin Islands and within the coastal zone of Puerto Rico, and within the EEZs of the Dominican Republic and the British Virgin Islands. The survey would occur in water depths ranging from approximately 1,000 to 8,400 meters (m) for the high energy survey portion and approximately 100–3,000 m for the low energy survey portion. To complete this survey, the R/V Langseth would tow two different airgun configurations: (a) 36-airgun

towed array with a total discharge volume of ~6600 in$^3$ at a depth of 12 m for the high-energy surveys, and (b) two 45/105-in$^3$ generator-injector (GI) airguns with a total discharge volume of 90 in$^3$ off southern Puerto Rico at a depth of 3 m for the low-energy surveys. The airgun array receiving systems for the different survey segments would consist of a 15 kilometer (km) long solid-state hydrophone streamer, approximately 31 short-period Ocean Bottom Seismometers (OBS), and 10 ultra-deep-water broadband OBS for the high-energy portion, and 150 m solid-state hydrophone streamer for the low-energy portion. For the high-energy survey, 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 400-m (~155 s) interval during OBS seismic refraction surveys. For the low energy survey, the airgun would fire at a shot interval of 6.25 m (2.7 s). Approximately 4,630 kilometer (km) of total survey trackline are proposed.

The purpose of the proposed high-energy survey is to investigate the Puerto Rico Trench, its outer rise, and across the island of Puerto Rico, and provide data necessary to illuminate the depth, geometry, and physical properties of the seismogenic fault interface between the subducting Atlantic plate and the overlying accretionary wedge/Puerto Rico arc/Caribbean plate, as well as seismogenic structures in the accretionary wedge and submarine slopes of the island of Puerto Rico. The low-energy seismic surveys would be located over a 2019–2020 area of seismic activity in the Caribbean Sea to define the geometry of the faults that ruptured and other potential seismogenic structures. 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 proposed high-energy survey is expected to last for approximately 42 days, with 21 days of seismic operations, 20 days for equipment deployment/recovery, and 2 days transit/contingency time. The low-energy survey would consist of approximately 3 days of seismic operations. R/V Langseth would likely leave from and return to port in San Juan, Puerto Rico during fall 2023.

*Specific Geographic Region*

The proposed survey would occur within approximately 17–21° N, 63.6–68.2° W, within the EEZs of Puerto Rico, U.S. Virgin Islands, British Virgin Islands, and the Dominican Republic, in water depths ranging from approximately 100–8,400 m. The closest approach of the proposed low-energy survey lines to land on the south side of Puerto Rico is ~2.5 km from Isla de Ratones (Isla Piñero), ~3.4 km from Cayo Maria Langa, and ~3 km from Cayo Aurora. The closest approach of the high-energy survey lines to the coast of Puerto Rico is ~22 km, 28 km to the British Virgin Islands, 42 km to Dominican Republic, and 77 km to the U.S. Virgin Islands. The region where the survey is proposed 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.

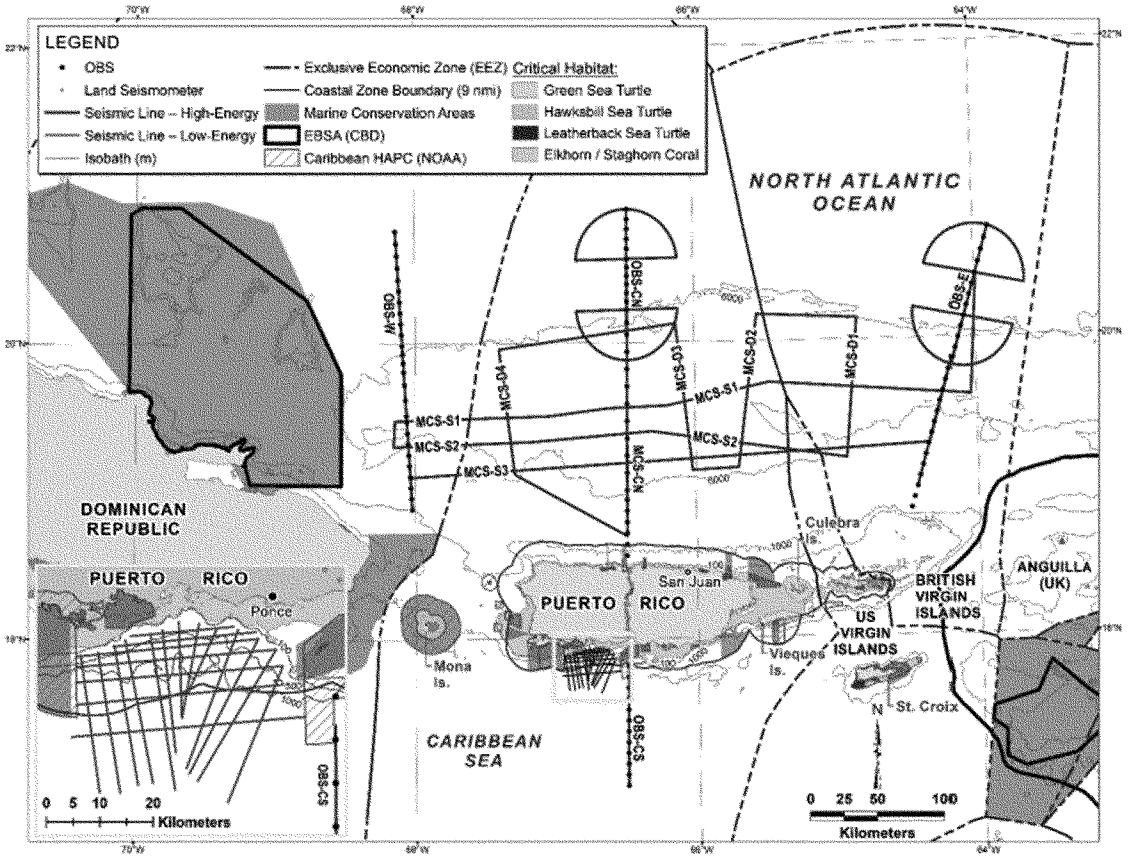

**Figure 1—Location of the Proposed Puerto Rico Seismic Surveys in the Northwest Atlantic Ocean**

Representative survey tracklines are included in the figure; however, the tracklines could occur anywhere within the survey area. EBSA = Ecologically or Biologically Significant Marine Areas. CBD = Convention on Biological Diversity. N = North. HAPC = habitat of particular concern.

*Detailed Description of the Specified Activity*

The procedures to be used for the proposed surveys would be similar to those used during previous seismic surveys by L–DEO and would use conventional seismic methodology. The high-energy surveys would involve one source vessel, R/V Langseth, which is owned and operated by L–DEO. During the high-energy MCS seismic reflection and OBS seismic refraction surveys, R/V Langseth would tow 4 strings with 36 airguns, consisting of a mixture of Bolt 1500LL and Bolt 1900LLX. During the surveys, all 4 strings, totaling 36 active airguns with a total discharge volume of 6,600 $in^3$, would be used. The four airgun strings would be spaced 16 m apart, distributed across an area of approximately 24 m x 16 m behind the R/V Langseth, and would be towed approximately 140 m behind the vessel. During the low energy survey, R/V Langseth would tow a 2 GI-airgun cluster in true GI (45/105 in3) mode as the seismic source, with a total discharge volume of 90 in3. The two inline GI airguns would be spaced 2.46 m apart. The airgun array configurations are illustrated in Figure 2–13 of NSF and USGS's Programmatic Environmental Impact Statement (PEIS; NSF–USGS, 2011). (The PEIS is available online at: *www.nsf.gov/geo/oce/envcomp/usgs-nsf-marine-seismic-research/nsf-usgs-final-eis-oeis-with-appendices.pdf*). The receiving system would consist of a 15-km long solid-state hydrophone streamer, 31 short-period OBSs, and 10 GEOMAR ultra-deep-water broadband OBSs. For the low-energy surveys, the receiving system would consist of a 150-m long solid-state hydrophone streamer. As the airgun arrays are towed along the survey lines, the hydrophone streamer would transfer the data to the on-board processing system for the MCS survey, and the OBSs would receive and store the returning acoustic signals internally for later analysis.

Approximately 4630 km of seismic acquisition are proposed. During the high-energy surveys, ~4070 km of transect lines would be surveyed (~2565 km of 2–D MCS seismic reflection data and 1505 km of OBS refraction data); the low-energy USGS surveys would consist of ~560 line km. All of the high-energy surveys with the 36-airgun array would occur in deep water >1000 m deep. For the low-energy USGS surveys conducted with the 2–GI airguns, 43 percent would occur in intermediate-depth water 100–1000 m deep, and 57 percent would take place in deep water >1000 m; no effort would occur in shallow water (<100 m deep). Following refraction shooting of one line, OBSs on that line would be recovered, serviced, and redeployed on a subsequent refraction line. In addition to the operations of the airgun array, the ocean floor would be mapped with the Kongsberg EM 122 MBES and a Knudsen Chirp 3260 SBP. A Teledyne RDI 75 kHz Ocean Surveyor ADCP would be used to measure water current velocities, and acoustic pingers would be used to retrieve OBSs. Take of marine mammals is not expected to occur incidental to use of the MBES, SBP, and ADCP, whether or not the airguns are operating simultaneously with the other sources. Given their characteristics (*e.g.,* narrow downward-directed beam), marine mammals would experience no more than one or two brief ping exposures, if any exposure were to occur. NMFS does not expect that the use of these sources presents any reasonable potential to cause take of marine mammals.

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; *https://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 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 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: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

Aside from the few species with stocks assigned for Puerto Rico and the U.S. Virgin Islands, individuals from the species affected would not be from the stocks described in the SARs. These stocks are not extensively studied but are provisionally being considered separate stocks for management purposes and further work to differentiate them from stocks in the Atlantic and Gulf of Mexico are being conducted. However, these stocks are likely trans-boundary within, at minimum, waters near adjacent Caribbean Islands and are not likely to occur exclusively within the bounds of the U.S. EEZ.

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 [3] |
|---|---|---|---|---|---|
| **Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)** | | | | | |
| Family Balaenopteridae (rorquals): | | | | | |
| Humpback whale | *Megaptera novaeangliae* | | -/-; N | 1,396 (0; 1,380; 2016) | 4,990 |
| Fin whale | *Balaenoptera physalus* | | E/D; Y | 6,802 (0.24; 5,573; 2016) | 11,672 |
| Sei whale | *Balaenoptera borealis* | | E/D; Y | 6,292 (1.02; 3,098; 2016) | 19,530 |
| Minke whale | *Balaenoptera acutorostrata* | | -/-; N | 21,968 (0.31; 17,002; 2016) | 13,784 |
| Blue whale | *Balaenoptera musculus* | | E/D; Y | unk (unk; 402; 1980–2008) | 191 |
| **Superfamily Odontoceti (toothed whales, dolphins, and porpoises)** | | | | | |
| Family Physeteridae: | | | | | |
| Sperm whale | *Physeter macrocephalus* | Puerto Rico and U.S. Virgin Islands. | E/D; Y | 4,349 (0.28; 3,451; 2016)[4] | 64,015 |
| Family Kogiidae: | | | | | |
| Pygmy sperm whale | *Kogia breviceps* | | -/-; N | 7,750 (0.38; 5,689; 2016) | 26,043 |
| Dwarf sperm whale | *Kogia sima* | | -/-; N | | |
| Family Ziphiidae (beaked whales): | | | | | |
| Cuvier's beaked Whale | *Ziphius cavirostris* | Puerto Rico and U.S. Virgin Islands. | -/-; Y | 5,744 (0.36, 4,282, 2016) [4] .. | 65,069 |
| Blainville's beaked Whale | *Mesoplodon densirostris* | | -/-; N | 10,107 (0.27; 8,085; 2016) | |
| True's beaked whale | *Mesoplodon mirus* | | -/-; N | | |
| Gervais' beaked whale | *Mesoplodon europaeus* | | -/-; N | | |
| Family Delphinidae: | | | | | |
| Short finned pilot whale | *Globicephala macrorhynchus* | Puerto Rico and U.S. Virgin Islands. | -/-; Y | 28,924 (0.24; 23,637; 2016) [4]. | 264,907 |
| Rough-toothed dolphin | *Steno bredanensis* | | -/-; N | 136 (1.0; 67; 2016) | 32,848 |
| Bottlenose dolphin | *Tursiops truncatus* | Puerto Rico and U.S. Virgin Islands. | -/-; Y | 62,851 (0.23; 51,914, 2016) [4]. | 418,151 |
| Pantropical spotted dolphin | *Stenella attenuata* | | -/-; N | 6,593 (0.52; 4,367; 2016) | 321,740 |
| Atlantic spotted dolphin | *Stenella frontalis* | Puerto Rico and U.S. Virgin Islands. | -/-; Y | 39,921 (0.27; 32,032; 2016) [4]. | 259,519 |
| Spinner dolphin | *Stenella longirostris* | Puerto Rico and U.S. Virgin Islands. | -/-; Y | 4,102 (0.99; 2,045; 2016) [4] .. | 152,511 |
| Clymene dolphin | *Stenella clymene* | | -/-; N | 4,237 (1.03; 2,071; 2016) | 181,209 |
| Striped dolphin | *Stenella coeruleoalba* | | -/-; N | 67,036 (0.29; 52,939; 2016) | 412,729 |
| Fraser's dolphin | *Lagenodelphis hosei* | | -/-; N | unk | 19,585 |
| Risso's dolphin | *Grampus griseus* | | -/-; N | 35,215 (0.19; 30,051; 2016) | 78,205 |
| Common dolphin | *Delphinus delphis* | | -/-; N | 172,947 (0.21; 145,216; 2016) | 473,260 |
| Melon-headed whale | *Peponocephala electra* | | -/-; N | unk | 64,114 |
| Pygmy killer whale | *Feresa attenuate* | | -/-; N | unk | 9,001 |
| False killer whale | *Pseudorca crassidens* | | -/-; N | 1,791 (0.56; 1,154; 2016) | 12,682 |
| Killer whale | *Orcinus orca* | | -/-; N | unk | 972 |

[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] Modeled abundance value from U.S Navy Atlantic Fleet Training and Testing Area Marine Mammal Density (AFTT) (Roberts *et al.,* 2023; Mannocci *et al.,* 2017)

[4] Puerto Rico and U.S. Virgin Islands stocks have unknown abundance, therefore providing abundance information associated with the Atlantic stocks as point of reference.

In Table 1 above, NMFS reports two sets of abundance estimates: Those from NMFS' SARs and those predicted by Roberts *et al.* (2023). The latter represent density data developed for use in environmental analyses covering areas of the northwest Atlantic Ocean outside of the U.S. EEZ, also referred to as the U.S. Navy Atlantic Fleet Training and Testing Area (AFTT) *https://seamap.env.duke.edu/models/Duke/AFTT/*. We refer to these data hereafter as the AFTT models. NMFS' SAR estimates do not include areas covered by this survey and therefore the AFTT abundance value was included as it covers the Caribbean Sea and waters off Puerto Rico. The SAR abundances provided with no stock listed are for the other Western North Atlantic stocks as a point of reference.

Additionally, NMFS' SAR estimates are typically generated from the most recent shipboard and/or aerial surveys conducted. The spatial scale of these surveys along the Atlantic coast is small relative to the ability of most cetacean species to travel within their ranges. As an example, only one sighting of rough-toothed dolphin occurred in the last two dedicated cetacean abundance surveys near L–DEO's proposed survey area during 2011 or 2016. Multiple species with modeled take proposed for authorization also do not have a population abundance listed in the SAR's even though the last surveys were conducted on these species in 2019. Studies based on abundance and distribution surveys restricted to U.S. waters are unable to detect temporal shifts in distribution beyond U.S. waters that might account for any changes in abundance within U.S. waters. NMFS' SAR estimates also typically do not incorporate correction for detection bias. Therefore, they should generally be considered underestimates, especially for cryptic or long-diving species (*e.g.,* beaked whales, *Kogia* spp., sperm whales).

As indicated above, all 27 number 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 proposed 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 off southeast U.S.), or because their known migration through the area does not align with the proposed survey dates, are listed in section 3 of the application; however, they are omitted from further analysis. These generally include species that do not normally occur in the area, but for which there are one or more occurrence records that are considered beyond the normal range of the species. In addition to what is included in Sections 3 and 4 of the application, the SARs, and NMFS' website, further detail informing the baseline for select species of particular or unique vulnerability (*i.e.,* information regarding current Unusual Mortality Events (UME) and important habitat areas) is provided below.

*Humpback Whale*

In the western North Atlantic, the humpback whale occurs from Greenland to Venezuela (Würsig *et al.* 2000). For most North Atlantic humpbacks, the summer feeding grounds range from the northeast coast of the U.S. to the Barents Sea (Katona and Beard 1990; Smith *et al.* 1999). The whales that feed on the eastern coast of the United States are recognized as a distinct feeding stock, known as the Gulf of Maine stock (Palsbøll *et al.* 2001; Vigness-Raposa *et al.* 2010). During winter, these whales mate and calve in the West Indies, where spatial and genetic mixing among feeding stocks occurs (Katona and Beard 1990; Clapham *et al.* 1993; Palsbøll *et al.* 1997; Stevick *et al.* 1998; Kennedy *et al.* 2013).

Humpback whales were listed as endangered under the Endangered Species Conservation Act (ESCA) in June 1970. In 1973, the ESA replaced the ESCA, and humpbacks continued to be listed as endangered. NMFS re-evaluated the status of the species in 2015, and on September 8, 2016, divided the species into 14 distinct population segments (DPS), removed the current species-level listing, and in its place listed 4 DPSs as endangered and 1 DPS as threatened (81 FR 62259, September 8, 2016). The remaining nine DPSs were not listed. Only one DPS occurs in the proposed survey area, the West Indies DPS, which is not listed under the ESA.

Stevick *et al.* (2018) found that the timing and migration destinations of humpback whales in the northwestern and southeastern Caribbean are different and suggested that there could be two different breeding populations in the West Indies. Stevick *et al.* (2003b) reported that males were often seen on breeding grounds earlier than females. Some individuals from the North Atlantic are known to migrate to Cape Verde to breed (*e.g.,* Wenzel *et al.* 2009). A small proportion of the Atlantic humpback whale population remains in high latitudes in the eastern North Atlantic during winter (*e.g.,* Christensen *et al.* 1992).

The largest winter concentration of humpbacks occurs at Silver and Navidad Banks off northeastern Dominican Republic (Mattila *et al.* 1989; Whitehead and Moore 1992). Hundreds of humpbacks aggregate there from January through March to calve (Mattila *et al.* 1989). Mona Passage (Puerto Rico), Virgin Bank, and Anguilla Bank are also considered to be major calving grounds (Mattila and Clapham 1989). Humpback whales are commonly sighted in Puerto Rico and the Virgin Islands during the winter (Mignucci-Giannoni 1998). Hotspots for humpback whales off the west coast of Puerto Rico are related to bathymetry, with groups of two or more primarily occurring in deeper water, singing males occur near the shelf edge, whereas non-singing individuals occur farther from the shelf edge; mother-calf pairs primarily occur in shallow water, unless they are with an escort, in which case they were seen farther from shore (MacKay *et al.* 2016). Similarly, Sanders *et al.* (2005) reported that mother-calf pairs sighted off northwestern Puerto Rico from January–March were most frequently reported in shallow water <100 m deep.

Samaná Bay, on the northeastern coast of the Dominican Republic, is also recognized as an important winter ground for western North Atlantic humpback whales (Mattila *et al.* 1994; Betancourt *et al.* 2012). Photo identification has shown that whales that occurred in the Dominican Republic were seen at high-latitude feeding areas, such as the Gulf of Maine, Newfoundland, Gulf of St. Lawrence, and Greenland as well as at other regions in the West Indies, such as Silver Bank and Navidad Bank off Dominican Republic, Puerto Rico, Guadeloupe, Virgin Bank, and Anguilla Bank (Mattila *et al.* 1989, 1994; MacKay *et al.* 2019), even within the same season (*e.g.,* MacKay *et al.* 2019). Two humpbacks outfitted with satellite transmitters near the Dominican Republic during winter and spring of 2008–2012 were later reported off the east coast of Canada (Kennedy *et al.* 2014). Humpback whale vocalizations were recorded off the northern Dominican Republic during each month from December 2016 through May 2017 (Heenehan *et al.* 2019). Humpback whales were sighted within the proposed survey areas during winter 1995 (Roden and Mullin 2000), winter 2000 (Swartz *et al.* 2001), and winter 2001 (Swartz *et al.* 2002); they were also detected there acoustically during winter 2001 (Swartz *et al.* 2002). Although most sightings of humpbacks occur off the northern Dominican Republic, four sightings were made during March 2005 off the southern coast (Whaley *et al.* 2006). There are numerous records of humpbacks throughout the proposed study area, including sightings in offshore waters to the north of Puerto Rico, nearshore sightings off western Puerto Rico and around the Virgin Islands, and numerous sightings on Silver and Navidad banks north of the Dominican Republic; all sightings were reported for January–March (Ocean Biodiversity Information System (OBIS) 2021). However, some sightings have been reported in nearshore waters of northern Puerto Rico and the U.S. Virgin Islands during fall (Department of Navy (DoN) 2002).

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. The event was declared a UME in April 2017, and includes stranding's starting in 2016. Partial or full necropsy examinations have been conducted on approximately half of the 200 known cases. Of the whales examined, about 40 percent had evidence of human interaction, either ship strike or entanglement. While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not consistent across all whales examined and more research is needed. NMFS is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. Three additional UMEs involving humpback whales have occurred since 2000, in 2003, 2005, and 2006. More information is available at: *https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2021-humpback-whale-unusual-mortality-event-along-atlantic-coast.*

*Minke Whale*

Minke whales occur in the southeastern U.S. and Caribbean during

the winter; however, a lack of acoustic detection in the region during summer indicates either absence of minke whales at that time of year, or a change in vocal behavior at different times of the year (Risch *et al.* 2014). Risch *et al.* (2014) deployed acoustic detectors throughout the North Atlantic to detect minke whale occurrence; one recorder was deployed in the Caribbean, at Saba Bank. There, minke whales were acoustically detected during winter and spring (Risch *et al.* 2014). Minke whale vocalizations were also recorded 200–350 km off northeastern Puerto Rico, March 1994 (Mellinger *et al.* 2000). Mignucci-Giannoni (1998) reported three sightings for Puerto Rico and the Virgin Islands up to 1989. One minke whale was sighted in the proposed survey area north of Puerto Rico during winter 1995 (Roden and Mullin 2000). Another sighting of a minke was made in offshore waters of the proposed survey area north of Puerto Rico on 20 January 2014 (Rodriguez-Ferrer *et al.* 2018). In the OBIS database, there are 16 records of minke whales for the northeastern portion of the proposed survey area; all sightings were reported during March 1994 (OBIS 2021).

Since January 2017, elevated minke whale mortalities have occurred along the U.S. Atlantic coast from Maine through South Carolina, with a total of 148 known strandings. This event has been declared a UME. Full or partial necropsy examinations were conducted on more than 60 percent of the whales. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: *https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2021-minke-whale-unusual-mortality-event-along-atlantic-coast.*

Both the humpback whale and minke whale UME's are of populations of whales found on the Atlantic Coast and may not be the same populations found near the survey area. Additionally, further detailed descriptions and regional information of all potentially affected marine mammal species can be found in Section 3 of the L–DEO's application.

*Marine Mammal Hearing*

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

| Hearing group | Generalized hearing range * |
|---|---|
| Low-frequency (LF) cetaceans (baleen whales) | 7 Hz to 35 kHz. |
| Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales) | 150 Hz to 160 kHz. |
| High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*). | 275 Hz to 160 kHz. |
| Phocid pinnipeds (PW) (underwater) (true seals) | 50 Hz to 86 kHz. |
| Otariid pinnipeds (OW) (underwater) (sea lions and fur seals) | 60 Hz to 39 kHz. |

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

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 Active Acoustic Sound Sources*

This section contains a brief technical background on sound, the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document.

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower

water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the dB. A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 micropascal (μPa)) and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa) while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (RMS) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 $\mu Pa^2-s$) represents the total energy contained within a pulse and considers both intensity and duration of exposure. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-p) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source and is represented in the same units as the RMS sound pressure. Another common metric is peak-to-peak sound pressure (pk-pk), which is the algebraic difference between the peak positive and peak negative sound pressures. Peak-to-peak pressure is typically approximately 6 dB higher than peak pressure (Southall *et al.,* 2007).

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources), as is the case for pulses produced by the airgun arrays considered here. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including the following (Richardson *et al.,* 1995):

*Wind and waves:* The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf sound becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions;

*Precipitation:* Sound from rain and hail impacting the water surface can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times;

*Biological:* Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz; and

*Anthropogenic:* Sources of anthropogenic sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly. Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.,* a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

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 human 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 this 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 a given activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed. 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.,* NMFS, 2018; Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid

rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Airgun arrays produce pulsed signals with energy in a frequency range from about 10–2,000 Hz, with most energy radiated at frequencies below 200 Hz. The amplitude of the acoustic wave emitted from the source is equal in all directions (*i.e.,* omnidirectional), but airgun arrays do possess some directionality due to different phase delays between guns in different directions. Airgun arrays are typically tuned to maximize functionality for data acquisition purposes, meaning that sound transmitted in horizontal directions and at higher frequencies is minimized to the extent possible.

*Acoustic Effects*

Here, we discuss the effects of active acoustic sources on marine mammals.

*Potential Effects of Underwater Sound* [1]—Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: Temporary or permanent hearing impairment; non-auditory physical or physiological effects; behavioral disturbance; stress; and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing, if it occurs at all, will occur almost exclusively in cases where a noise is within an animal's hearing frequency range. We first describe specific manifestations of acoustic effects before providing discussion specific to the use of airgun arrays.

[1] Please refer to the information given previously (''Description of Active Acoustic Sound Sources'') regarding sound, characteristics of sound types, and metrics used in this document.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological response. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects of certain non-auditory physical or physiological effects only briefly as we do not expect that use of airgun arrays are reasonably likely to result in such effects (see below for further discussion). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015). The survey activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

*Threshold Shift*—Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). Threshold shift can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997). Therefore, NMFS does not typically consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several dBs above (a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulsive sounds (such as airgun pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. 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. 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 occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Finneran *et al.* (2015) measured hearing thresholds in 3 captive bottlenose dolphins before and after exposure to 10 pulses produced by a seismic airgun in order to study TTS induced after exposure to multiple pulses. Exposures began at relatively low levels and gradually increased over a period of several months, with the highest exposures at peak SPLs from 196 to 210 dB and cumulative (unweighted) SELs from 193–195 dB. No substantial TTS was observed. In addition, behavioral reactions were observed that indicated that animals can learn behaviors that effectively mitigate noise exposures (although exposure patterns must be learned, which is less likely in wild animals than for the captive animals considered in this study). The authors note that the failure to induce more significant auditory effects was likely due to the intermittent nature of exposure, the relatively low peak pressure produced by the acoustic source, and the low-frequency energy in airgun pulses as compared with the frequency range of best sensitivity for dolphins and other mid-frequency cetaceans.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise (*Phocoena phocoena*), and Yangtze finless porpoise (*Neophocaena asiaeorientalis*)) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). In general, harbor porpoises have a lower TTS onset than other measured cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There is no direct data available on noise-induced hearing loss for mysticetes.

Critical questions remain regarding the rate of TTS growth and recovery after exposure to intermittent noise and the effects of single and multiple pulses. Data at present are also insufficient to construct generalized models for recovery and determine the time necessary to treat subsequent exposures as independent events. More information is needed on the relationship between auditory evoked potential and behavioral measures of TTS for various stimuli. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007, 2019), Finneran and Jenkins (2012), Finneran (2015), and NMFS (2018).

*Behavioral Effects*—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. 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, 2019; Weilgart, 2007; Archer *et al.,* 2010). 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). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007). However, many delphinids approach acoustic source vessels with no apparent discomfort or obvious behavioral change (*e.g.,* Barkaszi *et al.,* 2012).

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; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely, and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Ng and Leung, 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013 a, b). Variations in dive behavior may reflect disruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

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.

Visual tracking, passive acoustic monitoring (PAM), and movement recording tags were used to quantify sperm whale behavior prior to, during, and following exposure to airgun arrays at received levels in the range 140–160 dB at distances of 7–13 km, following a phase-in of sound intensity and full array exposures at 1–13 km (Madsen *et al.,* 2006; Miller *et al.,* 2009). Sperm whales did not exhibit horizontal avoidance behavior at the surface. However, foraging behavior may have been affected. The sperm whales exhibited 19 percent less vocal, or buzz, rate during full exposure relative to post exposure, and the whale that was approached most closely had an extended resting period and did not resume foraging until the airguns had ceased firing. The remaining whales continued to execute foraging dives throughout exposure; however, swimming movements during foraging dives were 6 percent lower during exposure than control periods (Miller *et al.,* 2009). These data raise concerns that seismic surveys may impact foraging behavior in sperm whales, although more data are required to understand whether the differences were due to exposure or natural variation in sperm whale behavior (Miller *et al.,* 2009).

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005, 2006; Gailey *et al.,* 2007, 2016).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs or amplitude of calls (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004; Holt *et al.,* 2012), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Cerchio *et al.* (2014) used PAM to document the presence of singing humpback whales off the coast of northern Angola and to opportunistically test for the effect of seismic survey activity on the number of singing whales. Two recording units were deployed between March and December 2008 in the offshore environment; numbers of singers were counted every hour. Generalized Additive Mixed Models were used to assess the effect of survey day (seasonality), hour (diel variation), moon phase, and received levels of noise (measured from a single pulse during each 10 minutes sampled period) on singer number. The number of singers significantly decreased with increasing received level of noise, suggesting that humpback whale communication was disrupted to some extent by the survey activity.

Castellote *et al.* (2012) reported acoustic and behavioral changes by fin whales in response to shipping and airgun noise. Acoustic features of fin whale song notes recorded in the Mediterranean Sea and northeast Atlantic Ocean were compared for areas with different shipping noise levels and traffic intensities and during a seismic airgun survey. During the first 72 hours of the survey, a steady decrease in song received levels and bearings to singers indicated that whales moved away from the acoustic source and out of the study area. This displacement persisted for a time period well beyond the 10-day duration of seismic airgun activity, providing evidence that fin whales may avoid an area for an extended period in the presence of increased noise. The authors hypothesize that fin whale acoustic communication is modified to compensate for increased background noise and that a sensitization process may play a role in the observed temporary displacement.

Seismic pulses at average received levels of 131 dB re 1 $\mu Pa^2$-s caused blue whales to increase call production (Di Iorio and Clark, 2010). In contrast, McDonald *et al.* (1995) tracked a blue whale with seafloor seismometers and reported that it stopped vocalizing and changed its travel direction at a range of 10 km from the acoustic source vessel (estimated received level 143 dB pk-pk). Blackwell *et al.* (2013) found that bowhead whale call rates dropped significantly at onset of airgun use at sites with a median distance of 41–45 km from the survey. Blackwell *et al.* (2015) expanded this analysis to show that whales actually increased calling rates as soon as airgun signals were detectable before ultimately decreasing calling rates at higher received levels (*i.e.,* 10-minute cumulative sound exposure level ($SEL_{cum}$) of ~127 dB). Overall, these results suggest that bowhead whales may adjust their vocal output in an effort to compensate for noise before ceasing vocalization effort and ultimately deflecting from the acoustic source (Blackwell *et al.,* 2013, 2015). These studies demonstrate that even low levels of noise received far from the source can induce changes in vocalization and/or behavior for mysticetes.

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Humpback whales show avoidance behavior in the presence of an active seismic array during observational studies and controlled exposure experiments in western Australia (McCauley *et al.,* 2000). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to

changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

Forney *et al.* (2017) detail the potential effects of noise on marine mammal populations with high site fidelity, including displacement and auditory masking, noting that a lack of observed response does not imply absence of fitness costs and that apparent tolerance of disturbance may have population-level impacts that are less obvious and difficult to document. Avoidance of overlap between disturbing noise and areas and/or times of particular importance for sensitive species may be critical to avoiding population-level impacts because (particularly for animals with high site fidelity) there may be a strong motivation to remain in the area despite negative impacts. Forney *et al.* (2017) state that, for these animals, remaining in a disturbed area may reflect a lack of alternatives rather than a lack of effects.

Forney *et al.* (2017) specifically discuss beaked whales, stating that until recently most knowledge of beaked whales was derived from strandings, as they have been involved in atypical mass stranding events associated with mid-frequency active sonar (MFAS) training operations. Given these observations and recent research, beaked whales appear to be particularly sensitive and vulnerable to certain types of acoustic disturbance relative to most other marine mammal species. Individual beaked whales reacted strongly to experiments using simulated MFAS at low received levels, by moving away from the sound source and stopping foraging for extended periods. These responses, if on a frequent basis, could result in significant fitness costs to individuals (Forney *et al.,* 2017). Additionally, difficulty in detection of beaked whales due to their cryptic surfacing behavior and silence when near the surface pose problems for mitigation measures employed to protect beaked whales. Forney *et al.* (2017) specifically states that failure to consider both displacement of beaked whales from their habitat and noise exposure could lead to more severe biological consequences.

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a 5-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors, such as sound exposure, are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than 1 day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stone (2015) reported data from at-sea observations during 1,196 seismic surveys from 1994 to 2010. When arrays of large airguns (considered to be 500 $in^3$ or more in that study) were firing, lateral displacement, more localized avoidance, or other changes in behavior were evident for most odontocetes. However, significant responses to large arrays were found only for the minke whale and fin whale. Behavioral responses observed included changes in swimming or surfacing behavior, with indications that cetaceans remained near the water surface at these times. Cetaceans were recorded as feeding less often when large arrays were active. Behavioral observations of gray whales during a seismic survey monitored whale movements and respirations pre-, during, and post-seismic survey (Gailey *et al.,* 2016). Behavioral state and water depth were the best ''natural'' predictors of whale movements and respiration and, after considering natural variation, none of the response variables were significantly associated with seismic survey or vessel sounds.

*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 sufficiently to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

*Auditory Masking*—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). 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.,* 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.

Under certain circumstances, significant masking could disrupt behavioral patterns, which in turn could affect fitness for survival and reproduction. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in predicting any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking may be less in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited, although there are few specific data on this. Because of the intermittent nature and low duty cycle of seismic pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However, in exceptional situations, reverberation occurs for much or all of the interval between pulses (*e.g.,* Simard *et al.* 2005; Clark and Gagnon 2006), which could mask calls. Situations with prolonged strong reverberation are infrequent. However, it is common for reverberation to cause some lesser degree of elevation of the background level between airgun pulses (*e.g.,* Gedamke 2011; Guerra *et al.* 2011, 2016; Klinck *et al.* 2012; Guan *et al.* 2015), and this weaker reverberation presumably reduces the detection range of calls and other natural sounds to some degree. Guerra *et al.* (2016) reported that ambient noise levels between seismic pulses were elevated as a result of reverberation at ranges of 50 km from the seismic source. Based on measurements in deep water of the Southern Ocean, Gedamke (2011) estimated that the slight elevation of background noise levels during intervals between seismic pulses reduced blue and fin whale communication space by as much as 36–51 percent when a seismic survey was operating 450–2,800 km away. Based on preliminary modeling, Wittekind *et al.* (2016) reported that airgun sounds could reduce the communication range of blue and fin whales 2,000 km from the seismic source. Nieukirk *et al.* (2012) and Blackwell *et al.* (2013) noted the potential for masking effects from seismic surveys on large whales.

Some baleen and toothed whales are known to continue calling in the presence of seismic pulses, and their calls usually can be heard between the pulses (*e.g.,* Nieukirk *et al.* 2012; Thode *et al.* 2012; Bröker *et al.* 2013; Sciacca *et al.* 2016). Cerchio *et al.* (2014) suggested that the breeding display of humpback whales off Angola could be disrupted by seismic sounds, as singing activity declined with increasing received levels. In addition, some cetaceans are known to change their calling rates, shift their peak frequencies, or otherwise modify their vocal behavior in response to airgun sounds (*e.g.,* Di Iorio and Clark 2010; Castellote *et al.* 2012; Blackwell *et al.* 2013, 2015). The hearing systems of baleen whales are more sensitive to low-

frequency sounds than are the ears of the small odontocetes that have been studied directly (*e.g.,* MacGillivray *et al.,* 2014). The sounds important to small odontocetes are predominantly at much higher frequencies than are the dominant components of airgun sounds, thus limiting the potential for masking. In general, masking effects of seismic pulses are expected to be minor, given the normally intermittent nature of seismic pulses.

*Ship Noise*

Vessel noise from the Langseth could affect marine animals in the proposed survey areas. Houghton *et al.* (2015) proposed that vessel speed is the most important predictor of received noise levels, and Putland *et al.* (2017) also reported reduced sound levels with decreased vessel speed. However, some energy is also produced at higher frequencies (Hermannsen *et al.,* 2014); low levels of high-frequency sound from vessels has been shown to elicit responses in harbor porpoise (Dyndo *et al.,* 2015).

Ship noise, through masking, can reduce the effective communication distance of a marine mammal if the frequency of the sound source is close to that used by the animal, and if the sound is present for a significant fraction of time (*e.g.,* Richardson *et al.* 1995; Clark *et al.,* 2009; Jensen *et al.,* 2009; Gervaise *et al.,* 2012; Hatch *et al.,* 2012; Rice *et al.,* 2014; Dunlop 2015; Erbe *et al.,* 2015; Jones *et al.,* 2017; Putland *et al.,* 2017). In addition to the frequency and duration of the masking sound, the strength, temporal pattern, and location of the introduced sound also play a role in the extent of the masking (Branstetter *et al.,* 2013, 2016; Finneran and Branstetter 2013; Sills *et al.,* 2017). Branstetter *et al.* (2013) reported that time-domain metrics are also important in describing and predicting masking.

Baleen whales are thought to be more sensitive to sound at these low frequencies than are toothed whales (*e.g.,* MacGillivray *et al.* 2014), possibly causing localized avoidance of the proposed survey area during seismic operations. Many odontocetes show considerable tolerance of vessel traffic, although they sometimes react at long distances if confined by ice or shallow water, if previously harassed by vessels, or have had little or no recent exposure to ships (Richardson *et al.* 1995). Pirotta *et al.* (2015) noted that the physical presence of vessels, not just ship noise, disturbed the foraging activity of bottlenose dolphins. There is little data on the behavioral reactions of beaked whales to vessel noise, though they seem to avoid approaching vessels (*e.g.,* Würsig *et al.,* 1998) or dive for an extended period when approached by a vessel (*e.g.,* Kasuya 1986).

In summary, project vessel sounds would not be at levels expected to cause anything more than possible localized and temporary behavioral changes in marine mammals, and would not be expected to result in significant negative effects on individuals or at the population level. In addition, in all oceans of the world, large vessel traffic is currently so prevalent that it is commonly considered a usual source of ambient sound (NSF–USGS 2011).

*Vessel Strike*

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. Wounds resulting from vessel strike may include massive trauma, hemorrhaging, broken bones, or propeller lacerations (Knowlton and Kraus, 2001). An animal at the surface may be struck directly by a vessel, a surfacing animal may hit the bottom of a vessel, or an animal just below the surface may be cut by a vessel's propeller. Superficial strikes may not kill or result in the death of the animal. These interactions are typically associated with large whales (*e.g.,* fin whales), which are occasionally found draped across the bulbous bow of large commercial ships upon arrival in port. Although smaller cetaceans are more maneuverable in relation to large vessels than are large whales, they may also be susceptible to strike. The severity of injuries typically depends on the size and speed of the vessel, with the probability of death or serious injury increasing as vessel speed increases (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007; Conn and Silber, 2013). Impact forces increase with speed, as does the probability of a strike at a given distance (Silber *et al.,* 2010; Gende *et al.,* 2011).

Pace and Silber (2005) also found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 kn (26 kilometer per hour (kph), and exceeded 90 percent at 17 kn (31 kph). Higher speeds during collisions result in greater force of impact, but higher speeds also appear to increase the chance of severe injuries or death through increased likelihood of collision by pulling whales toward the vessel (Clyne, 1999; Knowlton *et al.,* 1995). In a separate study, Vanderlaan and Taggart (2007) analyzed the probability of lethal mortality of large whales at a given speed, showing that the greatest rate of change in the probability of a lethal injury to a large whale as a function of vessel speed occurs between 8.6 and 15 kn (28 kph). The chances of a lethal injury decline from approximately 80 percent at 15 kn (28 kph) to approximately 20 percent at 8.6 kn (16 kph). At speeds below 11.8 kn (22 kph), the chances of lethal injury drop below 50 percent, while the probability asymptotically increases toward one hundred percent above 15 kn (28 kph).

The Langseth will travel at a speed of 5 kn (9 kph) while towing seismic survey gear. At this speed, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are discountable. At average transit speed, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again discountable. Vessel strikes, as analyzed in the studies cited above, generally involve commercial shipping, which is much more common in both space and time than is geophysical survey activity. Jensen and Silber (2004) summarized vessel strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). No such incidents were reported for geophysical survey vessels during that time period.

It is possible for vessel strikes to occur while traveling at slow speeds. For example, a hydrographic survey vessel traveling at low speed (5.5 kn (10 kph)) while conducting mapping surveys off the central California coast struck and killed a blue whale in 2009. The State of California determined that the whale had suddenly and unexpectedly surfaced beneath the hull, with the result that the propeller severed the whale's vertebrae, and that this was an unavoidable event. This strike represents the only such incident in approximately 540,000 hours of similar coastal mapping activity ($p = 1.9 \times 10^{-6}$; 95 percent confidence interval = 0–$5.5 \times 10^{-6}$; NMFS, 2013). In addition, a research vessel reported a fatal strike in 2011 of a dolphin in the Atlantic, demonstrating that it is possible for strikes involving smaller cetaceans to occur. In that case, the incident report indicated that an animal apparently was struck by the vessel's propeller as it was intentionally swimming near the vessel. While indicative of the type of unusual events that cannot be ruled out, neither of these instances represents a

circumstance that would be considered reasonably foreseeable or that would be considered preventable.

Although the likelihood of the vessel striking a marine mammal is low, we propose a robust vessel strike avoidance protocol (see Proposed Mitigation), which we believe eliminates any foreseeable risk of vessel strike during transit. We anticipate that vessel collisions involving a seismic data acquisition vessel towing gear, while not impossible, represent unlikely, unpredictable events for which there are no preventive measures. Given the proposed mitigation measures, the relatively slow speed of the vessel towing gear, the presence of bridge crew watching for obstacles at all times (including marine mammals), and the presence of marine mammal observers, the possibility of vessel strike is discountable and, further, were a strike of a large whale to occur, it would be unlikely to result in serious injury or mortality. No incidental take resulting from vessel strike is anticipated, and this potential effect of the specified activity will not be discussed further in the following analysis.

*Stranding*—When a living or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). The legal definition for a stranding under the MMPA is that a marine mammal is dead and is on a beach or shore of the United States; or in waters under the jurisdiction of the United States (including any navigable waters); or a marine mammal is alive and is on a beach or shore of the United States and is unable to return to the water; on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance.

Marine mammals strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, vessel strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Geraci *et al.,* 1976; Eaton, 1979; Odell *et al.,* 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.,* 2003; Fair and Becker, 2000; Foley *et al.,* 2001; Moberg, 2000; Relyea, 2005a, 2005b; Romero, 2004; Sih *et al.,* 2004).

There is no conclusive evidence that exposure to airgun noise results in behaviorally-mediated forms of injury. Behaviorally-mediated injury (*i.e.,* mass stranding events) has been primarily associated with beaked whales exposed to mid-frequency active (MFA) naval sonar. MFA sonar and the alerting stimulus used in Nowacek *et al.* (2004) are very different from the noise produced by airguns. One should therefore not expect the same reaction to airgun noise as to these other sources. As explained below, military MFA sonar is very different from airguns, and one should not assume that airguns will cause the same effects as MFA sonar (including strandings).

To understand why military MFA sonar affects beaked whales differently than airguns do, it is important to note the distinction between behavioral sensitivity and susceptibility to auditory injury. To understand the potential for auditory injury in a particular marine mammal species in relation to a given acoustic signal, the frequency range the species is able to hear is critical, as well as the species' auditory sensitivity to frequencies within that range. Current data indicate that not all marine mammal species have equal hearing capabilities across all frequencies and, therefore, species are grouped into hearing groups with generalized hearing ranges assigned on the basis of available data (Southall *et al.,* 2007, 2019). Hearing ranges as well as auditory sensitivity/susceptibility to frequencies within those ranges vary across the different groups. For example, in terms of hearing range, the high-frequency cetaceans (*e.g., Kogia* spp.) have a generalized hearing range of frequencies between 275 Hz and 160 kHz, while mid-frequency cetaceans—such as dolphins and beaked whales—have a generalized hearing range between 150 Hz to 160 kHz. Regarding auditory susceptibility within the hearing range, while mid-frequency cetaceans and high-frequency cetaceans have roughly similar hearing ranges, the high-frequency group is much more susceptible to noise-induced hearing loss during sound exposure, *i.e.,* these species have lower thresholds for these effects than other hearing groups (NMFS, 2018). Referring to a species as behaviorally sensitive to noise simply means that an animal of that species is more likely to respond to lower received levels of sound than an animal of another species that is considered less behaviorally sensitive. So, while dolphin species and beaked whale species—both in the mid-frequency cetacean hearing group—are assumed to generally hear the same sounds equally well and be equally susceptible to noise-induced hearing loss (auditory injury), the best available information indicates that a beaked whale is more likely to behaviorally respond to that sound at a lower received level compared to an animal from other mid-frequency cetacean species that are less behaviorally sensitive. This distinction is important because, while beaked whales are more likely to respond behaviorally to sounds than are many other species (even at lower levels), they cannot hear the predominant, lower frequency sounds from seismic airguns as well as sounds that have more energy at frequencies that beaked whales can hear better (such as military MFA sonar).

Military MFA sonar affects beaked whales differently than airguns do because it produces energy at different frequencies than airguns. Mid-frequency cetacean hearing is generically thought to be best between 8.8 to 110 kHz, *i.e.,* these cutoff values define the range above and below which a species in the group is assumed to have declining auditory sensitivity, until reaching frequencies that cannot be heard (NMFS, 2018). However, beaked whale hearing is likely best within a higher, narrower range (20–80 kHz, with best sensitivity around 40 kHz), based on a few measurements of hearing in stranded beaked whales (Cook *et al.,* 2006; Finneran *et al.,* 2009; Pacini *et al.,* 2011) and several studies of acoustic signals produced by beaked whales (*e.g.,* Frantzis *et al.,* 2002; Johnson *et al.,* 2004, 2006; Zimmer *et al.,* 2005). While precaution requires that the full range of audibility be considered when assessing risks associated with noise exposure (Southall *et al.,* 2007, 2019), animals typically produce sound at frequencies where they hear best. More recently, Southall *et al.* (2019) suggested that certain species in the historical mid-frequency hearing group (beaked whales, sperm whales, and killer whales) are likely more sensitive to lower frequencies within the group's generalized hearing range than are other

species within the group, and state that the data for beaked whales suggest sensitivity to approximately 5 kHz. However, this information is consistent with the general conclusion that beaked whales (and other mid-frequency cetaceans) are relatively insensitive to the frequencies where most energy of an airgun signal is found. Military MFA sonar is typically considered to operate in the frequency range of approximately 3–14 kHz (D'Amico *et al.,* 2009), *i.e.,* outside the range of likely best hearing for beaked whales but within or close to the lower bounds, whereas most energy in an airgun signal is radiated at much lower frequencies, below 500 Hz (Dragoset, 1990).

It is important to distinguish between energy (loudness, measured in dB) and frequency (pitch, measured in Hz). In considering the potential impacts of mid-frequency components of airgun noise (1–10 kHz, where beaked whales can be expected to hear) on marine mammal hearing, one needs to account for the energy associated with these higher frequencies and determine what energy is truly ''significant.'' Although there is mid-frequency energy associated with airgun noise (as expected from a broadband source), airgun sound is predominantly below 1 kHz (Breitzke *et al.,* 2008; Tashmukhambetov *et al.,* 2008; Tolstoy *et al.,* 2009). As stated by Richardson *et al.* (1995), ''[. . .] most emitted [seismic airgun] energy is at 10–120 Hz, but the pulses contain some energy up to 500–1,000 Hz.'' Tolstoy *et al.* (2009) conducted empirical measurements, demonstrating that sound energy levels associated with airguns were at least 20 dB lower at 1 kHz (considered ''mid-frequency'') compared to higher energy levels associated with lower frequencies (below 300 Hz) (''all but a small fraction of the total energy being concentrated in the 10–300 Hz range'' [Tolstoy *et al.,* 2009]), and at higher frequencies (*e.g.,* 2.6–4 kHz), power might be less than 10 percent of the peak power at 10 Hz (Yoder, 2002). Energy levels measured by Tolstoy *et al.* (2009) were even lower at frequencies above 1 kHz. In addition, as sound propagates away from the source, it tends to lose higher-frequency components faster than low-frequency components (*i.e.,* low-frequency sounds typically propagate longer distances than high-frequency sounds) (Diebold *et al.,* 2010). Although higher-frequency components of airgun signals have been recorded, it is typically in surface-ducting conditions (*e.g.,* DeRuiter *et al.,* 2006; Madsen *et al.,* 2006) or in shallow water, where there are advantageous propagation conditions for the higher frequency (but low-energy) components of the airgun signal (Hermannsen *et al.,* 2015). This should not be of concern because the likely behavioral reactions of beaked whales that can result in acute physical injury would result from noise exposure at depth (because of the potentially greater consequences of severe behavioral reactions). In summary, the frequency content of airgun signals is such that beaked whales will not be able to hear the signals well (compared to MFA sonar), especially at depth where we expect the consequences of noise exposure could be more severe.

Aside from frequency content, there are other significant differences between MFA sonar signals and the sounds produced by airguns that minimize the risk of severe behavioral reactions that could lead to strandings or deaths at sea, *e.g.,* significantly longer signal duration, horizontal sound direction, typical fast and unpredictable source movement. All of these characteristics of MFA sonar tend towards greater potential to cause severe behavioral or physiological reactions in exposed beaked whales that may contribute to stranding. Although both sources are powerful, MFA sonar contains significantly greater energy in the mid-frequency range, where beaked whales hear better. Short-duration, high energy pulses—such as those produced by airguns—have greater potential to cause damage to auditory structures (though this is unlikely for mid-frequency cetaceans, as explained later in this document), but it is longer duration signals that have been implicated in the vast majority of beaked whale strandings. Faster, less predictable movements in combination with multiple source vessels are more likely to elicit a severe, potentially anti-predator response. Of additional interest in assessing the divergent characteristics of MFA sonar and airgun signals and their relative potential to cause stranding events or deaths at sea is the similarity between the MFA sonar signals and stereotyped calls of beaked whales' primary predator: the killer whale (Zimmer and Tyack, 2007). Although generic disturbance stimuli—as airgun noise may be considered in this case for beaked whales—may also trigger antipredator responses, stronger responses should generally be expected when perceived risk is greater, as when the stimulus is confused for a known predator (Frid and Dill, 2002). In addition, because the source of the perceived predator (*i.e.,* MFA sonar) will likely be closer to the whales (because attenuation limits the range of detection of mid-frequencies) and moving faster (because it will be on faster-moving vessels), any antipredator response would be more likely to be severe (with greater perceived predation risk, an animal is more likely to disregard the cost of the response; Frid and Dill, 2002). Indeed, when analyzing movements of a beaked whale exposed to playback of killer whale predation calls, Allen *et al.* (2014) found that the whale engaged in a prolonged, directed avoidance response, suggesting a behavioral reaction that could pose a risk factor for stranding. Overall, these significant differences between sound from MFA sonar and the mid-frequency sound component from airguns and the likelihood that MFA sonar signals will be interpreted in error as a predator are critical to understanding the likely risk of behaviorally-mediated injury due to seismic surveys.

The available scientific literature also provides a useful contrast between airgun noise and MFA sonar regarding the likely risk of behaviorally-mediated injury. There is strong evidence for the association of beaked whale stranding events with MFA sonar use, and particularly detailed accounting of several events is available (*e.g.,* a 2000 Bahamas stranding event for which investigators concluded that MFA sonar use was responsible; Evans and England, 2001). D'Amico *et al.,* (2009) reviewed 126 beaked whale mass stranding events over the period from 1950 (*i.e.,* from the development of modern MFA sonar systems) through 2004. Of these, there were two events where detailed information was available on both the timing and location of the stranding and the concurrent nearby naval activity, including verification of active MFA sonar usage, with no evidence for an alternative cause of stranding. An additional 10 events were at minimum spatially and temporally coincident with naval activity likely to have included MFA sonar use and, despite incomplete knowledge of timing and location of the stranding or the naval activity in some cases, there was no evidence for an alternative cause of stranding. The U.S. Navy has publicly stated agreement that five such events since 1996 were associated in time and space with MFA sonar use, either by the U.S. Navy alone or in joint training exercises with the North Atlantic Treaty Organization. The U.S. Navy additionally noted that, as of 2017, a 2014 beaked whale stranding event in Crete coincident with naval exercises was under review and had not yet been determined to be linked to sonar activities (U.S. Navy, 2017). Separately,

the International Council for the Exploration of the Sea reported in 2005 that, worldwide, there have been about 50 known strandings, consisting mostly of beaked whales, with a potential causal link to MFA sonar (ICES, 2005). In contrast, very few such associations have been made to seismic surveys, despite widespread use of airguns as a geophysical sound source in numerous locations around the world.

A review of possible stranding associations with seismic surveys (Castellote and Llorens, 2016) states that, ''[s]peculation concerning possible links between seismic survey noise and cetacean strandings is available for a dozen events but without convincing causal evidence.'' The authors' search of available information found 10 events worth further investigation via a ranking system representing a rough metric of the relative level of confidence offered by the data for inferences about the possible role of the seismic survey in a given stranding event. Only three of these events involved beaked whales. Whereas D'Amico *et al.,* (2009) used a 1–5 ranking system, in which ''1'' represented the most robust evidence connecting the event to MFA sonar use, Castellote and Llorens (2016) used a 1–6 ranking system, in which ''6'' represented the most robust evidence connecting the event to the seismic survey. As described above, D'Amico *et al.* (2009) found that two events were ranked ''1'' and 10 events were ranked ''2'' (*i.e.,* 12 beaked whale stranding events were found to be associated with MFA sonar use). In contrast, Castellote and Llorens (2016) found that none of the three beaked whale stranding events achieved their highest ranks of 5 or 6. Of the 10 total events, none achieved the highest rank of 6. Two events were ranked as 5: one stranding in Peru involving dolphins and porpoises and a 2008 stranding in Madagascar. This latter ranking can only be broadly associated with the survey itself, as opposed to use of seismic airguns. An investigation of this stranding event, which did not involve beaked whales, concluded that use of a high-frequency mapping system (12-kHz multibeam echosounder) was the most plausible and likely initial behavioral trigger of the event, which was likely exacerbated by several site- and situation-specific secondary factors. The review panel found that seismic airguns were used after the initial strandings and animals entering a lagoon system, that airgun use clearly had no role as an initial trigger, and that there was no evidence that airgun use dissuaded animals from leaving (Southall *et al.,* 2013).

However, one of these stranding events, involving two Cuvier's beaked whales, was contemporaneous with and reasonably associated spatially with a 2002 seismic survey in the Gulf of California conducted by L–DEO, as was the case for the 2007 Gulf of Cadiz seismic survey discussed by Castellote and Llorens (also involving two Cuvier's beaked whales). Neither event was considered a ''true atypical mass stranding'' (according to Frantzis (1998)) as used in the analysis of Castellote and Llorens (2016). While we agree with the authors that this lack of evidence should not be considered conclusive, it is clear that there is very little evidence that seismic surveys should be considered as posing a significant risk of acute harm to beaked whales or other mid-frequency cetaceans. We have considered the potential for the proposed surveys to result in marine mammal stranding and, based on the best available information, do not expect a stranding to occur.

*Entanglement*—Entanglements occur when marine mammals become wrapped around cables, lines, nets, or other objects suspended in the water column. During seismic operations, numerous cables, lines, and other objects primarily associated with the airgun array and hydrophone streamers will be towed behind the Langseth near the water's surface. However, we are not aware of any cases of entanglement of marine mammals in seismic survey equipment. No incidents of entanglement of marine mammals with seismic survey gear have been documented in over 54,000 nautical miles (100,000 km) of previous NSF-funded seismic surveys when observers were aboard (*e.g.,* Smultea and Holst 2003; Haley and Koski 2004; Holst 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a; Haley and Ireland 2006; SIO and NSF 2006b; Hauser *et al.,* 2008; Holst and Smultea 2008). Although entanglement with the streamer is theoretically possible, it has not been documented during tens of thousands of miles of NSF-sponsored seismic cruises or, to our knowledge, during hundreds of thousands of miles of industrial seismic cruises. There are a relative few deployed devices, and no interaction between marine mammals and any such device has been recorded during prior NSF surveys using the devices. There are no meaningful entanglement risks posed by the proposed survey, and entanglement risks are not discussed further in this document.

*Anticipated Effects on Marine Mammal Habitat*

*Physical Disturbance*—Sources of seafloor disturbance related to geophysical surveys that may impact marine mammal habitat include placement of anchors, nodes, cables, sensors, or other equipment on or in the seafloor for various activities. Equipment deployed on the seafloor has the potential to cause direct physical damage and could affect bottom-associated fish resources.

Placement of equipment, could damage areas of hard bottom where direct contact with the seafloor occurs and could crush epifauna (organisms that live on the seafloor or surface of other organisms). Damage to unknown or unseen hard bottom could occur, but because of the small area covered by most bottom-founded equipment and the patchy distribution of hard bottom habitat, contact with unknown hard bottom is expected to be rare and impacts minor. Seafloor disturbance in areas of soft bottom can cause loss of small patches of epifauna and infauna due to burial or crushing, and bottom-feeding fishes could be temporarily displaced from feeding areas. Overall, any effects of physical damage to habitat are expected to be minor and temporary.

*Effects to Prey*—Marine mammal prey varies by species, season, and location and, for some, is not well documented. 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. However, the reaction of fish to airguns depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Several studies have demonstrated that airgun 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), though the bulk of studies indicate no or slight reaction to noise (*e.g.,* Miller and Cripps, 2013; Dalen and Knutsen, 1987; Pena *et al.,* 2013; Chapman and Hawkins, 1969; Wardle *et al.,* 2001; Sara *et al.,* 2007; Jorgenson and Gyselman, 2009; Blaxter *et al.,* 1981; Cott *et al.,* 2012; Boeger *et al.,* 2006), and that, most commonly, while there are likely to be impacts to fish as a result of noise from nearby airguns, such effects will be temporary. For example, investigators reported significant, short-term declines in commercial fishing catch rate of

gadid fishes during and for up to 5 days after seismic survey operations, but the catch rate subsequently returned to normal (Engas *et al.,* 1996; Engas and Lokkeborg, 2002). Other studies have reported similar findings (Hassel *et al.,* 2004). Skalski *et al.,* (1992) also found a reduction in catch rates—for rockfish (*Sebastes* spp.) in response to controlled airgun exposure—but suggested that the mechanism underlying the decline was not dispersal but rather decreased responsiveness to baited hooks associated with an alarm behavioral response. A companion study showed that alarm and startle responses were not sustained following the removal of the sound source (Pearson *et al.,* 1992). Therefore, Skalski *et al.* (1992) suggested that the effects on fish abundance may be transitory, primarily occurring during the sound exposure itself. In some cases, effects on catch rates are variable within a study, which may be more broadly representative of temporary displacement of fish in response to airgun noise (*i.e.,* catch rates may increase in some locations and decrease in others) than any long-term damage to the fish themselves (Streever *et al.,* 2016).

Sound pressure levels of sufficient strength have been known to cause injury to fish and fish mortality and, in some studies, fish auditory systems have been damaged by airgun noise (McCauley *et al.,* 2003; Popper *et al.,* 2005; Song *et al.,* 2008). 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.* (2012) 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; both of which are conditions unlikely to occur for this survey that is necessarily transient in any given location and likely result in brief, infrequent noise exposure to prey species in any given area. For this survey, the sound source is constantly moving, and most fish would likely avoid the sound source prior to receiving sound of sufficient intensity to cause physiological or anatomical damage. In addition, ramp-up may allow certain fish species the opportunity to move further away from the sound source.

A recent comprehensive review (Carroll *et al.,* 2017) found that results are mixed as to the effects of airgun noise on the prey of marine mammals. While some studies suggest a change in prey distribution and/or a reduction in prey abundance following the use of seismic airguns, others suggest no effects or even positive effects in prey abundance. As one specific example, Paxton *et al.* (2017), which describes findings related to the effects of a 2014 seismic survey on a reef off of North Carolina, showed a 78 percent decrease in observed nighttime abundance for certain species. It is important to note that the evening hours during which the decline in fish habitat use was recorded (via video recording) occurred on the same day that the seismic survey passed, and no subsequent data is presented to support an inference that the response was long-lasting. Additionally, given that the finding is based on video images, the lack of recorded fish presence does not support a conclusion that the fish actually moved away from the site or suffered any serious impairment. In summary, this particular study corroborates prior studies indicating that a startle response or short-term displacement should be expected.

Available data suggest that cephalopods are capable of sensing the particle motion of sounds and detect low frequencies up to 1–1.5 kHz, depending on the species, and so are likely to detect airgun noise (Kaifu *et al.,* 2008; Hu *et al.,* 2009; Mooney *et al.,* 2010; Samson *et al.,* 2014). Auditory injuries (lesions occurring on the statocyst sensory hair cells) have been reported upon controlled exposure to low-frequency sounds, suggesting that cephalopods are particularly sensitive to low-frequency sound (Andre *et al.,* 2011; Sole *et al.,* 2013). Behavioral responses, such as inking and jetting, have also been reported upon exposure to low-frequency sound (McCauley *et al.,* 2000b; Samson *et al.,* 2014). Similar to fish, however, the transient nature of the survey leads to an expectation that effects will be largely limited to behavioral reactions and would occur as a result of brief, infrequent exposures.

With regard to potential impacts on zooplankton, McCauley *et al.* (2017) found that exposure to airgun noise resulted in significant depletion for more than half the taxa present and that there were two to three times more dead zooplankton after airgun exposure compared with controls for all taxa, within 1 km of the airguns. However, the authors also stated that in order to have significant impacts on r-selected species (*i.e.,* those with high growth rates and that produce many offspring) such as plankton, the spatial or temporal scale of impact must be large in comparison with the ecosystem concerned, and it is possible that the findings reflect avoidance by zooplankton rather than mortality (McCauley *et al.,* 2017). In addition, the results of this study are inconsistent with a large body of research that generally finds limited spatial and temporal impacts to zooplankton as a result of exposure to airgun noise (*e.g.,* Dalen and Knutsen, 1987; Payne, 2004; Stanley *et al.,* 2011). Most prior research on this topic, which has focused on relatively small spatial scales, has showed minimal effects (*e.g.,* Kostyuchenko, 1973; Booman *et al.,* 1996; Sætre and Ona, 1996; Pearson *et al.,* 1994; Bolle *et al.,* 2012).

A modeling exercise was conducted as a follow-up to the McCauley *et al.* (2017) study (as recommended by McCauley *et al.*), in order to assess the potential for impacts on ocean ecosystem dynamics and zooplankton population dynamics (Richardson *et al.,* 2017). Richardson *et al.* (2017) found that for copepods with a short life cycle in a high-energy environment, a full-scale airgun survey would impact copepod abundance up to 3 days following the end of the survey, suggesting that effects such as those found by McCauley *et al.* (2017) would not be expected to be detectable downstream of the survey areas, either spatially or temporally.

Notably, a more recently described study produced results inconsistent with those of McCauley *et al.* (2017). Researchers conducted a field and laboratory study to assess if exposure to airgun noise affects mortality, predator escape response, or gene expression of the copepod *Calanus finmarchicus* (Fields *et al.,* 2019). Immediate mortality of copepods was significantly higher, relative to controls, at distances of 5 m or less from the airguns. Mortality 1 week after the airgun blast was significantly higher in the copepods placed 10 m from the airgun but was not significantly different from the controls at a distance of 20 m from the airgun. The increase in mortality, relative to controls, did not exceed 30 percent at any distance from the airgun. Moreover, the authors caution that even this higher mortality in the immediate vicinity of the airguns may be more pronounced than what would be observed in free-swimming animals due to increased flow speed of fluid inside bags containing the experimental animals. There were no sublethal effects on the escape performance or the sensory threshold needed to initiate an escape response at any of the distances from the airgun that were tested. Whereas McCauley *et al.* (2017) reported an SEL of 156 dB at a range of 509–658 m, with zooplankton mortality observed at that range, Fields *et al.* (2019) reported an

SEL of 186 dB at a range of 25 m, with no reported mortality at that distance. Regardless, if we assume a worst-case likelihood of severe impacts to zooplankton within approximately 1 km of the acoustic source, the brief time to regeneration of the potentially affected zooplankton populations does not lead us to expect any meaningful follow-on effects to the prey base for marine mammals.

A recent review article concluded that, while laboratory results provide scientific evidence for high-intensity and low-frequency sound-induced physical trauma and other negative effects on some fish and invertebrates, the sound exposure scenarios in some cases are not realistic to those encountered by marine organisms during routine seismic operations (Carroll *et al.,* 2017). The review finds that there has been no evidence of reduced catch or abundance following seismic activities for invertebrates, and that there is conflicting evidence for fish with catch observed to increase, decrease, or remain the same. Further, where there is evidence for decreased catch rates in response to airgun noise, these findings provide no information about the underlying biological cause of catch rate reduction (Carroll *et al.,* 2017).

In summary, impacts of the specified activity on marine mammal prey species will likely be limited to behavioral responses, the majority of prey species will be capable of moving out of the area during the survey, a rapid return to normal recruitment, distribution, and behavior for prey species is anticipated, and, overall, impacts to prey species will be minor and temporary. Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects. Mortality from decompression injuries is possible in close proximity to a sound, but only limited data on mortality in response to airgun noise exposure are available (Hawkins *et al.,* 2014). The most likely impacts for most prey species in the survey area would be temporary avoidance of the area. The proposed survey would move through an area relatively quickly, limiting exposure to multiple impulsive sounds. In all cases, sound levels would return to ambient once the survey moves out of the area or ends and the noise source is shut down and, when exposure to sound ends, behavioral and/or physiological responses are expected to end relatively quickly (McCauley *et al.,* 2000b). The duration of fish avoidance of a given area after survey effort stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. While the potential for disruption of spawning aggregations or schools of important prey species can be meaningful on a local scale, the mobile and temporary nature of this survey and the likelihood of temporary avoidance behavior suggest that impacts would be minor.

*Acoustic Habitat*—Acoustic habitat is the soundscape—which encompasses all of the sound present in a particular location and time, as a whole—when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators), and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (*e.g.,* produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal's total habitat.

Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic, or may be intentionally introduced to the marine environment for data acquisition purposes (as in the use of airgun arrays). Anthropogenic noise varies widely in its frequency content, duration, and loudness and these characteristics greatly influence the potential habitat-mediated effects to marine mammals (please see also the previous discussion on masking under ''Acoustic Effects''), which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). For more detail on these concepts see, *e.g.,* Barber *et al.,* 2010; Pijanowski *et al.,* 2011; Francis and Barber, 2013; Lillis *et al.,* 2014.

Problems arising from a failure to detect cues are more likely to occur when noise stimuli are chronic and overlap with biologically relevant cues used for communication, orientation, and predator/prey detection (Francis and Barber, 2013). Although the signals emitted by seismic airgun arrays are generally low frequency, they would also likely be of short duration and transient in any given area due to the nature of these surveys. As described previously, exploratory surveys such as these cover a large area but would be transient rather than focused in a given location over time and therefore would not be considered chronic in any given location.

Based on the information discussed herein, 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).

Anticipated takes would primarily be Level B harassment, as use of the airgun arrays have 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 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 mid-frequency 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 high-frequency cetaceans. As discussed in further detail below, we do not expect auditory injury for mid-frequency cetaceans. The proposed 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 proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

*Acoustic Thresholds*

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

*Level B Harassment*—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 µPa)) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 µPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

L–DEO's proposed survey includes the use of impulsive seismic sources (*i.e.,* 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 proposed 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: *https://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. |
| 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.

When the Technical Guidance was published (NMFS, 2016), 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 proposed 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 12 m and two 45/105 $in^3$ GI airguns at a tow depth of 3 m. L–DEO's model results are used to determine the 160 $dB_{rms}$ radius for both the airgun sources down to a maximum depth of 2,000 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. 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 proposed high-energy survey would acquire data with the 36-airgun array at a tow depth of 12 m and the low-energy surveys would use two GI airguns at a 3m tow depth. For deep water (≤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 and the two GI airguns. 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 proposed 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 | [1] 6,733 |
| Two 45/105 in GI airguns | 3 | >1,000 | [1] 438 |
| | | 100–1,000 | [2] 657 |

[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—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 |

The largest distance (in bold) of the dual criteria (SEL cum or Peak) was used to estimate threshold distances and potential takes by Level A harassment.

Table 5 presents the modeled PTS isopleths for each cetacean hearing group based on L–DEO modeling incorporated in the companion user spreadsheet, for the high-energy surveys with the shortest shot interval (*i.e.*, greatest potential to cause PTS based on accumulated sound energy) (NMFS 2018).

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 2016). 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.

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 mid-frequency cetaceans, given very small modeled zones of injury for those species (all estimated zones less than 15 m for mid-frequency cetaceans), in context of distributed source dynamics.

In consideration of the received sound levels in the near-field as described above, we expect the potential for Level A harassment of mid-frequency 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 mid-frequency cetacean and do not propose to authorize 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 stratified marine mammal densities for the North Atlantic and Puerto Rico are taken from the US Navy Atlantic Fleet Training and Testing Area Marine Mammal Density (Roberts *et al.,* 2023; Mannocci *et al.,* 2017), which represent the best available information regarding marine mammal densities in the survey area. This density information incorporates visual line-transect surveys of marine mammals for over 35 years, resulting in various studies that estimated the abundance, density, and distributions of marine mammal populations. The habitat-based density models consisted of 10 km x 10 km grid cells. Densities in the grid cells for the AFTT Area south of 21° N were averaged per month for each of two water depth categories (intermediate and deep); for most months, the densities for each species were the same. More information is available online at *https://seamap.env.duke.edu/models/Duke/AFTT/.*

For most species, the average monthly densities were the same throughout the year; densities for fin whale, sei whale, humpback whale, and Atlantic white-sided dolphin varied by month, so the highest monthly densities were used.

*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. 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 proposed line km to be surveyed. The 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 (24) 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 proposed 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.,* mid-frequency 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 proposed for authorization. Estimated exposures and proposed 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 for species that could potentially occur in the survey area.

TABLE 6—ESTIMATED TAKE PROPOSED FOR AUTHORIZATION

| Species | Stock | Estimated take | | Proposed authorized take | | Modeled abundance [2] | Percent of stock |
|---|---|---|---|---|---|---|---|
| | | Level B | Level A | Level B | Level A | | |
| Humpback whale | Gulf of Maine | 262 | 12 | 262 | 12 | 4,990 | 5.5 |
| Fin whale | Western North Atlantic | 0.4 | 0 | [1] 2 | 0 | 11,672 | 0.2 |
| Sei whale | Nova Scotia | 22 | 1 | 22 | 1 | 19,530 | 0.1 |
| Minke whale | Canadian East Coast | 58 | 3 | 58 | 3 | 13,784 | 0.4 |
| Blue whale | Western North Atlantic | 1 | 0 | 1 | 0 | 191 | 0.5 |
| Sperm whale | North Atlantic | 481 | 1 | 482 | 0 | 64,105 | 0.8 |
| Kogia spp | | 354 | 14 | 354 | 14 | 26,043 | 1.4 |
| Beaked whale | | 539 | 1 | 540 | 0 | 65,069 | 0.8 |
| Pilot whales | | 1,830 | 3 | 1,833 | 0 | 264,907 | 0.7 |
| Rough-toothed dolphin | Western North Atlantic | 476 | 1 | 477 | 0 | 32,848 | 1.5 |
| Bottlenose dolphin | Western North Atlantic Offshore | 2,128 | 4 | 2,132 | 0 | 418,151 | 0.5 |
| Pantropical spotted dolphin | Western North Atlantic | 778 | 1 | 779 | 0 | 321,740 | 0.2 |
| Atlantic spotted dolphin | Western North Atlantic | 1,537 | 3 | 1,540 | 0 | 259,519 | 0.6 |
| Spinner dolphin | Western North Atlantic | 1,928 | 4 | 1,932 | 0 | 152,511 | 1.3 |
| Clymene dolphin | Western North Atlantic | 1,586 | 3 | 1,589 | 0 | 181,209 | 0.9 |
| Striped dolphin | Western North Atlantic | 317 | 1 | 318 | 0 | 412,729 | 0.1 |
| Fraser's dolphin | Western North Atlantic | 213 | 0 | 213 | 0 | 19,585 | 1.1 |
| Risso's dolphin | Western North Atlantic | 164 | 0 | 164 | 0 | 78,205 | 0.2 |
| Common dolphin | Western North Atlantic | 88 | 0 | 88 | 0 | 473,260 | <0.1 |
| Melon-headed whale | Western North Atlantic | 985 | 2 | 987 | 0 | 64,114 | 1.5 |
| Pygmy killer whale | Western North Atlantic | 130 | 0 | 130 | 0 | 9,001 | 1.4 |
| False killer whale | Western North Atlantic | 218 | 0 | 218 | 0 | 12,682 | 1.7 |
| Killer whale | Western North Atlantic | 2 | 0 | 2 | 0 | 972 | 0.2 |

[1] Group size from Jefferson *et al.,* 2015.
[2] Modeled abundance (Roberts *et al.,* 2023).

**Proposed Mitigation**

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

*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.

L–DEO must notify the NMFS Southeast Regional Office (SERO), Nicole Angeli (DPNR Virgin Islands), and Grisel Rodriguez Ferrer (DNR Puerto Rico) of the start and end date of airgun operations in the survey area via email (*nmfs.ser.research.notification@noaa.gov; nicole.angeli@dpnr.vi.gov; grodriguez@drna.pr.gov*).

*Passive Acoustic Monitoring*

Passive acoustic monitoring 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 PAM operator 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 mid-frequency 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 mid-frequency 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.

*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.

Vessel speeds must be reduced to 10 kn (18.5 kph) 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 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.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on 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.

*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 (as discussed in 3(d));
  - 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; and
  - 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);
  - 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). Geographic Information System files shall be provided in Environmental Systems Research Institute 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 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 Office of Protected Resources (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 in the U.S. Caribbean territories and/or 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 proposed to be 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, resulting from 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 proposing to authorize a limited number of Level A harassment events of five species in the form of PTS (humpback whale, minke whale, sei whale, and *Kogia* spp), 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 Proposed Mitigation), 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.

In addition, 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 (24 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 UMEs*

As discussed above, 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. Although, the populations experiencing the UME's may not be the same as the populations impacted by the proposed survey.

Additionally, the proposed 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 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;
- The proposed activity is temporary and of relatively short duration (40 days);
- The vast majority of anticipated impacts of the proposed 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 proposed 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 proposed survey would be temporary and spatially limited, and impacts to marine mammal foraging would be minimal;
- The proposed 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 proposed 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 proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

**Small Numbers**

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS authorizes is below one-third of the estimated modeled abundance for all species (in fact, take of individuals is less than six percent of the abundance of the affected stocks, see Table 6). 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 be encountered multiple times in a day, but PSOs would count them as separate individuals if they cannot be identified.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

**Unmitigable Adverse Impact Analysis and Determination**

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

**Endangered Species Act**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the

destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the ESA Interagency Cooperation Division within the NMFS OPR.

NMFS is proposing to authorize take of blue whales, fin whales, sei whales, and sperm whales, which are listed under the ESA. The OPR Permits and Conservation Division has requested initiation of section 7 consultation with the OPR Interagency Cooperation Division for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

**Proposed Authorization**

As a result of these preliminary determinations, NMFS proposes to issue an IHA to L–DEO for conducting a marine geophysical survey in Puerto Rico in the Northwest Atlantic Ocean during fall of 2023, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.*

**Request for Public Comments**

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed marine geophysical survey. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1 year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 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: August 15, 2023.

**Kimberly Damon-Randall,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

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# FEDERAL REGISTER

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Part IV

## The President

Presidential Determination No. 2023–09 of August 11, 2023—Continuation of U.S. Drug Interdiction Assistance to the Government of Colombia

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# Presidential Documents

**Title 3—**

## The President

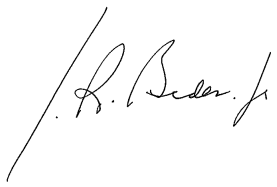
**Presidential Determination No. 2023–09 of August 11, 2023**

## Continuation of U.S. Drug Interdiction Assistance to the Government of Colombia

**Memorandum for the Secretary of State [and] the Secretary of Defense**

By the authority vested in me as President by the Constitution and the laws of the United States, and pursuant to the authority vested in me by section 1012 of the National Defense Authorization Act for Fiscal Year 1995, as amended (22 U.S.C. 2291–4), I hereby certify, with respect to Colombia, that: (1) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary, because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (2) Colombia has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which includes effective means to identify and warn an aircraft before the use of force is directed against the aircraft.

The Secretary of State is authorized and directed to publish this determination in the *Federal Register* and to notify the Congress of this determination.



THE WHITE HOUSE,
*Washington, August 11, 2023*

[FR Doc. 2023–18102
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