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FEDERAL ELECTION COMMISSION

11 CFR Part 111

[NOTICE 2023–21]

Civil Monetary Penalties Annual Inflation Adjustments

AGENCY: Federal Election Commission.

ACTION: Final rules.

SUMMARY: As required by the Federal Civil Penalties Inflation Adjustment Act of 1990, the Federal Election Commission is adjusting for inflation the civil monetary penalties established under the Federal Election Campaign Act, the Presidential Election Campaign Fund Act, and the Presidential Primary Matching Payment Account Act. The civil monetary penalties being adjusted are those negotiated by the Commission or imposed by a court for certain statutory violations, and those imposed by the Commission for late filing of or failure to file certain reports required by the Federal Election Campaign Act. The adjusted civil monetary penalties are calculated according to a statutory formula and the adjusted amounts will apply to penalties assessed after the effective date of these rules.

DATES: This final rule is effective January 5, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, Mr. Joseph P. Wenzinger, Attorney, or Ms. Terrell D. Stansbury, Paralegal, Office of General Counsel, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (the ''Inflation Adjustment Act''),[1] as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the ''2015 Act''),[2] requires federal agencies, including the Commission, to adjust for inflation the civil monetary penalties within their jurisdiction according to prescribed formulas. A civil monetary penalty is ''any penalty, fine, or other sanction'' that (1) ''is for a specific monetary amount'' or ''has a maximum amount'' under federal law; and (2) that a Federal agency assesses or enforces ''pursuant to an administrative proceeding or a civil action'' in Federal court.[3] Under the Federal Election Campaign Act, 52 U.S.C. 30101–45 (''FECA''), the Commission may seek and assess civil monetary penalties for violations of FECA, the Presidential Election Campaign Fund Act, 26 U.S.C. 9001–13, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031–42.

The Inflation Adjustment Act requires federal agencies to adjust their civil penalties annually, and the adjustments must take effect no later than January 15 of every year.[4] Pursuant to guidance issued by the Office of Management and Budget,[5] the Commission is now adjusting its civil monetary penalties for 2024.[6]

The Commission must adjust for inflation its civil monetary penalties ''notwithstanding Section 553'' of the Administrative Procedures Act (''APA'').[7] Thus, the APA's notice-and-comment and delayed effective date requirements in 5 U.S.C. 553(b)–(d) do not apply because Congress has specifically exempted agencies from these requirements.[8]

Furthermore, because the inflation adjustments made through these final rules are required by Congress and involve no Commission discretion or policy judgments, these rules do not need to be submitted to the Speaker of the United States House of Representatives or the President of the United States Senate under the Congressional Review Act, 5 U.S.C. 801 *et seq*. Moreover, because the APA's notice-and-comment procedures do not apply to these final rules, the Commission is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604. *See* 5 U.S.C. 601(2), 604(a). Nor is the Commission required to submit these revisions for congressional review under FECA. *See* 5 U.S.C. 30111(d)(1), (4) (providing for congressional review when Commission ''prescribe[s]'' a ''rule of law'').

The new penalty amounts will apply to civil monetary penalties that are assessed after the date the increase takes effect, even if the associated violation predated the increase.[9]

Explanation and Justification

The Inflation Adjustment Act requires the Commission to annually adjust its civil monetary penalties for inflation by applying a cost-of-living-adjustment (''COLA'') ratio.[10] The COLA ratio is the percentage that the Consumer Price Index (''CPI'') [11] ''for the month of October preceding the date of the adjustment'' exceeds the CPI for October of the previous year.[12] To calculate the adjusted penalty, the Commission must increase the most recent civil monetary penalty amount by the COLA ratio.[13] According to the Office of Management and Budget, the COLA ratio for 2024 is 0.03241, or 3.241%; thus, to calculate the new penalties, the Commission must multiply the most recent civil monetary penalties in force by 1.03241.[14]

The Commission assesses two types of civil monetary penalties that must be adjusted for inflation. First are penalties that are either negotiated by the Commission or imposed by a court for violations of FECA, the Presidential Election Campaign Fund Act, or the Presidential Primary Matching Payment Account Act. These civil monetary

[1] Public Law 101–410, 104 Stat. 890 (codified at 28 U.S.C. 2461 note), *amended by* Debt Collection Improvement Act of 1996, Public Law 104–134, sec. 31001(s)(1), 110 Stat. 1321, 1321–373; Federal Reports Elimination Act of 1998, Public Law 105–362, sec. 1301, 112 Stat. 3280.

[2] Public Law 114–74, sec. 701, 129 Stat. 584, 599.

[3] Inflation Adjustment Act sec. 3(2).

[4] Inflation Adjustment Act sec. 4(a).

[5] *See* Inflation Adjustment Act sec. 7(a) (requiring OMB to ''issue guidance to agencies on implementing the inflation adjustments required under this Act''); *see also* Memorandum from Shalanda D. Young, Director, Office of Management and Budget, to Heads of Executive Departments and Agencies, *M–24–07, Dec. 19, 2023, M-24-07-Implementation-of-Penalty-Inflation-Adjustments-for-2024.pdf* (*whitehouse.gov*) (''OMB Memorandum'').

[6] Inflation Adjustment Act sec. 5.

[7] Inflation Adjustment Act sec. 4(b)(2).

[8] *See, e.g., Asiana Airlines* v. *FAA,* 134 F.3d 393, 396–99 (D.C. Cir. 1998) (finding APA ''notice and comment'' requirement not applicable where Congress clearly expressed intent to depart from normal APA procedures).

[9] Inflation Adjustment Act sec. 6.

[10] The COLA ratio must be applied to the most recent civil monetary penalties. Inflation Adjustment Act, sec. 4(a); *see also* OMB Memorandum at 2.

[11] The Inflation Adjustment Act, sec. 3, uses the CPI ''for all-urban consumers published by the Department of Labor.''

[12] Inflation Adjustment Act, sec. 5(b)(1).

[13] Inflation Adjustment Act, sec. 5(a), (b)(1).

[14] OMB Memorandum at 1.

penalties are set forth at 11 CFR 111.24. Second are the civil monetary penalties assessed through the Commission's Administrative Fines Program for late filing or non-filing of certain reports required by FECA. *See* 52 U.S.C. 30109(a)(4)(C) (authorizing Administrative Fines Program), 30104(a) (requiring political committee treasurers to report receipts and disbursements within certain time periods). The penalty schedules for these civil monetary penalties are set out at 11 CFR 111.43 and 111.44.

1. 11 CFR 111.24—Civil Penalties

FECA establishes the civil monetary penalties for violations of FECA and the other statutes within the Commission's jurisdiction. *See* 52 U.S.C. 30109(a)(5), (6), (12). Commission regulations in 11 CFR 111.24 provide the current inflation-adjusted amount for each such civil monetary penalty. To calculate the adjusted civil monetary penalty, the Commission multiplies the most recent penalty amount by the COLA ratio and rounds that figure to the nearest dollar.

The actual adjustment to each civil monetary penalty is shown in the chart below.

Section	Most recent civil penalty	COLA	New civil penalty
11 CFR 111.24(a)(1)	$23,494	1.03241	24,255
11 CFR 111.24(a)(2)(i)	50,120	1.03241	51,744
11 CFR 111.24(a)(2)(ii)	82,188	1.03241	84,852
11 CFR 111.24(b)	7,028	1.03241	7,256
11 CFR 111.24(b)	17,570	1.03241	18,139

2. 11 CFR 111.43, 111.44—Administrative Fines

FECA authorizes the Commission to assess civil monetary penalties for violations of the reporting requirements of 52 U.S.C. 30104(a) according to the penalty schedules ''established and published by the Commission.'' 52 U.S.C. 30109(a)(4)(C)(i). The Commission has established two penalty schedules: The penalty schedule in 11 CFR 111.43(a) applies to reports that are not election sensitive, and the penalty schedule in 11 CFR 111.43(b) applies to reports that are election sensitive.[15] Each penalty schedule contains two columns of penalties, one for late-filed reports and one for non-filed reports, with penalties based on the level of financial activity in the report and, if late-filed, its lateness.[16] In addition, 11 CFR 111.43(c) establishes a civil monetary penalty for situations in which a committee fails to file a report and the Commission cannot calculate the relevant level of activity. Finally, 11 CFR 111.44 establishes a civil monetary penalty for failure to file timely reports of contributions received less than 20 days, but more than 48 hours, before an election. *See* 52 U.S.C. 30104(a)(6).

To determine the adjusted civil monetary penalty amount for each level of activity, the Commission multiplies the most recent penalty amount by the COLA ratio and rounds that figure to the nearest dollar. The new civil monetary penalties are shown in the schedules in the rule text, below.

List of Subjects in 11 CFR Part 111

Administrative practice and procedures, Elections, Law enforcement, Penalties.

For the reasons set out in the preamble, the Federal Election Commission amends 11 CFR part 111 as follows:

PART 111—COMPLIANCE PROCEDURE (52 U.S.C. 30109, 30107(a))

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

Authority: 52 U.S.C. 30102(i), 30109, 30107(a), 30111(a)(8); 28 U.S.C. 2461 nt.

§ 111.24 [Amended]

■ 2. Section 111.24 is amended as shown the following table. For each paragraph indicated in the left column, remove the number indicated in the middle column, and add in its place the number indicated in the right column.

Paragraph	Remove	Add
(a)(1)	$23,494	$24,255
(a)(2)(i)	50,120	51,744
(a)(2)(ii)	82,188	84,852
(b)	7,028	7,256
(b)	17,570	18,139

■ 3. Section 111.43 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 111.43 What are the schedules of penalties?

(a) The civil money penalty for all reports that are filed late or not filed, except election sensitive reports and pre-election reports under 11 CFR 104.5, shall be calculated in accordance with the following schedule of penalties:

TABLE 1 TO PARAGRAPH (a)

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–4,999.99[a]	[$42 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$415 × [1 + (.25 × Number of previous violations)].
$5,000–9,999.99	[$83 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$499 × [1 + (.25 × Number of previous violations)].
$10,000–24,999.99	[$178 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$832 × [1 + (.25 × Number of previous violations)].
$25,000–49,999.99	[$353 + ($33 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1,497 × [1 + (.25 × Number of previous violations)].
$50,000–74,999.99	[$532 + ($133 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$4,774 × [1 + (.25 × Number of previous violations)].

[15] Election sensitive reports are certain reports due shortly before an election. *See* 11 CFR 111.43(d)(1).

[16] A report is considered to be ''not filed'' if it is never filed or is filed more than a certain number of days after its due date. *See* 11 CFR 111.43(e).

TABLE 1 TO PARAGRAPH (a)—Continued

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$75,000–99,999.99	[$706 + ($178 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$6,188 × [1 + (.25 × Number of previous violations)].
$100,000–149,999.99 ...	[$1,059 + ($221 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$7,958 × [1 + (.25 × Number of previous violations)].
$150,000–199,999.99 ...	[$1,417 + ($264 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$9,725 × [1 + (.25 × Number of previous violations)].
$200,000–249,999.99 ...	[$1,767 + ($308 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$11,493 × [1 + (.25 × Number of previous violations)].
$250,000–349,999.99 ...	[$2,653 + ($353 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$14,146 × [1 + (.25 × Number of previous violations)].
$350,000–449,999.99 ...	[$3,537 + ($353 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,914 × [1 + (.25 × Number of previous violations)].
$450,000–549,999.99 ...	[$4,421+ ($353 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$16,798 × [1 + (.25 × Number of previous violations)].
$550,000–649,999.99 ...	[$5,303 + ($353 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$17,683 × [1 + (.25 × Number of previous violations)].
$650,000–749,999.99 ...	[$6,188 + ($353 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$18,567 × [1 + (.25 × Number of previous violations)].
$750,000–849,999.99 ...	[$7,072 + ($353 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$19,450 × [1 + (.25 × Number of previous violations)].
$850,000–949,999.99 ...	[$7,958 + ($353 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$20,334 × [1 + (.25 × Number of previous violations)].
$950,000 or over	[$8,842 + ($353 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$21,218 × [1 + (.25 × Number of previous violations)].

[a] The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(b) The civil money penalty for election sensitive reports that are filed late or not filed shall be calculated in accordance with the following schedule of penalties:

TABLE 2 TO PARAGRAPH (b)

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–$4,999.99[a]	[$83 + ($15 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$832 × [1 + (.25 × Number of previous violations)].
$5,000–$9,999.99	[$167 + ($15 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$997 × [1 + (.25 × Number of previous violations)].
$10,000–24,999.99	[$249 + ($15 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1,497 × [1 + (.25 × Number of previous violations)].
$25,000–49,999.99	[$532 + ($42 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$2,328 × [1 + (.25 × Number of previous violations)].
$50,000–74,999.99	[$796 + ($133 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$5,303 × [1 + (.25 × Number of previous violations)].
$75,000–99,999.99	[$1,059 + ($178 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$7,072 × [1 + (.25 × Number of previous violations)].
$100,000–149,999.99 ...	[$1,592 + ($221 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$8,842 × [1 + (.25 × Number of previous violations)].
$150,000–199,999.99 ...	[$2,123 + ($264 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$10,609 × [1 + (.25 × Number of previous violations)].
$200,000–249,999.99 ...	[$2,653 + ($308 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$13,261 × [1 + (.25 × Number of previous violations)].
$250,000–349,999.99 ...	[$3,978 + ($353 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,914 × [1 + (.25 × Number of previous violations)].
$350,000–449,999.99 ...	[$5,303 + ($353 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$17,683 × [1 + (.25 × Number of previous violations)].
$450,000–549,999.99 ...	[$6,631 + ($353 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$19,450 × [1 + (.25 × Number of previous violations)].
$550,000–649,999.99 ...	[$7,958 + ($353 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$21,218 × [1 + (.25 × Number of previous violations)].
$650,000–749,999.99 ...	[$9,283 + ($353 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$22,988 × [1 + (.25 × Number of previous violations)].
$750,000–849,999.99 ...	[$10,609 + ($353 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$24,756 × [1 + (.25 × Number of previous violations)].
$850,000–949,999.99 ...	[$11,935 + ($353 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$26,523 × [1 + (.25 × Number of previous violations)].

TABLE 2 TO PARAGRAPH (b)—Continued

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$950,000 or over	[$13,261 + ($353 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$28,292 × [1 + (.25 × Number of previous violations)].

[a] The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(c) If the respondent fails to file a required report and the Commission cannot calculate the level of activity under paragraph (d) of this section, then the civil money penalty shall be $9,725.

* * * * *

§ 111.44 [Amended]

■ 4. Amend § 111.44 in paragraph (a)(1) by removing ''$172'' and adding in its place ''$178''.

Dated: December 29, 2023.

On behalf of the Commission.

Dara S. Lindenbaum,

Chair, Federal Election Commission.

[FR Doc. 2024–00028 Filed 1–4–24; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF STATE

22 CFR Parts 35, 103, 127, and 138

[Public Notice: 12298]

RIN 1400–AF72

Department of State 2024 Civil Monetary Penalties Inflationary Adjustment

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This final rule is issued to adjust the civil monetary penalties (CMP) for regulatory provisions maintained and enforced by the Department of State. The revised CMP adjusts the amount of civil monetary penalties assessed by the Department of State based on the December 2023 guidance from the Office of Management and Budget and by recent legislation. For penalties adjusted according to the December 2023 guidance, the new amounts will apply only to those penalties assessed on or after the effective date of this rule, regardless of the date on which the underlying facts or violations occurred.

DATES: This final rule is effective on January 5, 2024.

FOR FURTHER INFORMATION CONTACT: Alice Kottmyer, Attorney-Adviser, Office of Management, *kottmyeram@state.gov.* ATTN: Regulatory Change, CMP Adjustments, (202) 647–2318.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134, required the head of each agency to adjust its CMPs for inflation no later than October 23, 1996 and required agencies to make adjustments at least once every four years thereafter. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Section 701 of Public Law 114–74 (the 2015 Act) further amended the 1990 Act by requiring agencies to adjust CMPs, if necessary, pursuant to a ''catch-up'' adjustment methodology prescribed by the 2015 Act, which mandated that the catch-up adjustment take effect no later than August 1, 2016. Additionally, the 2015 Act required agencies to make annual adjustments to their respective CMPs in accordance with guidance issued by the Office of Management and Budget (OMB).

Based on these statutes, the Department of State (the Department) published a final rule in June 2016 [1] to implement the ''catch-up'' provisions, followed by annual updates in January of each year. The most recent update was in January 2023.[2]

On December 19, 2023, OMB notified agencies that the annual cost-of-living adjustment multiplier for fiscal year (FY) 2024, based on the Consumer Price Index, is 1.03241. Additional information may be found in OMB Memorandum M–24–07. This final rule amends Department CMPs for fiscal year 2024.

Overview of the Areas Affected by This Rule

See the table for specific changes. Within the Department of State (title 22, Code of Federal Regulations), this rule affects four areas:

(1) Part 35, which implements the Program Fraud Civil Remedies Act of 1986 (PFCRA), codified at 31 U.S.C. 3801–3812. The PFCRA, enacted in 1986, authorizes agencies, with approval from the Department of Justice, to pursue individuals or firms for false claims;

(2) Part 103, which implements the Chemical Weapons Convention Implementation Act of 1998 (CWC Act) (22 U.S.C. 6761). The CWC Act provided domestic implementation of the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction. The penalty provisions of the CWC Act are codified at 22 U.S.C. 6761(a);

(3) Part 127, which implements the penalty provisions of sections 38(e), 39A(c), and 40(k) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(e), 2779a(c), and 2780(k)). The Assistant Secretary of State for Political-Military Affairs is responsible for the imposition of CMPs under the International Traffic in Arms Regulations (ITAR), which is administered by the Directorate of Defense Trade Controls (DDTC); and

(4) Part 138, which implements section 319 of Public Law 101–121, codified at 31 U.S.C. 1352, provides penalties for recipients of Federal contracts, grants, and loans who use appropriated funds to lobby the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Any person who violates that prohibition is subject to a civil penalty. The statute also requires each person who requests or receives a Federal contract, grant, cooperative agreement, loan, or a Federal commitment to insure or guarantee a loan, to disclose any lobbying; there is a penalty for failure to disclose.

[1] 81 FR 36771 (Jun. 8, 2016).

[2] 88 FR 1505 (Jan. 11, 2023).

FY 2024 MULTIPLIER: 1.03241

Citation in 22 CFR	FY 23 penalties	New FY 24 max penalties
§ 35.3	$13,508 up to $405,270	$13,946 up to $418,405.
§ 103.6(a)(1) *Prohibited Acts*	$45,429	$46,901.
§ 103.6(a)(2) *Recordkeeping Violations.*	$9,086	$9,380.
§ 127.10(a)(1)(i)	The greater of $1,200,000 or the amount that is twice the value of the transaction that is the basis of the violation with respect to which the penalty is imposed.	The greater of $1,238,892 or the amount that is twice the value of the transaction that is the basis of the violation with respect to which the penalty is imposed.
§ 127.10(a)(1)(ii)	$996,685, or five times the amount of the prohibited payment, whichever is greater.	$1,028,988, or five times the amount of the prohibited payment, whichever is greater.
§ 127.10(a)(1)(iii)	$1,186,338	$1,224,787.
§ 138.400 *First Offenders*	$23,343	$24,100.
§ 138.400 *Others*	$23,727 up to $237,268	$24,496 up to $244,958.

Effective Date of Penalties

The revised CMP amounts for all penalties will go into effect on the date this rule is published. All violations for which those CMPs are assessed on or after the effective date of this rule, regardless of whether the violation occurred before the effective date, will be assessed at the adjusted penalty level.

Future Adjustments and Reporting

The 2015 Act directed agencies to undertake an annual review of CMPs using a formula prescribed by the statute. Annual adjustments to CMPs are made in accordance with the guidance issued by OMB. As in this rulemaking, the Department of State will publish notification of annual inflation adjustments to CMPs in the **Federal Register** no later than January 15 of each year, with the adjusted amount taking effect immediately upon publication.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is publishing this rule using the ''good cause'' exception to the Administrative Procedure Act (5 U.S.C. 553(b)), as the Department has determined that public comment on this rulemaking would be impractical, unnecessary, or contrary to the public interest. This rulemaking is mandatory and entirely without agency discretion; it implements Public Law 114–74. *See* 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because this rulemaking is exempt from 5 U.S.C. 553, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

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

Congressional Review Act

This rule is not a major rule within the meaning of the Congressional Review Act, 5 U.S.C. 801 *et seq.*

Executive Orders 12372 and 13132

This amendment will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Executive Orders 12866, 14094, and 13563

The Department believes that benefits of the rulemaking outweigh any costs, and there are no feasible alternatives to this rulemaking. Pursuant to M–23–05, the Office of Information and Regulatory Affairs (OIRA) has determined that agency regulations that (1) exclusively implement the annual adjustment, (2) are consistent with this guidance, and (3) have an annual impact of less than $100 million, are generally not significant regulatory actions under E.O. 12866. Therefore, agencies are generally not required to submit regulations satisfying those criteria to OIRA for review. This regulation satisfies all of those criteria.

Executive Order 12988

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

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian Tribal governments, and will not preempt Tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. Chapter 35.

List of Subjects

22 CFR Part 35

Administrative practice and procedure, Claims, Fraud, Penalties.

22 CFR Part 103

Administrative practice and procedure, Chemicals, Classified information, Foreign relations, Freedom of information, International organization, Investigations, Penalties, Reporting and recordkeeping requirements.

22 CFR Part 127

Arms and munitions, Crime, Exports, Penalties, Seizures and forfeitures.

22 CFR Part 138

Government contracts, Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth above, 22 CFR parts 35, 103, 127, and 138 are amended as follows:

PART 35—PROGRAM FRAUD CIVIL REMEDIES

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 22 U.S.C. 2651a; 31 U.S.C. 3801 *et seq.;* Pub. L. 114–74, 129 Stat. 584.

§ 35.3 [Amended]

■ 2. In § 35.3:
■ a. In paragraphs (a)(1) introductory text, (b)(1)(ii), and (f) remove ''$13,508'' and add in its place ''13,946; and
■ b. In paragraph (f), remove ''$405,270'' and add in its place ''$418,405''.

PART 103—REGULATIONS FOR IMPLEMENTATION OF THE CHEMICAL WEAPONS CONVENTION AND THE CHEMICAL WEAPONS CONVENTION IMPLEMENTATION ACT OF 1998 ON THE TAKING OF SAMPLES AND ON ENFORCEMENT OF REQUIREMENTS CONCERNING RECORDKEEPING AND INSPECTIONS

■ 3. The authority citation for part 103 continues to read as follows:

Authority: 22 U.S.C. 2651a; 22 U.S.C. 6701 *et seq.;* Pub. L. 114–74, 129 Stat. 584.

§ 103.6 [Amended]

■ 4. In § 103.6:
■ a. In paragraph (a)(1), remove ''$45,429'' and add in its place ''$46,901''; and
■ b. In paragraph (a)(2), remove ''$9,086'' and add in its place ''$9,380''.

PART 127—VIOLATIONS AND PENALTIES

■ 5. The authority citation for part 127 continues to read as follows:

Authority: Sections 2, 38, and 42, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); 22 U.S.C. 401; 22 U.S.C. 2651a; 22 U.S.C. 2779a; 22 U.S.C. 2780; E.O. 13637, 78 FR 16129; Pub. L. 114–74, 129 Stat. 584.

§ 127.10 [Amended]

■ 6. In § 127.10:
■ a. In paragraph (a)(1)(i), remove ''$1,200,000'' and add in its place ''$1,238,892'';
■ b. In paragraph (a)(1)(ii), remove ''$996,685'' and add in its place ''$1,028,988''; and
■ c. In paragraph (a)(1)(iii), remove ''$1,186,338'' and add in its place ''$1,224,787''.

PART 138—RESTRICTIONS ON LOBBYING

■ 7. The authority citation for part 138 continues to read as follows:

Authority: 22 U.S.C. 2651a; 31 U.S.C. 1352; Pub. L. 114–74, 129 Stat. 584.

§ 138.400 [Amended]

■ 8. In § 138.400:
■ a. In paragraphs (a), (b), and (e), remove ''$23,727'' and ''$237,268'' and add in their place ''$24,496'' and ''$244,958'', respectively; and
■ b. In paragraph (e), remove ''$23,343'' and add in its place ''$24,100''.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, Department of State.

[FR Doc. 2023–29003 Filed 1–4–24; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

California Occupational Safety and Health State Plan; Operational Status Agreement

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notification of revisions to the California State Plan's Operational Status Agreement.

SUMMARY: This document announces a new Operational Status Agreement between the Occupational Safety and Health Administration (OSHA) and the California State Plan, which specifies the areas of State responsibility and delineates continuing Federal responsibilities.

DATES: Effective January 5, 2024.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Francis Meilinger, OSHA Office of Communications; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general and technical information: Douglas J. Kalinowski, Director, OSHA Directorate of Cooperative and State Programs; telephone: (202) 693–2200; email: *kalinowski.doug@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

California administers an OSHA-approved State Plan to develop and enforce occupational safety and health standards for public-sector and private-sector employers, pursuant to the provisions of Section 18 of the Occupational Safety and Health Act (the OSH Act), 29 U.S.C. 667. The California Occupational Safety and Health State Plan received initial Federal OSHA approval on May 1, 1973 (38 FR 10717), pursuant to Section 18(c) of the OSH Act (29 U.S.C. 667(c)), and the Division of Occupational Safety and Health of the California Department of Industrial Relations (DIR) was designated as the state agency responsible for administering the State Plan. Pursuant to Section 18(e) of the Act, 29 U.S.C. 667(e), as implemented by 29 CFR 1954.3, OSHA and California DIR entered into an initial Operational Status Agreement (OSA) on October 3, 1989, whereby concurrent Federal enforcement authority was suspended with regard to Federal occupational safety and health standards in issues covered by the State Plan. The 1989 OSA was published in the **Federal Register** on July 12, 1990 (55 FR 28612). Subsequently, on April 30, 2014, OSHA and California DIR signed a new OSA, which replaced the prior 1989 OSA. The new 2014 OSA was published in the **Federal Register** on June 2, 2017 (82 FR 25631).

II. Notification of New Operational Status Agreement

On September 15, 2022, OSHA and California DIR signed a new OSA, which replaced the prior 2014 OSA. The new OSA remains largely the same as the 2014 OSA, but includes a few necessary clarifications and corrections, as briefly described herein. First, the 2022 OSA clarifies that Federal OSHA enforcement authority within U.S. military installations applies when the installations' borders are ''secured'' and access is controlled, but that California DIR continues to have enforcement authority over state and local government employers on such military installations. Second, the 2022 OSA defines the ''Federal enclaves'' over which Federal OSHA retains enforcement authority, and revises the specific list of recognized Federal enclaves to bring that list up to date. Third, the 2022 OSA clarifies the scope of Federal OSHA enforcement authority over employers operating on Native American Reservations or Trust lands, including that California DIR continues to have enforcement authority over state and local government employers operating on such lands and over Tribal member employers operating outside of such lands. Fourth, and finally, the 2022 OSA clarifies that the definition of ''maritime employment'' over which Federal OSHA maintains enforcement authority includes all afloat dredging and pile-driving and similar operations on navigable waters, and all floating drilling platforms on navigable waters.

Effective immediately, Federal OSHA and California DIR will exercise their respective enforcement authorities according to the terms of the 2022 OSA between them. As detailed in the 2022 OSA, Federal enforcement responsibility under the OSH Act will continue to be exercised with regard to: Federal Government employers, including the United States Postal Service (USPS), as well as contractors

and contractor-operated facilities engaged in USPS mail operations; private sector employers within the secured borders of all United States military installations where access is controlled; private sector employers within the borders of Federal enclaves, including property where the Federal government reserved jurisdiction when the State of California entered the Union and where Federal properties were acquired from the State of California with the consent of the State legislature; private sector employers and Native American-owned or tribal workplaces within the borders of all U.S. Government recognized Native American Reservations or on lands held in Trust for the various tribes in California; and maritime employment (except marine construction, which the State covers on bridges, and on shore) on the navigable waters of the United States. Federal responsibility will also continue to be exercised with regard to investigation and inspection for the purpose of carrying out the monitoring obligations under Section 18(f) of the OSH Act, 29 U.S.C. 667(f), as implemented by 29 CFR part 1954, and the enforcement of complaints filed with Federal OSHA under the OSH Act's whistleblower provision, Section 11(c), 29 U.S.C. 660(c). For further information please visit *https://www.osha.gov/stateplans/ca.*

Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. OSHA is issuing this notification under the authority specified by Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), Secretary of Labor's Order No. 8–2020 (85 FR 58393 (Sept. 18, 2020)), and 29 CFR parts 1902 and 1953.

Signed in Washington, DC.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–00047 Filed 1–4–24; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA–HQ–OW–2023–0073; FRL 9916–02–OW]

State of Louisiana Underground Injection Control Program; Class VI Primacy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is approving an application from the state of Louisiana to revise the state's Safe Drinking Water Act (SDWA) section 1422 underground injection control (UIC) program to include Class VI injection well primary enforcement responsibility (primacy). This final rule allows the Louisiana Department of Natural Resources to issue UIC permits for geologic carbon sequestration facilities as Class VI wells and ensure compliance of Class VI wells under the UIC program within the state. The EPA will remain the permitting authority for all well classes in Indian lands within the state and will also oversee Louisiana's administration of the state's UIC Class VI program as authorized under SDWA.

DATES: This final rule is effective on February 5, 2024. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 on February 5, 2024. For judicial purposes, this final rule is promulgated as of January 5, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2023–0073. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by law. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Kelly, Drinking Water Infrastructure Development Division, Office of Ground Water and Drinking Water (4606M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–3887; or Lisa Pham, U.S. EPA Region 6, Groundwater/UIC Section (Mail code WDDG), 1201 Elm Street, Suite 500, Dallas, Texas 75720–2102; telephone number: (214) 665–8326. Both can be reached by emailing: *LAClassVINOA@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

A. UIC Program and Primary Enforcement Authority (Primacy)

The Safe Drinking Water Act (also known as SDWA), 42 U.S.C. 300h–1, was passed by Congress in 1974. It protects public health by regulating the nation's public drinking water supply, including both surface and groundwater

sources. The SDWA requires the EPA to develop requirements for state and Tribal Underground Injection Control programs. These programs regulate the injection of fluids (such as water, wastewater, brines from oil and gas production, and carbon dioxide) to protect underground sources of drinking water. USDWs are aquifers or parts of aquifers that supply a public water system or contain enough groundwater to supply a public water system. *See* 40 CFR 144.3.

The UIC program regulates various aspects of an injection well project. These include technical aspects throughout the lifetime of the project from site characterization, construction, operation, and testing and monitoring through site closure, as well as permitting, site inspections, and reporting to ensure well owners and operators comply with UIC regulations.

SDWA section 1422 directs the EPA to establish requirements that states, territories, and federally recognized Tribes (hereafter referred to as applicants) must meet to be granted primary enforcement responsibility or ''primacy'' for implementing a UIC program, including a Class VI program. An applicant seeking primacy under SDWA section 1422 for a Class VI program must demonstrate to the EPA that the applicant's Class VI program meets federal requirements to protect USDWs, including jurisdiction over underground injection and provisions for the necessary civil and criminal enforcement remedies under SDWA.

The EPA conducts a comprehensive technical and legal evaluation of each primacy application to assess and confirm that the proposed program meets the federal regulatory requirements and to evaluate the effectiveness of the state's proposed program at protecting USDWs. Louisiana's application included the following elements: Louisiana's Class VI-related UIC statutes and regulations; documents describing Louisiana's public participation process when adopting its proposed Class VI program; a letter from the Governor of Louisiana requesting Class VI primacy; a Program Description that explains how the state intends to carry out its responsibilities; a state Attorney General's Class VI statement of enforcement authority; and an addendum to the existing Memorandum of Agreement between the EPA and Louisiana describing the administration, implementation, and enforcement of the Louisiana's Class VI program.

B. Class VI Wells Under the UIC Program

Class VI wells are used to inject carbon dioxide into deep rock formations for the purpose of long-term underground storage, also known as geologic sequestration. Geologic sequestration, when used as a part of carbon capture and storage and carbon dioxide removal projects (such as projects that remove carbon dioxide from the atmosphere), is a promising tool for reducing the amount of carbon dioxide in the atmosphere. Class VI injection wells are regulated under an existing, rigorous SDWA permitting framework that protects USDWs.

The UIC Class VI program provides multiple safeguards that work together to protect USDWs and human health. Owners or operators that wish to inject carbon dioxide for the purpose of geologic sequestration must demonstrate that their injection well will meet all regulatory requirements and receive a Class VI permit for each well. The UIC Class VI program requires applicants to meet strict technical, financial, and reporting and record keeping requirements to obtain a Class VI permit, including:

- Site characterization to ensure the geology in the project area will contain the carbon dioxide within the zone where it will be injected.
- Modeling to delineate the predicted area influenced by injection activities through the lifetime of operation.
- Evaluation of the delineated area to ensure all potential pathways for fluid movement have been identified and addressed through corrective action.
- Well construction requirements that ensure the Class VI injection well will not leak carbon dioxide.
- Testing and monitoring throughout the life of the project, including after carbon dioxide injection has ended. Requirements include, for example, testing to ensure physical integrity of the well, monitoring for seismic activity near the injection site, monitoring of injection pressure and flow, chemical analysis of the carbon dioxide stream that is being injected, and monitoring the extent of the injected carbon dioxide plume and the surrounding area (*e.g.,* ground water) to ensure the carbon dioxide is contained as predicted.
- Operating requirements (*e.g.,* injection pressure monitoring and mechanical integrity testing requirements) to ensure the injection activity will not endanger USDWs or human health.
- Financial assurance mechanisms sufficient to cover the cost for all phases of the geologic sequestration project including the post injection site care period until site closure has been approved by the permitting authority.
- Emergency and remedial response plans.
- Reporting of all testing and monitoring results to the permitting authority to ensure the well is operating in compliance with all permit and regulatory requirements.

The permitting authority ensures that these protective requirements are included and implemented for each Class VI permit. A draft of each Class VI permit must be made available to the public for comment before a final permit is issued.

C. Louisiana UIC Programs

The state of Louisiana received primacy for Class I, III, IV, and V injection wells under SDWA section 1422, and Class II injection wells under SDWA section 1425 on March 23, 1982. On September 17, 2021, Louisiana applied to the EPA under section 1422 of SDWA for primacy for Class VI injection wells located within the state, except those located on Indian lands. On December 9, 2022, and January 11, 2023, the EPA Administrator Michael S. Regan sent letters to governors and Tribal leaders calling for partnership to advance the twin goals of combatting climate change and supporting environmental justice. In the letters, the EPA encouraged states and Tribes seeking primacy to incorporate EJ and equity considerations into proposed UIC Class VI programs. During development of the proposed rule, Louisiana revised its Class VI MOA addendum to incorporate all the EJ elements described in the letter, including elements related to implementing an inclusive public participation process, incorporating EJ and civil rights considerations in permit review processes, enforcing Class VI regulatory protections, and incorporating mitigation measures. During the comment period for the EPA's proposal, Louisiana signed into law Act No. 378 (HB 571), which revised portions of Louisiana law relevant to LDNR's application effective June 14, 2023. After the comment period, on June 30, 2023, LDNR supplemented its Class VI primacy application to include Act No. 378. In response, on August 16, 2023, the EPA published a Notice of Availability in the **Federal Register** (88 FR 55610) providing a 30-day comment period specific to LDNR's supplement to its primacy application, since this information was not available for public review and comment at the time of the proposal. That comment period closed on September 15, 2023.

D. Final Rule

In this final rule, the EPA is approving Louisiana's application because the EPA has determined that the application meets all applicable requirements for approval under SDWA section 1422 and the state is capable of administering a Class VI program in a manner consistent with the terms and purposes of SDWA and applicable UIC regulations. The EPA will remain the permitting authority for all UIC well classes on Indian land within the state (including Class VI wells) and will also oversee Louisiana's administration of the state's UIC Class VI program as authorized under SDWA.

II. Legal Authorities

This final rule is issued under authority of SDWA sections 1422 and 1450, 42 U.S.C. 300h–1 and 300j–9.

Section 1421 of SDWA requires the Administrator of the EPA to promulgate federal requirements for effective state UIC programs to prevent underground injection activities that endanger USDWs. Section 1422 of SDWA establishes requirements for states and Tribes seeking the EPA's approval of their UIC programs. It also requires that states and Tribes seeking approval demonstrate to the satisfaction of the Administrator that the applicant (after public notice) has adopted and will implement a UIC program which meets the requirements set forth under section 1421. The EPA's regulations establish procedures for the EPA's review, and approval or disapproval, of state or Tribal revisions to existing UIC programs already approved by the EPA. 40 CFR 145.32.

For states and Tribes that seek approval for UIC programs under section 1422 of SDWA and those seeking the EPA's approval of revisions to existing state and Tribal UIC programs, the EPA has promulgated regulations setting forth the applicable procedures and substantive requirements codified in 40 CFR parts 144, 145 and 146. 40 CFR part 144 outlines general program requirements that each state or Tribe must meet to obtain UIC primacy. 40 CFR part 145 specifies the procedures the EPA will follow in approving primacy programs, approving revisions to such programs, and withdrawing primacy programs and outlines the elements and provisions that a state or Tribe must include in its application. It also includes requirements for state or Tribal permitting programs (often by reference to certain provisions of 40 CFR parts 124 and 144), compliance evaluation programs, enforcement authority, and information sharing. 40 CFR part 146 contains the technical criteria and standards applicable to each well class, including Class VI wells.

III. Louisiana's Application for Class VI Primacy

A. Background

On September 17, 2021, Louisiana submitted to the EPA a program revision application to add Class VI injection wells to the state's SDWA section 1422 UIC program. The UIC program revision package included a description of the state's UIC Class VI program, copies of all applicable rules and forms, a statement of legal authority, a summary and results of Louisiana's public participation activities for developing the proposed Class VI program, and an addendum to the existing MOA between Louisiana and the EPA's Region 6 office. The EPA reviewed the application for completeness and performed a technical evaluation of the application materials.

B. Public Participation Activities Conducted by Louisiana

In October 2020, LDNR published a notice of intent in the Louisiana Register to adopt Statewide Order No. 29–N–6 providing rules for Class VI injection wells. LDNR held a public comment period from October 20, 2020, to December 1, 2020, and provided the opportunity to request a public hearing. There was no request for a public hearing. LDNR received five comments, which did not result in changes to the proposed rule. LDNR later provided a second public comment period on the state's intent to seek Class VI Primacy from May 28, 2021, to July 13, 2021. LDNR held a public hearing at the LDNR Office in Baton Rouge on July 6, 2021. Notice of the comment period and public hearing was published in six newspapers across Louisiana, through an email mailing list, and on LDNR's website to garner statewide attention. LDNR received seven oral comments at the hearing and 21 written public comments. Commenters shared general concerns about the role of carbon capture and storage in mitigating climate change, sensitive coastal areas and erosion caused by pipelines, and the current pollution and environmental hazard burden in Louisiana. Commenters were also specifically concerned about whether LDNR had adequate resources to successfully permit and monitor Class VI projects and the state's assumption of liability after completion of projects. Environmental Justice was also a major concern, with commenters seeking a clear EJ review process and criteria, as well as a mechanism for Class VI projects to avoid impacts on already overburdened communities. LDNR responded to all public comments including details about increased staffing and resources for Class VI permitting responsibilities. Documentation of Louisiana's public participation activities, including comments received and responses by the LDNR, can be found in EPA's Docket ID No. EPA–HQ–OW–2023–0073.

C. Environmental Justice (EJ) in Class VI Permitting

People across the country have shared with the EPA concerns about the safety of carbon capture and storage and carbon dioxide removal projects as well as their concern that already environmentally overburdened communities may yet again bear a disproportionate environmental burden associated with geologic sequestration. Executive Order 12898 (59 FR 7629, February 16, 1994) and Executive Order 14096 (88 FR 25251, April 21, 2023) direct federal agencies, to the greatest extent practicable and permitted by law, to identify and address, as appropriate, disproportionate and adverse human health or environmental impacts on communities with EJ concerns. On December 9, 2022, and January 11, 2023, the EPA Administrator Michael S. Regan sent letters to governors and Tribal leaders calling for partnership to advance the twin goals of combatting climate change and supporting EJ. In the letters, the Administrator encouraged states and Tribes seeking primacy to incorporate EJ and equity considerations into proposed UIC Class VI programs, including in permitting. The Administrator's letters outlined a variety of approaches related to implementing an inclusive public participation process, consideration of EJ impacts on communities, enforcing Class VI regulatory requirements, and incorporating mitigation measures.

As part of developing this final rule, the EPA worked with the state of Louisiana to adopt the environmental justice approaches encouraged in the Administrator's letter, which Louisiana has incorporated into its primacy application. The EPA reviewed Louisiana's EJ approach as described in the state's Program Description and MOA addendum and compared it to the EJ elements discussed in the Administrator's letter. Louisiana has committed in its MOA addendum to adopt all of the EJ elements described in the letter, and in particular noted that inclusive public participation processes and incorporation of EJ and civil rights considerations in permit review will be

achieved through the methods set forth in the Program Description. For example, Louisiana committed in the MOA addendum to examine the potential risks of each proposed Class VI well to minority and low-income populations. The EPA supports these commitments. Furthermore, Louisiana's Program Description specifies that LDNR will require well owners or operators to conduct an EJ review as part of the Class VI application process. The Program Description also provides that LDNR intends to evaluate project sites using the EPA's EJ Screen and to utilize qualified third-party reviewers to conduct additional evaluation of the Class VI application when communities with EJ concerns and/or other increased risk factors are identified. The results of the review will be used by LDNR to determine if an enhanced public comment period will be required. Lastly, LDNR's Program Description provides that LDNR will require applicants to assess alternatives to the proposed site location and propose mitigating measures to ensure adverse environmental effects are minimized. The EPA supports each of these efforts described in LDNR's program description.

Based on its review of LDNR's MOA addendum and Program Description, the EPA concludes that Louisiana has addressed all EJ elements that were discussed in the Administrator's letter. The EPA supports LDNR's adoption of these approaches to protecting communities with EJ concerns. Louisiana's Class VI Program, as described in LDNR's primacy application, includes approaches to ensure that equity and EJ will be appropriately considered in permit reviews, and in LDNR's UIC Class VI program as a whole.

D. Summary of the EPA's Comprehensive Evaluation

The EPA conducted a comprehensive technical and legal evaluation of Louisiana's Class VI primacy application to assess and confirm that the state's UIC Class VI program meets federal regulatory requirements, and the EPA evaluated the effectiveness of the state's Class VI program. To be approved for Class VI primacy under SDWA section 1422, a state or Tribe must have a UIC program that meets federal requirements (40 CFR parts 124, 144, 145, and 146). The EPA evaluated Louisiana's UIC statutes and Class VI regulations against these federal requirements. The evaluation involved identifying and resolving any discrepancies between the state and federal UIC Class VI statutory and regulatory provisions prior to LDNR's submittal of the primacy application. The EPA's evaluation of the stringency and effectiveness of Louisiana's proposed Class VI program included an evaluation of Louisiana's Class VI Program Description, the state Attorney General's Class VI statement of enforcement authority, and the addendum to the MOA between the EPA and Louisiana, describing the administration, implementation, and enforcement of Louisiana's UIC Class VI program.

The EPA evaluated Louisiana's Class VI program description against 40 CFR 145.23, which identifies all the information that must be submitted as part of the program description. The EPA's evaluation of the program description includes reviewing the scope, structure, coverage, processes and organizational structure of the permitting authority. The EPA evaluated LDNR's permitting, administrative and judicial review procedures and reviewed the permit application, reporting, and manifest forms. The EPA also reviewed LDNR's description of the state's compliance tracking and enforcement mechanisms. The EPA evaluated LDNR's proposed schedule for issuing permits within the first 2 years after Class VI program approval. The EPA reviewed LDNR's description of the state agency staff who will carry out the Class VI program, including number, occupations, and general duties. The EPA also reviewed the Program Description to ensure that Louisiana has demonstrated that the state's Class VI program will have adequate in-house staff or access to contractor support for technical areas including site characterization, modeling, well construction, testing and monitoring, financial responsibility, regulatory and risk analysis expertise.

The EPA evaluated Louisiana's Class VI Attorney General's statement against 40 CFR 145.24 to ensure it meets federal requirements. The Attorney General's statement is required to ensure that a state's top legal officer affirms that state statutes, regulations and judicial decisions demonstrate adequate authority to administer the UIC Program as described in the program description and consistent with the EPA's regulatory requirements for UIC programs. The EPA independently evaluates and confirms that the Attorney General's statement certifies that the state either does not have environmental audit privilege and/or immunity laws, or, if there are environmental audit privilege and/or immunity laws, that they will not affect the ability of the state to meet the EPA's regulatory requirements regarding enforcement and information gathering.

The EPA evaluated Louisiana's Class VI MOA addendum against 40 CFR 145.25 to ensure it meets federal requirements. The MOA is the central agreement setting the provisions and arrangements between the state and the EPA concerning the administration, implementation, and enforcement of the state UIC Program. The EPA's evaluation includes ensuring that the MOA contains the necessary provisions pertaining to agreements on coordination, permitting, compliance monitoring, enforcement, and the EPA's oversight. For example, the LDNR Class VI MOA addendum specifies that LDNR and the EPA agree to maintain a high level of cooperation and coordination to assure successful and efficient administration of the UIC Class VI program. The EPA is aware that stakeholders have raised concern about Louisiana's long term liability provision in Louisiana Revised Statute (LA R.S.) 30:1109. As noted in the EPA's proposal, LDNR agreed in the MOA addendum that LDNR will not issue a certificate of completion pursuant to LA R.S. 30:1109 until the owner or operator submits a site closure report pursuant to 40 CFR 146.93(f) and Louisiana Code (LAC) 43:XVII.3633.A.6 and otherwise fully complies with the site closure requirements in 40 CFR 146.93 and LAC 43:XVII.3633.A. Additionally, LDNR agreed to coordinate with the EPA prior to LDNR approving any site closure to ensure doing so is consistent with the requirements of the federal Safe Drinking Water Act. During the comment period for the EPA's proposal, Louisiana signed into law Act No. 378 (HB 571), which revised Louisiana's long term liability provision in LA R.S. 30:1109. In this final rule, the EPA concludes that Louisiana's Class VI Program—considering the revisions made by Act 378 and as implemented consistent with the MOA addendum—meets federal requirements.

Louisiana has demonstrated that it has the legal authority to implement its Class VI program in conformance with the permit requirements found in 40 CFR 145.11. Louisiana's UIC Class VI permitting provisions are as stringent as permitting requirements found in 40 CFR 145.11. The state has incorporated necessary procedures, pursuant to 40 CFR 145.12 to support a robust compliance evaluation program for Class VI. For example, LDNR will maintain a program for periodic inspections of all Class VI facilities and activities subject to its authority. Additionally, Louisiana has the necessary civil and criminal

enforcement remedies pursuant to 40 CFR 145.13. The EPA has determined that Louisiana's enforcement authority related to the state's Class VI Program meets federal requirements. Louisiana's Class VI regulations regarding permitting, inspection, operation, and monitoring are at least as stringent as found in 40 CFR parts 145 and 146. Louisiana's reporting and recordkeeping requirements for Class VI wells are as stringent as found in 40 CFR 144.54 and 146.91.

E. Public Participation Activities Conducted by the EPA

On May 4, 2023, the EPA published a proposed rule in the **Federal Register** (88 FR 28450) to approve the state of Louisiana's application to implement a UIC program for Class VI injection wells within the state. The proposal established a 60-day public comment period that closed on July 3, 2023. The EPA held a three day in-person public hearing on June 21–23, 2023 in Baton Rouge, Louisiana and one virtual hearing on June 30, 2023. The EPA published notice of the public hearings on the EPA's website and in six major local newspapers in Louisiana. The EPA received oral comments from 156 people at the in-person public hearings and from 23 at the virtual hearing.

On June 30, 2023, LDNR supplemented its Class VI primacy application to include Act No. 378 (HB 571), which revised portions of Louisiana's law relevant to LDNR's application. On June 14, 2023, Act No. 378 was signed into law and went into effect during the comment period for the EPA's proposal. In response, on August 16, 2023, the EPA published a Notice of Availability in the **Federal Register** (88 FR 55610) providing a 30-day comment period specific to LDNR's supplement to its primacy application regarding Act No. 378, since this information was not available for public review and comment at the time of the proposal. This comment period closed on September 15, 2023.

On March 23, 2023, the EPA sent a written invitation to interested Tribes, requesting a consultation regarding the agency's review of Louisiana's request for Class VI program approval, in accordance with the EPA Policy for Consultation and Coordination with Indian Tribes (May 4, 2011). The EPA held a consultation conference call with interested Tribes on March 30, 2023. The Tribes did not raise any concerns during the consultation.

IV. Public Comments and the EPA's Responses

A. Public Comments

Following publication of the proposed rule, the EPA accepted public comments for 60 days. The EPA received 41,622 comments on the proposal from individuals and organizations representing a wide range of stakeholders, from individual citizens, energy, and industry groups, permittees, environmental and civil rights non-government organizations, local governments, members of the state Legislature, academia, and others. Of the comments received on the proposal, 36,151 were from mass mailing campaigns. In general, the EPA received comments from stakeholders that supported and opposed primacy approval.

Following publication of the NOA, the EPA accepted public comments for 30 days. The EPA received 6,997 comments from stakeholders similar to those received during the earlier public comment period for the proposal. Of the comments received on the supplemental notice, 6,940 were from mass mailing campaigns. In general, the majority of comments on the NOA that the EPA received supported primacy approval.

Each unique comment received for the proposal and the supplemental notice was read and considered in the development of this final rule. Copies of unique individual comments are available as part of the public record and can be accessed through the EPA's docket (ID No. EPA–HQ–OW–2023–0073). Documentation of the EPA's public participation activities, including comments received and the EPA's responsiveness summary can also be found in the docket (ID No. EPA–HQ–OW–2023–0073).

B. The EPA's Response to Comments

Comments received during the proposed rule and supplemental notice comment periods were similar to those received by the state of Louisiana during the state's public comment period. Commenters were concerned about the state's assumption of liability after completion of projects, whether LDNR had adequate staff and expertise to successfully permit and monitor Class VI projects, and LDNR's oversight of its existing UIC program. Commenters were also concerned about mitigation of risk, emergency response, community engagement, and Environmental Justice.

The EPA received comments during the proposal from commenters who stated that LDNR's proposed Class VI program meets or exceeds minimum federal requirements as well as from commenters who said that the state's proposed Class VI program failed to meet federal requirements. The EPA agrees with the many commenters that asserted that LDNR's proposed Class VI program meets the EPA's regulatory requirements and that approving Louisiana's Class VI primacy application is appropriate. The EPA worked closely with LDNR as the agency developed its regulations and Class VI primacy application. The final primacy application reflects the EPA's recommendations during that pre-application process. The EPA performed a thorough review of LDNR's primacy application, which describes how LDNR intends to oversee Class VI well owners or operators, including by reviewing permit applications, monitoring compliance with permits, and taking enforcement actions when appropriate.

Some commenters, noting that Louisiana has a state law provision concerning the transfer of long-term liability, argued that SDWA prohibits transfer of liability. The EPA disagrees that long term liability provisions are always incompatible with the SDWA and the EPA's UIC regulatory requirements. When promulgating its Class VI Rule (75 FR. 77272 Dec. 10, 2010), the EPA considered a range of comments regarding liability following site closure. Some commenters during that rulemaking urged that, ''after a GS site is closed, liability should be transferred to the State or Federal government or to a publicly- or industry-funded entity,'' while others disagreed ''that a public entity should bear liability following site closure.'' Ultimately, the EPA decided not to include regulatory provisions addressing long term liability after site closure in the Class VI Rule. The EPA explained this decision in part by noting that the SDWA does not grant the EPA the authority ''to transfer liability from one entity (*i.e.,* owner or operator) to another.'' It is important to note that, in making this statement, the EPA was not interpreting its UIC regulatory requirements as prohibiting primacy states from allowing liability transfer after site closure, but merely noting that, when the EPA acts as the Class VI permitting authority, it cannot do so. In short, the EPA did not conclude in the 2010 Class VI rule that states that authorize liability transfer after site closure cannot receive UIC Class VI primacy. However, such state liability transfer provisions must be appropriately crafted so that the state's Class VI program meets UIC regulatory requirements. Certain provisions could result in stringency issues. For example,

such issues may arise if a state law authorizes liability transfer before the permittee has fulfilled all of its UIC regulatory obligations, including all site closure requirements identified at 40 CFR 146.93. Further, as noted in the 2010 Class VI Rule preamble, even after the former permittee has fulfilled all of its UIC regulatory obligations, it may still be held liable for previous regulatory noncompliance. Thus, there may be stringency issues if a state law authorizes the permitting agency to release a former permittee from liability for earlier UIC violations. Additionally, as noted in the 2010 Class VI Rule preamble, a former permittee may always be subject to an order the Administrator deems necessary to protect public health if there is fluid migration that causes or threatens imminent and substantial endangerment to a USDW. The EPA's UIC regulations require that state UIC programs possess similar emergency authority (40 CFR 144.12(e)). Stringency issues will likely arise if state liability transfer provisions prohibit the EPA or the state UIC authority from subjecting a former permittee to such an emergency order. In conclusion, the EPA disagrees with commenters that SDWA and the UIC regulatory requirements prohibit state long term liability transfer provisions; however, when such provisions exist, they must be crafted so that the state Class VI program meets federal UIC regulatory requirements.

The EPA also received comments stating that the state's liability transfer provisions in Louisiana Revised Statute (LA R.S.) 30:1109 were in direct conflict with the EPA's Class VI regulations. As mentioned in the EPA's proposed approval, the EPA was aware that stakeholders had raised concern about Louisiana's long-term liability provisions, and the EPA and LDNR worked together to address stakeholder concerns by specifying in the Class VI MOA addendum that LDNR would not issue a certificate of completion pursuant to LA R.S. 30:1109 until the owner or operator submits a site closure report pursuant to 40 CFR 146.93(f) and Louisiana Administrative Code (LAC) 43:XVII.3633.A.6 and otherwise fully complies with the site closure requirements in 40 CFR 146.93 and LAC 43:XVII.3633.A. On August 16, 2023, the EPA provided notice that LDNR supplemented its primacy application to incorporate Act 378, which revised portions of Louisiana law relevant to long term liability including at LA R.S. 30:1109. Many commenters strongly supported Louisiana's passage of Act 378 stating that it strengthens the state's Class VI program because it prevents the issuance of certificates until ''Fifty years after cessation of injection into a storage facility'' or ''any other time frame established on a site-specific basis by application of the rules regarding the time frame for a storage operator's post-injection site care and site closure plan'' which matches the post-injection site care timeframes in the EPA's regulations (*see* 40 CFR 146.93(b)). The EPA agrees that the statutory revisions to the long-term liability provisions resolve the concern that transfer of liability could occur before a site is closed and the non-endangerment standard is met. Act 378 requires that before a certificate may be issued, it must be demonstrated that the owner or operator ''has complied with all applicable [UIC] regulations related to post-injection monitoring,'' the ''facility has been closed in accordance with all [UIC] regulations related to site closure,'' and the ''storage facility does not pose an endangerment to underground sources of drinking water, or the health and safety of the public.''

Additional commenters asserted that while Act 378 narrowed the scope of operator liability exemptions that were adopted in 2009, the state still does not have equivalent enforcement authority required by section 40 CFR 145.13(a)(1). The EPA disagrees with commenters that the state does not have enforcement authority as required by 40 CFR 145.13(a)(1). Overall, 40 CFR 145.13(a) requires a state agency to possess the ability to enforce ''violations of State program requirements.'' However, after an owner or operator has fully complied with all UIC Class VI regulatory requirements related to site closure, the former permittee is no longer subject to any Class VI regulatory requirements and therefore no ''violations'' could occur. Moreover, a certificate of completion issued pursuant to LA R.S. 30:1109 cannot release a former operator from any liabilities that arise from noncompliance with UIC regulatory requirements prior to issuance of the certificate. LA R.S. 30:1109.A(3). Further, as made explicit by Act 378, LDNR continues to possess authority to take emergency action to restrain any person, including a former operator of a Class VI well, from engaging in any activity which is endangering or causing damage to public health or the environment (*see* LAC 43:XVII.103.D.4). The EPA carefully reviewed Louisiana's statutes and regulations related to enforcement of its Class VI program and has determined that it meets federal requirements.

The EPA received a range of comments from stakeholders regarding LDNR's staff capacity and expertise. Some commenters expressed concern that LDNR has insufficient staff capacity and expertise to oversee the number of Class VI projects the commenters expected LDNR to eventually oversee. Conversely, other commenters stated that LDNR has a strong, well-established UIC program with dedicated, knowledgeable, and experienced staff. The EPA disagrees that LDNR staff lack the necessary expertise to oversee a Class VI program. The LDNR UIC program is comprised of staff with expertise in the variety of technical specialties needed to issue and oversee Class VI permits, including site characterization, modeling, well construction and testing, and finance. LDNR's staff competency is demonstrated via annual reviews with the EPA in accordance with the state's minimum qualifications for education and professional experience, and requirements to be a licensed professional engineer (P.E.) or geoscientist (or work under one) in good standing with either the Louisiana Professional Engineering and Land Surveying Board or Louisiana Board of Professional Geoscientists. The EPA understands that the state of Louisiana has a plan in place to expand its program to further support Class VI activities within the state by hiring seven additional staff and third-party contractors for modeling, risk and environmental justice analysis. In addition, the EPA stands ready to provide additional support as needed, including technical support, site specific analysis, and access to the experience and knowledge of the EPA staff in the regions, Headquarters, and the Office of Research and Development.

The EPA received a range of comments regarding LDNR's oversight of its existing UIC program. Some commenters stated that LDNR has significant institutional knowledge and expertise and has effectively regulated Class I–V injection wells and protected underground sources of drinking water since 1982. Other commenters stated that LDNR has a poor record of enforcing UIC and oil and gas program requirements and expressed concerns related to inspections, procedures for the public to report violations, whether fines are sufficient to deter noncompliance, and delays in enforcement. These commenters also provided examples of environmental incidents regulated by LDNR and other Louisiana agencies. They assert that LDNR is non-compliant with other environmental programs (*e.g.,* for

coastal and wetlands management), and asked the EPA to defer granting Class VI primacy until LDNR addresses these perceived deficiencies. The EPA notes that a number of the examples provided by commenters did not involve LDNR, which is the agency seeking Class VI primacy. Other examples did involve LDNR but were not related to UIC program implementation. The EPA agrees with commenters that inspections and enforcement actions are key components of a UIC program, and essential to ensuring compliance with UIC requirements. As LDNR describes in its Class VI MOA addendum with the EPA, LDNR will conduct periodic inspections of permittees to assess compliance with Class VI permits, to verify the accuracy of information submitted by operators in reporting forms and monitoring data, and to verify the adequacy of sampling, monitoring, and other methods to provide the information (MOA, Part III.D; *see also* 40 CFR 145.12(b)(2)). LDNR plans to devote 15 percent of its Class VI budget (first- and second-year Class VI budget estimates are $345,000 and $1.135 million respectively) to inspections and enforcement activities (Program Description, pg. 4). The EPA considers this to be appropriate and adequate to ensure that Class VI well owners or operators in Louisiana comply with the UIC requirements and their permits. With regard to Louisiana's current UIC program, all UIC enforcement and compliance records are publicly accessible on Louisiana's SONRIS Data Portal link at the top of the page at *https://www.sonris.com/* or onsite at the Injection and Mining Division of LDNR. Based on data it reports annually to the EPA, LDNR has over the past several years, taken an average of over 500 UIC enforcement actions annually. The EPA has determined that LDNR's Class VI program will have the capacity to perform the necessary inspections of all Class VI facilities and actives subject to LDNR's oversight to identify persons who have failed to comply with program requirements. 40 CFR 145.12(b). The EPA encourages residents to report violations to the state. Consideration of information submitted by the public about violations is a required element of 145.12(b)(3) and (b)(4). LDNR's Class VI primacy application indicates that LDNR has these programs in place at MOA Addendum 1, Sec. III.E. (p. 5) and Program Description, Sec. 5 (pp. 8–9). However, residents who are concerned that LDNR is not taking enforcement action against a violation of the UIC requirements may report a violation on the EPA's website at *www.epa.gov* (click on ''Report a Violation''), contact the EPA via the SDWA Hotline at (800) 426–4791, or email the EPA at *safewater@epa.gov.* The EPA will continue to oversee LDNR's administration of the SDWA Class VI program. The EPA conducts UIC program oversight to help ensure that states who have been granted primacy continue to implement their programs in a manner consistent with the SDWA and their memorandums of agreement with the EPA. *See* Class VI MOA addendum, section V, *EPA Oversight.* As part of the EPA's oversight responsibility, the EPA will conduct, at least annually, performance evaluations of the state's Class VI program using program reports and other requested information to determine state Class VI program consistency with the LDNR's approved program, SDWA, and applicable regulations. This includes a review of financial expenditures, progress on program implementation, and any departures from the Program Description; and MOA addendum. Any deficiencies in Class VI program performance will be shared with the state along with recommendations for improving state operations. In addition, the EPA's Region 6 Administrator may select Class VI activities and facilities within the state for the EPA to inspect jointly with the State. Further, in states with UIC primacy, the EPA maintains its independent authority to enforce violations of applicable UIC program requirements under SDWA 1423(a)(1), and its authority to act to address imminent and substantial endangerment under SDWA 1431.

Several commenters expressed concern that the state's Class VI UIC regulations do not have adequately robust monitoring mechanisms to mitigate risk to USDWs and ensure that projects are properly sited, permitted, and maintained. The EPA agrees that proper site selection and robust monitoring are fundamental components of the UIC program to ensure USDWs are protected. Further, the EPA finds that the monitoring requirements in LDNR's Class VI regulations, if properly implemented, adequately address the risks to USDWs associated with carbon dioxide injection for geologic sequestration because LDNR's monitoring requirements meet the EPA's Class VI regulatory requirements. For example, LAC 43: XVII.3625.A requires Class VI well owners or operators to develop and comply with an enforceable Testing and Monitoring Plan to verify that the geologic sequestration project is operating as permitted and is not endangering USDWs. The monitoring requirements of LDNR's Class VI rule are as stringent as those at 40 CFR 146.90 and ensure early warning of exceedances of operating conditions, damage to the injection well, changes in water quality, or unanticipated behavior of the carbon dioxide plume and pressure front that could endanger USDWs. Further, Louisiana regulations at LAC 43: XVII.3627 regarding monitoring for mechanical integrity are as stringent as the EPA's regulations on the same subject at 40 CFR 146.89 and LAC 43: XVII.3633 regarding post injection monitoring is as stringent as 40 CFR 146.93. The state's regulations, like the EPA's, require the development of enforceable testing and monitoring plans that are appropriately tailored to site-specific operational conditions and the geologic setting. The EPA concludes that this is the best approach for addressing the unique potential risks at each geologic sequestration project.

Additionally, some commenters asserted that the state's Class VI rule does not adequately address emergency scenarios (*i.e.,* evacuations and notification) involving endangerment to USDWs as well as situations that are broader than endangerment to USDWs. The EPA disagrees as LDNR's Class VI requirements for emergency and remedial response at LAC 43: XVII.625.A.1, are as stringent as the EPA's related requirements at 40 CFR 146.94 and are protective of USDWs. LDNR's regulations require Class VI well owners or operators to develop and comply with an enforceable site-specific Emergency and Remedial Response Plan with remedial actions to be taken in the event of an emergency in order to expeditiously mitigate any emergency situations and protect USDWs from endangerment. As stated in the EPA's 2018 UIC program Class VI Implementation Manual, the Emergency and Remedial Response Plan should consider the site operation, geology, local infrastructure, and the community's needs. While the federal Class VI regulations do not specify the specific content of the Emergency and Remedial Response Plan, the EPA encourages permittees in its 2012 UIC Class VI Well Project Plan Development Guidance to identify first responders (*e.g.,* police, fire) in the plan and include a section on how the owner or operator would communicate with first responders and the public about an emergency event.

Commenters asserted that LDNR lacks the statutory or regulatory authority to make the results of an EJ review part of a Class VI permitting decision or to

deny a permit based on EJ concerns. Commenters also expressed doubts about LDNR's or the state's commitment to EJ. The EPA acknowledges commenters' concerns about regulatory decisions not considering the environmental impacts of those decisions on disproportionately affected communities. In the Administrator's letter to state governors and Tribal leaders, the Administrator called for states seeking primacy to incorporate EJ and equity considerations into proposed UIC Class VI programs, including in permitting. The letter outlined a variety of approaches, including elements related to implementing an inclusive public participation process, consideration of EJ impacts on communities, enforcing Class VI regulatory requirements, and incorporating other mitigation measures. The EPA elaborated on these approaches in its Environmental Justice Guidance for UIC Class VI Permitting and Primacy that was released August 17, 2023. Additionally, the EPA's new UIC Class VI Grant Program (authorized by the Bipartisan Infrastructure Law) for states and Tribes seeking to establish or implement UIC Class VI primacy programs will require applicants to demonstrate how EJ and equity considerations are incorporated in their Class VI primacy programs. An integral part of Louisiana's Class VI primacy application (which includes a state Attorney Generals' statement that LDNR has authority to implement the Class VI Program as described) is a commitment to incorporating EJ considerations into the Class VI permitting process. LDNR's Program Description and Class VI MOA addendum both describe an EJ review process that is consistent with the EPA's guidance, including enhanced public participation, and incorporation of additional potential mitigation measures. LDNR's Class VI MOA addendum answers the EPA's request for states to incorporate EJ into their Class VI program by, among other things, adopting an inclusive public participation process. Louisiana will provide robust and ongoing opportunities for public participation, especially for lower-income people, communities of color, and those experiencing a disproportionate burden of pollution and environmental hazards. In its MOA addendum, LDNR described specific plans for tailoring notice of proposed Class VI wells to specific community needs and interests. Tailored public participation activities that LDNR may employ include scheduling public meetings at times convenient for residents, offering translation services where needed, enabling face-to-face or written feedback on permit applications early in the review process, convening local stakeholders and community groups for safety planning, and supporting the development of community benefits agreements (Class VI MOA addendum, Part II.H). The EPA agrees with commenters about the value of incorporating additional mitigation measures where appropriate for Class VI projects to address effects on already overburdened communities from all Class VI activities throughout the lifetime of the project. In its Class VI MOA addendum (Part II.H), Louisiana committed to work within its legal authority to prevent and/or reduce any adverse impacts to USDWs from well construction and operational activities. While the scope of Louisiana's UIC Program (and this primacy decision) is designed to protect USDWs, LDNR stated in its Class VI MOA addendum that it may work within its legal authority under state law to employ a range of mitigation measures to ensure that Class VI projects do not increase environmental impacts and public health risks in already overburdened communities. For example, LDNR's MOA addendum said such residential protection measures could include carbon dioxide monitoring and release notification networks, installation of enhanced pollution controls, or other measures to offset impacts by improving other environmental amenities for affected communities and providing resources for clean-up of previously degraded public areas.

V. Incorporation by Reference

In this action, the EPA is approving a revision to the state of Louisiana's UIC Program for primacy for regulating Class VI injection wells in the state, except for those located on Indian lands. Louisiana's statutes and regulations incorporated by reference in this final rule are publicly available in EPA's Docket No. EPA–HQ–OW–2023–0073. This action amends 40 CFR 147.950 and incorporates by reference EPA-approved state statutes and regulations that contain standards, requirements, and procedures applicable to Class VI owners or operators.

For clarity, the EPA is reformatting the codification of Louisiana UIC Program statutes and regulations for Well Classes I, II, III, IV, and V that the EPA already approved in previous approval actions, and which are already incorporated by reference into 40 CFR 147.950. Instead of codifying Louisiana statutes and regulations as separate paragraphs, the EPA is incorporating by reference a compilation that contains ''EPA-approved Louisiana SDWA § 1422 and § 1425 Underground Injection Control Program Statutes and Regulations for Well Classes I, II, III, IV, V, and VI,'' dated November 8, 2023. This compilation is incorporated by reference into 40 CFR 147.950 and is available at *https://www.regulations.gov* in the docket for this final rule. The EPA has also codified a table listing EPA-approved Louisiana Statutes and Regulations for Well Classes I, II, III, IV, V, and VI in 40 CFR 147.950, including those already incorporated by reference.

The EPA will oversee Louisiana's administration of the SDWA Class VI program and will continue to oversee Louisiana's administration of the programs for SDWA Class I, II, III, IV, and V wells. The EPA will require quarterly reports of non-compliance and annual UIC performance reports pursuant to 40 CFR 144.8. The MOA addendum between the EPA and Louisiana, signed by the Regional Administrator on March 3, 2023, articulates that the EPA will oversee the state's administration of the UIC Class VI program on a continuing basis to assure that such administration is consistent with the program MOAs, the state UIC grant application, and all applicable requirements embodied in current regulations and federal law. In addition, the MOA addendum provides that the EPA may request specific information including permits and the accompanying EJ reviews.

VI. Statutory and Executive Orders Reviews

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

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

This action is exempt from review under Executive Order 12866, as amended by Executive Order 14094, because the Office of Management and Budget has exempted, as a category, the approval of state UIC programs.

B. Paperwork Reduction Act (PRA)

This action does not impose any information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2040–0042. Reporting or recordkeeping requirements will be based on Louisiana's Class VI UIC Regulations,

and the State of Louisiana is not subject to the PRA.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action does not impose any requirements on small entities as this action approves an existing state program.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or Tribal governments or the private sector. The EPA's approval of Louisiana's Class VI program will not constitute a federal mandate because there is no requirement that a state establish UIC regulatory programs and because the program is a state, rather than a federal program.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have Tribal implications as specified in Executive Order 13175. This action contains no federal mandates for Tribal governments and does not impose any enforceable duties on Tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions considered significant under section 3(f)(1) of Executive Order 12866 and that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it approves a state program.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This action does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations; Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

EPA believes that it is not practicable to assess whether the human health or environmental conditions that exist prior to this action result in disproportionate and adverse effects on communities with EJ concerns. There currently are no Class VI wells permitted in Louisiana and because this is a procedural action. The EPA has reviewed Louisiana's proposed approach to environmental justice, as outlined in the Program Description and Class VI MOA addendum, and described in section IV.B of this preamble. The EPA considers Louisiana's Class VI primacy application to fully integrate environmental justice and equity considerations into the state's UIC Class VI program, while ensuring protection of USDWs. This action would provide Louisiana with primacy under SDWA section 1422 for a UIC Class VI program, pursuant to which Louisiana will implement a program that meets the EPA's requirements for UIC Class VI programs.

K. Congressional Review Act (CRA)

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

VII. References

Memorandum of Agreement Addendum 3 between the State of Louisiana and EPA, Region VI for the UIC Class VI Program, signed by the EPA Regional Administrator on March 3, 2023.

State of Louisiana Class VI Underground Injection Control Program 1422 Description, April 2021.

USEPA. 2012. Geologic Sequestration of Carbon Dioxide—UIC Program Class VI Well Project Plan Development Guidance. August 2012. Office of Water. EPA 816–R–11–017

USEPA. 2018. Geologic Sequestration of Carbon Dioxide—UIC Program Class VI Implementation Manual for UIC Program Directors. January 2018. Office of Water. EPA 816–R–18–001

USEPA. 2022. U.S. Environmental Protection Agency. EPA Administrator's EJ Letter to State Governors, from Michael S. Regan, EPA Administrator. (December 9, 2022).

USEPA. 2023a. U.S. Environmental Protection Agency. EPA Administrator's EJ Letter to Tribal leaders, from Michael S. Regan, EPA Administrator. (January 11, 2023).

USEPA. 2023b. U.S. Environmental Protection Agency. Memorandum to Water Division Directions, Regions I–X, from Radhika Fox, Office of Water. Environmental Justice Guidance for UIC Class VI Permitting and Primacy (August 17, 2023).

List of Subjects in 40 CFR Part 147

Environmental protection, Incorporation by reference, Indian lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR part 147 as follows:

PART 147—STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND INJECTION CONTROL PROGRAMS

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

Authority: 42 U.S.C. 300f *et seq.;* and 42 U.S.C. 6901 *et seq.*

■ 2. Amend § 147.950 by:
■ a. Revising the section heading, the introductory text, and paragraph (a);
■ b. Adding a paragraph (b) heading and adding paragraphs (b)(3) and (4) and (c)(4); and
■ c. Revising paragraph (d).

The revisions and additions read as follows.

§ 147.950 State-administered program—Class I, II, III, IV, V and VI wells.

The UIC program for Class I, II, III, IV, and V wells in the State of Louisiana, except those wells on Indian lands, is the program administered by the Louisiana Department of Natural Resources approved by EPA pursuant to sections 1422 and 1425 of the SDWA. Notice of this approval was published in the **Federal Register** on April 23, 1982; the effective date of this program is March 23, 1982. The UIC Program for Class VI wells in Louisiana, except those located on Indian lands, is the program administered by the Louisiana

Department of Natural Resources, approved by EPA pursuant to SDWA section 1422. The effective date of this program is February 5, 2024. The UIC program for Class I, II, III, IV, V, and VI wells in the State of Louisiana, except those located on Indian lands, consists of the following elements, as submitted to EPA in the State's program application and program revision application.

(a) *Incorporation by reference.* The requirements set forth in the state statutes and regulations approved by the EPA for including in ''EPA-approved Louisiana SDWA § 1422 and § 1425 Underground Injection Control Program Statutes and Regulations for Well Classes I, II, III, IV, V, and VI, dated November 8, 2023, and listed in table 1 to this paragraph (a), are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Louisiana. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the State of Louisiana's statutes and regulations that are incorporated by reference may be inspected at the U.S. Environmental Protection Agency, Region VI Library, U.S. Environmental Protection Agency, 1201 Elm Street, Suite 500, Dallas, Texas 75270 and the U.S. Environmental Protection Agency, Water Docket, EPA Docket Center (EPA/DC), EPA WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20004. If you wish to obtain materials from the EPA Regional Office, please call (214) 665–7515, or from the EPA Headquarters Library, please call the Water Docket at (202) 566–2426. You may also view this material 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.*

TABLE 1 TO PARAGRAPH (a)—EPA-APPROVED LOUISIANA SDWA SEC. 1422 AND SEC. 1425 UNDERGROUND INJECTION CONTROL PROGRAM STATUTES AND REGULATIONS FOR WELL CLASSES I, II, III, IV, V, AND VI

State citation	Title/subject	State effective date	EPA approval date
Louisiana Revised Statutes Annotated §§ 30:1–30:24.	Minerals, Oil, and Gas and Environmental Quality.	January 1, 1975, and Supp. 1982	June 25, 1984.
Louisiana Administrative Code 43: XVII Chapter 1 (Statewide Order No. 29–N–1).	Underground Injection Control Program Regulations for Class I, III, IV, and V wells.	February 20, 1982, as amended June 1, 1985 and January 20, 1986.	March 6, 1991.
Louisiana Administrative Code 43: XIX Chapters 1–6 (Statewide Order No. 29–B).	Statewide Order Governing the Drilling for and Producing of Oil and Gas in the State of Louisiana.	August 26, 1974 as amended July 20, 1980, January 1 1981, February 20, 1982, May 20, 1983, May 20, 1984, and July 1 1985.	March 6, 1991.
Louisiana Administrative Code 43: XVII Chapter 3 (Statewide Order No. 29–M).	Hydrocarbon Storage Wells in Salt Dome Cavities.	July 6, 1977, as amended October 2, 1978, June 8, 1979.	June 25, 1984.
Louisiana Revised Statutes Annotated §§ 30:1101–30:1112.	Louisiana Geologic Sequestration of Carbon dioxide Act.	July 10, 2009 as amended June 14, 2023	January 5, 2024, **FEDERAL REGISTER** CITATION].
Louisiana Administrative Code 43: XVII Chapter 36 (Statewide Order No. 29–N–6).	Class VI Injection Wells	January 20, 2021	January 5, 2024, [**FEDERAL REGISTER** CITATION].

(b) *Memorandum of Agreement (MOA).* * * *

(3) Memorandum of Agreement Addendum 3 between the State of Louisiana and EPA, Region VI for the UIC Class VI Program, signed by the EPA Regional Administrator on March 3, 2023.

(4) Letter from Governor of Louisiana to Regional Administrator, EPA Region VI, March 4, 2021.

(c) * * *

(4) Attorney General's Statement ''Attorney General's Statement to Accompany Louisiana's Underground Injection Control Program Class VI Primacy Application,'' signed by the Attorney General for the State of Louisiana, February 10, 2021.

(d) *Program Description.* The Program Description and any other materials submitted as part of the application or amendment thereto, and the Program Description and any other materials submitted as part of the program revision application or amendment thereto.

[FR Doc. 2024–00044 Filed 1–4–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 384 and 386

[Docket No. FMCSA–2023–0174]

RIN 2126–AC60

General Technical, Organizational, Conforming, and Correcting Amendments to the Federal Motor Carrier Safety Regulations; Correction

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Correcting amendments.

SUMMARY: In a final rule published in the **Federal Register** on November 17, 2023, FMCSA amended its regulations by making technical corrections throughout the Federal Motor Carrier Safety Regulations (FMCSRs). The final rule had an incorrect paragraph number in the instruction for an amendment and, in an amendment replacing a term, erroneously failed to replace the possessive form of the term. The Agency corrects these errors.

DATES: This correction is effective January 5, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Nicholas Warren, Regulatory Development Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–6124; *nicholas.warren@dot.gov.*

SUPPLEMENTARY INFORMATION: On November 17, 2023, FMCSA published a final rule (88 FR 80169) that amended its regulations by making technical corrections throughout the FMCSRs. The rule made minor changes to correct inadvertent errors and omissions, remove or update obsolete references, and improve the clarity and consistency of certain regulatory provisions. The rule also made a change to its rules of organization, procedures, and practice. Through this document, FMCSA corrects two errors in that final rule.

Correction

First, in amendment no. 48, the instruction incorrectly identified paragraph (b)(2) of § 384.209 as one of

the paragraphs revised in that amendment. The correct paragraph is (b)(1), as shown in the regulatory text in that amendment. The amendment was carried out as intended, but FMCSA in this document is correcting the instruction for the record.

Therefore, in FR Doc. 2023–24160 appearing on page 80169 in the **Federal Register** of November 17, 2023, the following correction is made:

§ 384.209 [Corrected]

■ 1. On page 80182, in the first column, in amendment 48, the instruction ''Amend § 384.209 by revising paragraphs (a)(1) and (b)(2) to read as follows:'' is corrected to read ''Amend § 384.209 by revising paragraphs (a)(1) and (b)(1) to read as follows:''.

Second, amendment no. 56 replaced the text ''Assistant Administrator'' with the text ''Agency Decisionmaker'' throughout most of part 386. However, the amendment inadvertently omitted an instruction replacing the possessive form ''Assistant Administrator's'' with ''Agency Decisionmaker's'' which appears in a few sections of the part. This document provides an amendment to replace that possessive form accordingly.

List of Subjects in 49 CFR Part 386

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials transportation, Highway safety, Highways and roads, Motor carriers, Motor vehicle safety, Penalties.

In consideration of the foregoing, FMCSA amends 49 CFR part 386 by making the following correcting amendments:

PART 386—RULES OF PRACTICE FOR FMCSA PROCEEDINGS

■ 1. The authority citation for part 386 continues to read as follows:

Authority: 28 U.S.C. 2461 note; 49 U.S.C. 113, 1301 note, 31306a; 49 U.S.C. chapters 5, 51, 131–141, 145–149, 311, 313, and 315; and 49 CFR 1.81, 1.87.

§ 386.64 [Amended]

■ 2. Amend § 386.64 in paragraph (e) by removing the text ''Assistant Administrator's'' and adding in its place the text ''Agency Decisionmaker's''.

§ 386.66 [Amended]

■ 3. Amend § 386.66 in paragraph (a) introductory text by removing the text ''Assistant Administrator's'' and adding in its place the text ''Agency Decisionmaker's''.

§ 386.73 [Amended]

■ 4. Amend § 386.73 in paragraphs (g)(8) introductory text, (g)(9), and (h)(7) by removing the text ''Assistant Administrator's'' and adding in its place the text ''Agency Decisionmaker's''.

Issued under authority delegated in 49 CFR 1.87.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–00016 Filed 1–4–24; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 89, No. 4
Friday, January 5, 2024

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.

INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

2 CFR Chapter XVI

Nonprocurement Suspension and Debarment

AGENCY: U.S. International Development Finance Corporation.

ACTION: Proposed rule.

SUMMARY: The U.S. International Development Finance Corporation (DFC) invites the general public and other Federal agencies to take this opportunity to comment on proposed nonprocurement debarment and suspension regulations. Under this system, a person who is debarred or suspended is excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. The proposed regulations adopt the common rule format established by the Office of Management and Budget (OMB). In this document DFC proposes establishing a new CFR chapter that adopts OMB's final Governmentwide guidance on nonprocurement debarment and suspension and contains supplemental DFC nonprocurement debarment and suspension provisions.

DATES: Comments must be received by March 5, 2024.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Mail:* Deborah Papadopoulos, Records and Information Management Specialist, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527.
- *Email: fedreg@dfc.gov.*

Instructions: All submissions received must include the subject ''DFC Proposed Rule on Suspension and Debarment.'' Please note that all written comments received in response to this notice will be considered public records.

FOR FURTHER INFORMATION CONTACT: Agency Submitting Officer: Deborah Papadopoulos, (202) 357–3979, *Email: fedreg@dfc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order 12549 (51 FR 6370, February 18, 1986) established a Governmentwide debarment and suspension system covering the full range of Federal procurement and nonprocurement activities, and to establish procedures for debarment and suspension from participation in Federal nonprocurement programs. Section 6 of the Executive order authorized OMB to issue guidelines to Executive departments and agencies that govern which programs and activities are covered by the Executive order, prescribe Governmentwide criteria and Governmentwide minimum due process procedures, and set forth other related details for the effective administration of the guidelines. Section 3 directed agencies to issue implementing regulations that are consistent with OMB guidelines.

OMB issued an interim final guidance that implemented a common rule for Governmentwide Debarment and Suspension (Nonprocurement). This common rule is codified in part 180 of title 2 of the Code of Federal Regulations (70 FR 51864, August 31, 2005). In addition to restating and updating its guidance on nonprocurement debarment and suspension, the interim final guidance requires all Federal agencies to adopt a new approach to Federal agency implementation of the guidance. OMB requires each agency to issue a brief rule that: (1) Adopts the guidance, giving it regulatory effect for that agency's activities; and (2) states any agency-specific additions, clarifications, and exceptions to the Governmentwide policies and procedures contained in the guidance.

Under this system, a person who is debarred or suspended is excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency is registered with the General Services Administration (GSA)-maintained System for Award Management (SAM) exclusion list and has Governmentwide, reciprocal effect on that participant's ability to obtain procurement and nonprocurement contracts.

After notice and comment by the public, DFC intends to adopt the OMB regulations found in 2 CFR part 180 with agency specific additions and clarifications. To adopt these regulations, 2 CFR 180.25 requires Federal agencies to address certain agency specific elements. Accordingly, the following proposed regulations state what contracts are covered under this policy, identify the official authorized to grant exceptions to an excluded persons list, and state the person responsible for communicating requirements to both first and second tier program participants. By default, elements not addressed in the agency specific regulations will be covered by the Governmentwide sections in the common rule.

Invitation To Comment

We intend the proposed new chapter in 2 CFR to adopt the OMB guidelines with specified agency additions and clarifications as outlined in this notice of proposed rulemaking. We invite comments on the provisions contained in the common rule as well as any aspect of this proposed rulemaking.

Regulatory Analysis

Executive Order 12866

DFC is an independent agency and is not subject to Executive Order 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and Tribal Governments, in aggregate, or by the private sector of $100 million or more in any one year.

Paperwork Reduction Act of 1995

This proposed rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States,

on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 2 CFR Part XVI

Administrative practice and procedure, Assistance programs, Debarment and suspension, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, under the authority at 2 CFR 180.30, the United States International Development Finance Corporation proposes to add 2 CFR chapter XVI (16), consisting of parts 1600–1699, to read as follows:

Chapter XVI (16)—US International Development Finance Corporation

PART 1600—NONPROCUREMENT DEBARMENT AND SUSPENSION

PARTS 1601–1699 [RESERVED]

PART 1600—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 54 FR 34131, 3 CFR, 1989 Comp., p. 235.

§ 1600.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the U.S. International Development Finance Corporation (DFC) regulations for non-procurement debarment and suspension. It thereby gives regulatory effect for DFC to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR, 1986 Comp., p. 189); Executive Order 12689, ''Debarment and Suspension'' (3 CFR, 1989 Comp., p. 235); and section 2455 of the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (31 U.S.C. 6101 note).

§ 1600.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see subpart B of 2 CFR part 180 and the definition of ''non-procurement transaction'' at 2 CFR 180.970);

(b) Respondent in a DFC suspension or debarment action;

(c) DFC suspending or debarring official; and

(d) DFC investment, guarantee, insurance or grant official authorized to enter into any type of non-procurement transaction that is a covered transaction.

§ 1600.30 What regulations must I follow?

The DFC regulations that you must follow are the regulations specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180 as that section is supplemented by the section in this part with the same section number or by additional provisions with no corresponding section number. For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, DFC regulations are those in the OMB guidance.

Subpart A—General

§ 1600.137 Who in DFC may grant an exception to let an excluded person participate in a covered transaction?

The Chief Executive Officer (CEO) of DFC or designee may grant an exception permitting an excluded person to participate in a particular covered transaction. If the CEO of DFC or designee grants an exception, the exception must be in writing and state the reason(s) for deviating from the Governmentwide policy in Executive Order 12549.

Subpart B—Covered Transactions

§ 1600.215 Which nonprocurement transactions are not covered transactions?

In addition to the nonprocurement transactions which are not covered transactions under 2 CFR 180.215, any nonprocurement transaction entered into under a primary tier nonprocurement transaction that does not require DFC explicit prior consent is not a covered transaction under 2 CFR 180.215(g)(2).

§ 1600.220 What contracts and subcontracts are covered transactions?

None. Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (see also optional lower tier coverage in the figure in the appendix to 2 CFR part 180), DFC does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement under a covered nonprocurement transaction. Moreover, for purposes of determining whether a procurement contract is included as a covered transaction, the threshold in 2 CFR 180.220(b) is increased from $25,000 to the ''simplified acquisition threshold'' as defined in 48 CFR 2.101.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 1600.332 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

You, as a participant, must include a term or condition in lower-tier transactions that are covered transactions, requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 1600.437 What method do I use to communicate to a participant the requirements for participating in a covered transaction?

To communicate to a participant the requirements described in 2 CFR 180.435, you must include provisions in the contractual documentation of the transaction to ensure compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part.

The provisions must also require the participant to include similar terms or conditions of compliance in lower-tier covered transactions.

Subparts E and F [Reserved]

Subpart G—Suspension

§ 1600.765 How may I request reconsideration of my DFC suspension?

(a) If the DFC suspending official issues a decision under 2 CFR 180.755 to continue your suspension after you present information in opposition to that suspension under 2 CFR 180.720, you can ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) The suspending official must notify you of their decisions under this section, in writing, using the notice procedures at 2 CFR 180.615 and 180.975.

Subpart H—Debarment

§ 1600.890 How may I request reconsideration of my DFC debarment?

(a) If the DFC debarring official issues a decision under 2 CFR 180.870 to debar you after you present information in opposition to a proposed debarment under 2 CFR 180.815, you can ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(d) The debarring official must notify you of their decisions under this section, in writing, using the notice procedures at 2 CFR 180.615 and 180.975.

Subpart I—Definitions

§ 1600.930 Debarring official.

The debarring official for DFC is the Vice President & Chief Administrative Officer, Office of Administration, or designee as delegated in Agency policy.

§ 1600.1010 Suspending official.

The suspending official for DFC is the Vice President & Chief Administrative Officer, Office of Administration, or designee as delegated in Agency policy.

Subpart J [Reserved]

Dated: December 14, 2023.

Dev Jagadesan,

Deputy General Counsel, Office of the General Counsel, U.S. International Development Finance Corporation.

[FR Doc. 2023–28838 Filed 1–4–24; 8:45 am]

BILLING CODE 3210–02–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2023–0011; Notice No. 229]

RIN 1513–AD04

Proposed Establishment of the Tryon Foothills Viticultural Area

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes establishing the approximately 176-square mile ''Tryon Foothills'' viticultural area in Polk County, North Carolina. The proposed viticultural area is not within any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to its regulations.

DATES: Comments must be received by March 5, 2024.

ADDRESSES: You may electronically submit comments to TTB on this proposal using the comment form for this document posted within Docket No. TTB–2023–0011 on the *Regulations.gov* website at *https://www.regulations.gov.* At the same location, you also may view copies of this document, the related petition and selected supporting materials, and any comments TTB receives on this proposal. A direct link to that docket is available on the TTB website at *https://www.ttb.gov/wine/notices-of-proposed-rulemaking* under Notice No. 229. Alternatively, you may submit comments via postal mail to the Director, Regulations and Ruling Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005. Please see the Public Participation section of this document for further information on the comments requested on this proposal and on the submission, confidentiality, and public disclosure of comments.

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

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). In addition, the Secretary of the Treasury has delegated certain administrative and enforcement authorities to TTB through Treasury Order 120–01.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and, once approved, a name and a delineated boundary codified in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an

approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions to establish or modify AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Tryon Foothills Petition

TTB received a petition from Cory J. Lillberg, vineyard manager of Parker-Binns Vineyard, proposing the ''Tryon Foothills'' AVA. Mr. Lillberg submitted the petition on behalf of Parker-Binns Vineyard and other local vineyard and winery operators. The proposed Tryon Foothills AVA is located in Polk County, North Carolina. It contains approximately 176 square miles, with five vineyards covering a total of approximately 77.70 acres spread throughout the proposed AVA. There are also four wineries within the proposed AVA.

According to the petition, the distinguishing features of the proposed Tryon Foothills AVA include its topography and climate. Unless otherwise noted, all information and data pertaining to the proposed AVA is from the petition and its supporting exhibits.

Name Evidence

The proposed Tryon Foothills AVA is located in the Inner Piedmont region of the Blue Ridge Mountains of North Carolina and includes the town of Tryon. The petition states that the Inner Piedmont region is commonly referred to as the ''foothills'' of the Blue Ridge Mountains. For example, the petition references the Tryon Fitness and Health Club, which states on its website that it is ''located in the beautiful foothills of Tryon, NC. . . .'' The petition also notes that the website of Polk County Schools, which serves the region of the proposed AVA and is headquartered in Columbus, North Carolina, states that its schools are ''. . . in a small, mostly rural county in the foothills of the Blue Ridge Mountains.'' A real estate company serving the proposed AVA has a section on its website describing ''Fall in Tryon's Foothills.'' [1] The petition provides other examples of business or organizations within or serving the proposed AVA that use the term ''foothills'' including the Carolina Foothills Chamber of Commerce, Foothills Community Chapel, Grace Foothills Church, the Foothills Equestrian Nature Center, the Foothills Astronomical Society, Foothills Fine Art, Foothills Pharmacy, and the Foothills Music Club.

The petition also includes examples of use of the term ''Tryon Foothills'' to describe the region of the proposed AVA. A travel website encourages visitors to ''[u]nwind at the picturesque vineyards in the Tryon Foothills Wine Country.'' [2] A listing on a vacation rental website offers a home that is available for a ''Tryon Foothills Getaway.'' [3] A second vacation rental website also features rentals ''in the Tryon Foothills.'' [4] The Tryon Foothills Classic is an annual horse jumping event held in the proposed AVA. A limousine service offers tours of the wineries of the ''Tryon foothills.'' [5] Finally, Tryon Foothills Realty is a real estate agency located in Tryon.

Boundary Evidence

The proposed Tryon Foothills AVA is roughly shaped like a triangle with the apex pointing north. The proposed eastern boundary follows the shared Polk-Rutherford County line and separates the proposed AVA from lower elevations. The proposed southern boundary follows the shared North Carolina-South Carolina State line and separates the proposed AVA from regions that are not associated with the town of Tryon. The proposed western boundary follows the 1,200-foot elevation contour and separates the proposed AVA from the higher elevations of the Blue Ridge Escarpment.

Distinguishing Features

The distinguishing features of the proposed Tryon Foothills AVA include its topography and climate.

Topography

The proposed Tryon Foothills AVA is located on the western edge of the Inner Piedmont region of the Blue Ridge Mountains. The petition describes the Inner Piedmont as a region of low mountains and rolling hills. The average elevation within the proposed AVA is 988 feet, while the maximum elevation is 1,656 feet and the minimum is 712 feet.

To the west and northwest of the proposed AVA are the Blue Ridge Escarpment and the Blue Ridge Plateau. The petition describes the Blue Ridge Escarpment as steep and rugged, while the Blue Ridge Plateau is an elevated massif of basins and ranges that constitutes the bulk of the Blue Ridge Mountains. Elevations in both of these regions are significantly higher than within the proposed AVA, with average elevations of 2,584 feet and 2,649 feet, respectively. The region to the northeast of the proposed AVA is also higher, with an average elevation of 1,652 feet. This region is comprised of portions of the Blue Ridge Escarpment and the Inner Piedmont, as well as the South Mountains. Elevations immediately east of the proposed AVA in the Inner Piedmont region are higher but then decline as the Inner Piedmont region gives way to the Carolina Superterrane. The average elevation east of the proposed AVA is 987 feet, while the maximum is 2,968 feet and the minimum is 567 feet. South of the proposed AVA is a continuation of the Inner Piedmont region, but the elevations are generally lower than within the proposed AVA. The average elevation south of the proposed AVA is 880 feet, while the maximum and minimum elevations are 3,341 feet and 390 feet, respectively.

According to the petition, the proposed AVA's topography contributes to the creation of a thermal belt. At night, warm air that has accumulated at high elevations loses its heat by conductive radiation. The air becomes cooler and heavier and begins to sink to lower elevations. As the cool air sinks, it displaces the warmer air at lower elevations. The warm air settles on the mountain slopes above the cascading cooler air and creates a warmer layer of air above the cooler air. This warmer

[1] *http://lakeshillsandhorses.com/blog.*

[2] *https://www.romanticasheville.com/wine-country.*

[3] *https://www.airbnb.com/rooms/4297004.*

[4] *https://Yondervacationrentals.com/vacation-rentals/tryon.*

[5] *https://www.tryonwinetours.com.*

layer is known as a thermal belt. Within the proposed Tryon Foothills AVA, the thermal belt results in warmer temperatures than are found in the surrounding regions.

Climate

To support the claim that the climate of the proposed Tryon Foothills AVA differs from that of the surrounding regions, the petition includes information on the average annual temperatures, average growing season temperatures, average growing season length, and average annual growing degree day [6] (GDD) accumulations for locations within the proposed AVA and the surrounding regions. The petition also included average annual and growing season precipitation amounts for the proposed AVA and the surrounding regions. All data was collected using the 1980–2010 climate normals.

The petition states that, in general, the regions to the west, northwest, and northeast of the proposed AVA are cooler and have a greater range of average temperatures than the proposed AVA. The region south of the proposed AVA is warmer, as temperatures grow progressively warmer the farther south one travels from the proposed AVA. The proposed AVA and the region to the east have approximately the same average annual temperatures, but the region to the east has a lower average minimum temperature.

TABLE 1—AVERAGE ANNUAL TEMPERATURES IN DEGREES FAHRENHEIT (F)

Region	Average minimum	Average maximum	Average
Proposed AVA	59	60	59.2
Northwest	47	59	54.1
Northeast	49	59	56.7
East	53	60	59.1
South	54	61	60.3
West	47	59	54.6

The petition also categorizes average growing season temperatures [7] according to the Winegrape Climate/Maturity Groupings classification system.[8] Although a percentage of each of the regions fall into the ''Hot'' category, the proposed Tryon Foothills AVA is entirely within the ''Hot'' category, indicating a warmer growing season than the surrounding regions. According to the classification system, ''Hot'' regions are most suitable for growing varietals of grapes such as Zinfandel, Grenache, and Cabernet Sauvignon.

TABLE 2—DISTRIBUTION OF WINEGRAPE CLIMATE/MATURITY GROUPINGS

Region	Percentage of region in each grouping			
	Cool (55–59 degrees F)	Intermediate (59–63 degrees F)	Warm (63–67 degrees F)	Hot (67–72 degrees F)
Proposed AVA	.....	.....	.....	100
Northwest	0.49	26.89	69.31	3.31
Northeast	.....	8.93	22.21	68.86
East	.....	.....	2.03	97.97
South	.....	.....	2.72	97.28
West	0.72	9.77	76.41	13.10

The petition included information on the average length of the growing season for the locations within the proposed AVA and the surrounding regions. Within each region there are a range of growing seasons based primarily on elevation. Although each region has a percentage of land within the 200–210 day growing season range, the proposed AVA has the largest percentage of land within this range. Each of the surrounding regions also contains lands that have growing seasons that are as short as 170 days, while the shortest growing season length within the proposed AVA is between 190 and 200 days.

TABLE 3—GROWING SEASON LENGTH COMPARISON

Comparison areas	Growing season length in days									
	120–130	130–140	140–150	150–160	160–170	170–180	180–190	190–200	200–210	210–220
	Percentage of occurrence in each area									
Proposed AVA	.....	.....	.....	.....	.....	.....	.....	0.40	99.6	.....
Northwest	0.01	0.03	1.04	4.10	12.16	24.22	51.84	5.64	0.73	.....

[6] *See* Albert J. Winkler, *General Viticulture* (Berkeley: University of California Press, 1974), pp. 61–64. In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual Growing Degree Days (GDDs), defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees F, the minimum temperature required for grapevine growth. The Winkler scale regions are as follows: Region Ia: 1,500–2,000 GDDs; Region Ib: 2,000–2,500 GDDs; Region II: 2,500–3,000 GDDs; Region III: 3,000–3,500 GDDs; Region IV: 3,500–4,000 GDDs; Region V: 4,000–4,900 GDDs.

[7] The growing season is defined as the period from April 1 to October 31.

[8] Jones, G.V., *Climate and Terroir Variability and Change on Wine: Presentation: In Fine Wine and Terroir—The Geoscience Perspective,* McQueen, R.W., and Meinert, L.D. (eds.), Geoscience Canada Reprint Series Number 9, Geological Association of Canada, St. John's Newfoundland, (2006), p. 247.

TABLE 3—GROWING SEASON LENGTH COMPARISON—Continued

Comparison areas	Growing season length in days									
	120–130	130–140	140–150	150–160	160–170	170–180	180–190	190–200	200–210	210–220
	Percentage of occurrence in each area									
Northeast	.....	.....	0.09	0.50	3.03	6.76	13.48	42.74	33.41	.....
East	.....	.....	.....	.....	.....	0.09	1.31	7.17	91.43	.....
South	.....	.....	.....	.....	.....	1.12	1.55	3.14	87.26	6.93
West	.....	0.08	0.50	2.01	7.42	33.77	48.85	5.70	0.67	.....

To further demonstrate the warm climate of the proposed Tryon Foothills AVA, the petition provided information on the GDDs of the proposed AVA and the surrounding regions. The proposed AVA has a larger percentage of land classified as Region V than any of the surrounding regions, except the region to the south. Unlike each of the surrounding regions, the proposed AVA lacks land classified as Region III or lower.

TABLE 4—GROWING DEGREE DAY COMPARISONS

Comparison areas	Growing degree day zones						
	Too cold	IA	IB	II	III	IV	V
	Percentage of occurrence in each area						
Proposed AVA	.....	.....	.....	.....	.....	5.0	95.0
Northwest	0.1	0.8	14.0	32.0	49.0	4.0	0.1
Northeast	.....	0.1	5.0	11.0	14.0	61.0	8.9
East	.....	.....	.....	0.1	1.3	16.0	82.6
South	.....	.....	.....	0.7	1.8	1.9	95.6
West	0.1	0.7	10.9	36.6	49.2	2.5	.....

The petition also included information on the percentage of land within the proposed AVA and surrounding regions that is in each of the four Viticultural Suitability Zones.[9] The zones are based on climate conditions and were designed to help determine the best grape varietals to grow in a given area. The zones range from Zone 1, the warmest, to Zone 4, the coldest. The petition compared the proposed AVA, which is located in Polk County, to neighboring Rutherford, Cleveland, and Gaston Counties.[10] The zones indicate that temperatures increase as one moves eastward towards the Atlantic Ocean. According to the petition, 82 percent of the proposed Tryon Foothills AVA is in Zone 3, which is best suited to vinifera, hybrid, and native American varieties of grapes, and 18 percent is in Zone 2, which is suitable for growing a variety of muscadines, vinifera, hybrid, and native American varieties of grapes. Gaston County, the easternmost county in the comparison area, has a large percentage of land in Zone 1, which is recommended only for muscadines. None of the comparison areas contained land in the coldest Zone 4, although counties farther to the west of the proposed AVA do have some areas that are in Zone 4.[11]

TABLE 5—VITICULTURAL SUITABILITY ZONES

Comparison areas	Areas (sq. miles) and percentages of land in each zone			
	Total area	Zone 3	Zone 2	Zone 1
Proposed AVA	175.8	82.0	18.0	.....
Rutherford County	565.7	68.7	31.3	.....
Cleveland County	468.1	30.9	69.1	.....
Gaston County	364.0	.....	28.0	72.0

Finally, the petition included information on the average annual and growing season [12] precipitation amounts for the proposed AVA and surrounding regions. With respect to annual precipitation amounts, the proposed AVA has higher average amounts than each of the surrounding regions except the region to the west, lower maximum amounts than each region except those to the northeast and east, and higher minimum amounts than each of the surrounding regions. For growing season precipitation amounts, the proposed AVA has higher minimum

[9] *The North Carolina Winegrape Grower's Guide:* Raleigh, NC, North Carolina Cooperative Extension Service (E. Barclay Poling, Sara Spayd, eds., 2015), available at *Content.ces.ncsu.edu/north-carolina-winegrape-growers-guide.* A copy of the zone map is included in the petition as Figure 19 in Docket No. TTB–2023–0011 at *https://www.regulations.gov.*

[10] Rutherford County is located to the north, northeast, and east of Polk County. Cleveland County is adjacent to and due east of Rutherford County, while Gaston County is adjacent to and due east of Cleveland County.

[11] See Figure 19 to the petition in Docket TTB–2023–0011 at *https://www.regulations.gov.*

[12] Defined in the petition as the period from April 1 through October 1.

amounts than each of the surrounding regions, higher average amounts than each of the surrounding regions except the region to the west, and maximum amounts lower than each region except the regions to the northeast and east. According to the petition, the ideal growing season precipitation amount for mature grapevines is 24 to 30 inches.[13] Excessive growing season precipitation can promote excess vigor and fungal diseases and attracts pests. Insufficient growing season precipitation can result in reduced photosynthesis, cell desiccation, and potential death of the grapevines.

TABLE 6—AVERAGE ANNUAL AND GROWING SEASON PRECIPITATION

[Amounts (in inches)]

Comparison areas	Average annual precipitation			Average growing season precipitation		
	Minimum	Maximum	Average	Minimum	Maximum	Average
Proposed AVA	49	65	53.3	28	38	30.9
Northwest	36	72	46.3	22	41	26.9
Northeast	40	60	49.8	27	36	29.6
East	45	59	49.4	26	34	28.7
South	44	83	50.2	25	47	28.7
West	45	93	63.9	27	51	36.6

TTB Determination

TTB concludes that the petition to establish the proposed Tryon Foothills AVA merits consideration and public comment, as invited in this notice of proposed rulemaking.

Boundary Description

See the narrative description of the boundary of the petitioned-for AVA in the proposed regulatory text published at the end of this proposed rule.

Maps

The petitioner provided the required maps, and TTB lists them below in the proposed regulatory text. You may also view the proposed Tryon Foothills AVA boundary on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

If TTB establishes this proposed AVA, its name, ''Tryon Foothills,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using the name ''Tryon Foothills'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the AVA name as an appellation of origin if TTB adopts this proposed rule as a final rule.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether it should establish the proposed Tryon Foothills AVA. TTB is also interested in receiving comments on the sufficiency and accuracy of required information submitted in support of the petition. Please provide specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Tryon Foothills AVA on wine labels that include the term ''Tryon Foothills'' as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed AVA name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the proposed AVA.

Submitting Comments

You may submit comments on this proposal by using one of the following methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this document within Docket No. TTB–2023–0011 on ''*Regulations.gov*,'' the Federal e-rulemaking portal, at *https://www.regulations.gov.* A direct link to that docket is available under Notice No. 229 on the TTB website at *https://www.ttb.gov/wine/notices-of-proposed-rulemaking.* Supplemental files may be attached to comments submitted via *Regulations.gov.* For complete instructions on how to use *Regulations.gov,* visit the site and click on the FAQ link at the bottom of the page.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005. Please submit your comments by the closing date shown above in this document. Your comments must reference Notice No. 229 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and

[13] *The North Carolina Wine-grape Grower's Guide:* Raleigh, NC State Extension.

we consider all comments as originals. Your comment must clearly state if you are commenting on your own behalf or on behalf of an organization, business, or other entity. If you are commenting on behalf of an organization, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via *Regulations.gov,* please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality and Disclosure of Comments

All submitted comments and attachments are part of the rulemaking record and are subject to public disclosure. Do not enclose any material in your comments that you consider confidential or that is inappropriate for disclosure.

TTB will post, and you may view, copies of this document, the related petition and selected supporting materials, and any comments TTB receives about this proposal within the related *Regulations.gov* docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB's Regulations and Rulings division by email using the web form available at *https://www.ttb.gov/contact-rrd,* or by telephone at 202–453–2265, if you have any questions about commenting on this proposal or to request copies of this document, the related petition and its supporting materials, or any comments received.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993, as amended. Therefore, no regulatory assessment is required.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.____ to read as follows:

§ 9.____ Tryon Foothills.

(a) *Name.* The name of the viticultural area described in this section is ''Tryon Foothills''. For purposes of part 4 of this chapter, ''Tryon Foothills'' is a term of viticultural significance.

(b) *Approved maps.* The 10 United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Tryon Foothills viticultural area are:

(1) Lake Lure, NC, 1982; photoinspected 1987;

(2) Shingle Hollow, NC, 1982;

(3) Pea Ridge, NC, 1982;

(4) Rutherfordton South, NC, 1966;

(5) Fingerville East, SC-NC, 1993 (provisional edition);

(6) Fingerville West, SC-NC, 1983 (provisional edition);

(7) Landrum, SC-NC, 2020;

(8) Saluda, NC-SC, 2019;

(9) Cliffield Mountain, NC, 1997; and

(10) Mill Spring, NC, 1982; photorevised 1990.

(c) *Boundary.* The Tryon Foothills viticultural area is located in Polk County, North Carolina. The boundary of the viticultural area is as described as follows:

(1) The beginning point is on the Lake Lure map at the intersection of the 1,200-foot elevation contour and the shared Polk-Rutherford County line just west of State Highway 9 and north of an unnamed road known locally as Owl Hollow Road. From the beginning point, proceed clockwise along the shared Polk-Rutherford County line and across the Shingle Hollow, Pea Ridge, and Rutherford South maps and onto the Fingerville East map, to the intersection of the shared Polk-Rutherford County line and the shared North Carolina-South Carolina State line; then

(2) Proceed west along the shared North Carolina-South Carolina State line across the Fingerville East, Fingerville West, and Landrum maps and onto the Saluda map to the intersection of the North Carolina-South Carolina State line with the 1,200-foot elevation contour north of Dug Hill Road; then

(3) Proceed generally northerly along the meandering 1,200-foot elevation contour, crossing back and forth onto the Landrum and Saluda maps and onto the Mill Spring map, and continuing along the 1,200-foot elevation contour as it crosses onto the Cliffield Mountain map and then back onto the Mill Spring map and finally onto the Lake Lure map, returning to the beginning point at the intersection of the 1,200-foot elevation contour and the shared Polk-Rutherford County line just west of State Highway 9.

Signed: December 19, 2023.

Mary G. Ryan,

Administrator.

Approved: December 20, 2023.

Thomas C. West, Jr.,

Deputy Assistant Secretary (Tax Policy).

[FR Doc. 2024–00058 Filed 1–4–24; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2023–0012; Notice No. 230]

RIN 1513–AD07

Proposed Establishment of the Nashoba Valley Viticultural Area

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the approximately 18,367-acre ''Nashoba Valley'' viticultural area in Worcester County, Massachusetts. The proposed viticultural area is not within any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to its regulations.

DATES: Comments must be received by March 5, 2024.

ADDRESSES: You may electronically submit comments to TTB on this proposal using the comment form for this document posted within Docket No. TTB–2023–0012 on the *Regulations.gov* website at *https://www.regulations.gov.* At the same location, you also may view copies of this document, the related petition and selected supporting materials, and any comments TTB receives on this proposal. A direct link to that docket is available on the TTB website at *https://www.ttb.gov/wine/notices-of-proposed-rulemaking* under Notice No. 230. Alternatively, you may submit comments via postal mail to the Director, Regulations and Ruling Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005. Please see the Public Participation section of this document for further information on the comments requested on this proposal and on the submission, confidentiality, and public disclosure of comments.

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

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). In addition, the Secretary of the Treasury has delegated certain administrative and enforcement authorities to TTB through Treasury Order 120–01.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and, once approved, a name and a delineated boundary codified in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions to establish or modify AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Nashoba Valley Petition

TTB received a petition from Justin Pelletier, Chief Operating Officer and Quality Control Manager of Nashoba Valley Winery, proposing the establishment of the ''Nashoba Valley'' AVA on behalf of Nashoba Winery. The proposed AVA is located in Worcester County, Massachusetts, and contains approximately 18,367 acres. There are three vineyards covering a total of approximately 16 acres within the proposed AVA. According to the petition, the distinguishing features of the proposed Nashoba Valley AVA include its soils and climate. Unless otherwise noted, all information and data pertaining to the proposed AVA is from the petition and its supporting exhibits.

Name Evidence

According to the petition, Nashoba Valley is the name given to a region of Massachusetts in northwestern Middlesex and northeastern Worcester Counties that roughly encompasses the land around the interchange of Interstate 495 and Massachusetts Route 2. Although the name ''Nashoba Valley'' applies to the entire region, commercial viticulture currently occurs only in the Worcester County portion of the valley. Therefore, the proposed Nashoba Valley AVA is limited to the portion of the valley that is in Worcester County.

The petition included multiple examples of businesses and organizations located within or serving the region of the proposed AVA that use the name ''Nashoba Valley.'' The Nashoba Valley Ski Area and Nashoba Valley Tubing Park are recreational areas, and Nashoba Valley Winery and Nashoba Valley Spirits produce alcohol beverages within the proposed AVA. The proposed AVA is served by the Nashoba Valley Chamber of Commerce, and the Nashoba Valley Regional Dispatch District answers emergency and non-emergency public safety calls within the region. The Nashoba Valley Voice covers local news within the proposed AVA. Other businesses within or serving the proposed AVA include Nashoba Valley Fitness, Nashoba Valley Express Company, Nashoba Valley Movement Dance Studio, COWS of Nashoba Valley, Oh Deer of Nashoba Valley, Nashoba Valley Elder Care, and Life Care Center of Nashoba Valley.

Boundary Evidence

The northern boundary of the proposed Nashoba Valley AVA follows Massachusetts Route 117 to separate the proposed AVA from Fort Devens and the Bolton Flats Wildlife Management Area, neither of which are available for commercial viticulture. The proposed eastern boundary follows Interstate 495 to separate the proposed AVA from regions with climates that are more heavily influenced by the Atlantic Ocean and Cape Cod Bay. The proposed southern boundary follows a series of

roads that separate the proposed AVA from the Wachusett Reservoir and, farther south, the city of Worcester and its suburbs. According to the petition, Worcester was historically a manufacturing town and, as a result, has little land available for commercial agricultural activities. The proposed western boundary follows Interstate 190 and separates the proposed AVA from areas with soils and climates that differ from the proposed AVA.

Distinguishing Features

The distinguishing features of the proposed Nashoba Valley AVA include its soils and climate.

Soils

The petition states that most of the soil within the proposed Nashoba Valley AVA has parent soil of supraglacial till, subglacial till, alluvial deposits, and glaciofluvial deposits. The petition notes that soils within the proposed AVA are classified by the U.S. Department of Agriculture (USDA) as ''prime farmland,'' which means that they have specific physical and chemical characteristics that make them well suited for growing crops.[1] The most common soils in the proposed AVA belong to the Paxton soil series and comprise approximately 21 percent of the soils in the AVA. These soils are well-drained loamy soils and are moderately deep to very deep. The soil depth allows for unobstructed root growth, as roots can penetrate moderately deeply before hitting denser soils and very deeply before touching bedrock. The petition states that the soils promote strong root systems that allow grapevines to survive the harsher winters within the proposed AVA. The petition also states that the soils promote strong root systems that allow grapevines to survive the harsher winters within the proposed AVA. Paxton soils also have high saturated hydraulic conductivity values, which means that water moves quickly through the soil. The petition states this soil characteristic is essential for successful viticulture as it aids in minimizing fungal infections and rot.

To the immediate north of the proposed AVA are Fort Devens and the Bolton Flats Wildlife Management Area, which are not available for commercial viticulture. Further north, the soils have a slower water infiltration rate and do not drain as quickly as soils within the proposed AVA. East of the proposed AVA, the soils have a very slow water infiltration rate and a high-water table, increasing both the risk of flooding and fungal disease in vineyards. The region south of the proposed AVA is largely urban, with little land left open for agriculture to occur. The petition notes that what open land does exist is not classified as ''prime farmland'' by the USDA. To the west, the soils are shallower than within the proposed AVA and have a slow water infiltration rate.

Climate

The petition states that the proposed Nashoba Valley AVA has a warm climate suitable for growing grape varietals such as Albarino, Cabernet Franc, Chardonnay, Riesling, and St. Croix, among others. Throughout the growing season, average monthly temperatures range from a low of 47 degrees Fahrenheit (F) to 72 degrees F. July is typically the warmest month when the average high temperature is 82 degrees F. The proposed Nashoba Valley AVA has an average of 1,697 growing degree days (GDDs) [2] calculated in degrees Celsius,[3] which places it in Region III of the Winkler system.

According to the petition, wind is another climate factor that affects viticulture within the proposed AVA. The petition states that between March and May, average wind speeds within the proposed AVA range from 6.6 to 4.7miles per hour. In the springtime, air movement through the vineyards can reduce the risk of frost damage to new tender shoots and buds. However, more intense winds during the same period can damage shoots and flowers, which will lead to a smaller harvest. During the summer months of June to August, average wind speeds range from 4.2 to 3.9 miles per hour. According to the petition, humidity increases and rainstorms are common within the proposed AVA during the summer, so the gentle winds can decrease the time it takes for vineyards to dry and lessen the potential for molds and mildews to form.

To the north, the town of Fitchburg has a cooler climate than the proposed AVA. Fitchburg's average GDD accumulations total 1,536, placing it in the Region II category. Average monthly temperatures are lower for each month except July, when they are the same as the average monthly temperature for the proposed AVA. Additionally, Fitchburg has lower monthly average wind speeds. To the east, the city of Waltham's average GDD accumulations place it in the Region III category, which is the same as the proposed AVA. However, Waltham still has higher average GDD accumulations than the proposed AVA, with 1,738 GDDs. Waltham also has higher average monthly wind speeds than the proposed AVA, ranging from 4.3 to 7.6 miles per hour. South of the proposed AVA, the city of Worcester's climate is classified as Region II, with an average accumulation of 1,598 GDDs. During the growing season, Worcester also has slightly lower average monthly temperatures and average monthly wind speeds than the proposed AVA. To the west of the proposed AVA, the town of Barre also has a Region II climate, with average accumulations of 1,548 GDDs and lower average monthly temperatures throughout the year. Average monthly wind speeds in Barre are also lower each month than wind speeds within the proposed AVA.

Summary of Distinguishing Features

The following table summarizes the features of the proposed Nashoba Valley that distinguish it from the surrounding regions.

[1] See Appendix C to the petition in Docket No. TTB–2023–0012 at *https://www.regulations.gov.*

[2] *See* Albert J. Winkler, *General Viticulture* (Berkeley: University of California Press, 1974), pages 61–64. In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual Growing Degree Days (GDDs), defines climatic regions. One GDD accumulates for each degree Celsius that a day's mean temperature is above 10 degrees C, the minimum temperature required for grapevine growth. The Winkler scale regions are as follows: Region Ia, 850–1,111 GDDs; Region Ib, 1,112–1,389 GDDs; Region II, 1,390–1,667 GDDs; Region III, 1,668–1,944 GDDs; Region IV, 1,945–2,222 GDDs; Region V, 2,223–2,700 GDDs.

[3] Unless otherwise noted, all GDD accumulations listed in this document are in degrees Celsius.

FEATURES OF THE PROPOSED NASHOBA VALLEY AVA AND SURROUNDING REGIONS

Region	Features	
	Soils	Climate
Proposed AVA ..	Derived from supraglacial till, subglacial till, alluvial deposits, and glaciofluvial deposits; classified as ''prime farmland''; Paxton series is most prevalent; deep, well-drained loams.	Average monthly growing season temperatures range from 47 to 72 degrees F; average of 1,697 GDDs (Celsius); Winkler Region III; growing season wind speeds range from 6.6 to 4.7 mph.
North	Slow water infiltration rate	Cooler climate with lower average monthly temperatures; average of 1,536 GDDs; Winkler Region II; lower wind speeds.
South	Little land open for agricultural purposes; land not classified as ''prime farmland''.	Cooler climate with slightly lower average monthly temperatures; average of 1,598 GDDs; Region II; lower average monthly wind speeds.
East	Very slow water infiltration rate and high-water table	Average of 1,738 GDDs; Region III; higher average monthly wind speeds.
West	Shallower soils with slow water infiltration rate	Cooler climate with lower average monthly temperatures; average of 1,548 GDDs; Region II; lower average monthly wind speeds.

TTB Determination

TTB concludes that the petition to establish the proposed Nashoba Valley AVA merits consideration and public comment, as invited in this notice of proposed rulemaking.

Boundary Description

See the narrative description of the boundary of the petitioned-for AVA in the proposed regulatory text published at the end of this proposed rule.

Maps

The petitioner provided the required maps, and TTB lists them below in the proposed regulatory text. You may also view the proposed Nashoba Valley AVA boundary on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

If TTB establishes this proposed AVA, its name, ''Nashoba Valley,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using the name ''Nashoba Valley'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the AVA name as an appellation of origin if TTB adopts this proposed rule as a final rule.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether it should establish the proposed Nashoba Valley AVA. TTB is also interested in receiving comments on the sufficiency and accuracy of required information submitted in support of the petition. Please provide specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Nashoba Valley AVA on wine labels that include the term ''Nashoba Valley'' as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed AVA name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the proposed AVA.

Submitting Comments

You may submit comments on this proposal by using one of the following methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this document within Docket No. TTB–2023–0012 on ''*Regulations.gov*,'' the Federal e-rulemaking portal, at *https://www.regulations.gov.* A direct link to that docket is available under Notice No. 230 on the TTB website at *https://www.ttb.gov/wine/notices-of-proposed-rulemaking.* Supplemental files may be attached to comments submitted via *Regulations.gov.* For complete instructions on how to use *Regulations.gov,* visit the site and click on the ''FAQ'' link at the bottom of the page.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

Please submit your comments by the closing date shown above in this document. Your comments must reference Notice No. 230 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

Your comment must clearly state if you are commenting on your own behalf or on behalf of an organization, business, or other entity. If you are commenting on behalf of an organization, business, or other entity,

your comment must include the entity's name as well as your name and position title. If you comment via *Regulations.gov*, please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

TTB will post, and you may view, copies of this document, selected supporting materials, and any online or mailed comments received about this proposal within Docket No. TTB–2023–0012 on the Federal e-rulemaking portal, *Regulations.gov,* at *https://www.regulations.gov.* A direct link to that docket is available on the TTB website at *https://www.ttb.gov/wine/notices-of-proposed-rulemaking* under Notice No. 230. You may also reach the relevant docket through the *Regulations.gov* search page at *https://www.regulations.gov.* For instructions on how to use *Regulations.gov,* visit the site and click on the ''FAQ'' link at the bottom of the page.

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Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993, as amended. Therefore, no regulatory assessment is required.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.____ to read as follows:

§ 9.____ Nashoba Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Nashoba Valley''. For purposes of part 4 of this chapter, ''Nashoba Valley'' is a term of viticultural significance.

(b) *Approved maps.* The 2 United States Geological Survey (USGS) 1:100,000 scale topographic maps used to determine the boundary of the Nashoba Valley viticultural area are:

(1) Hudson, MA, 2021; and

(2) Clinton, MA, 2021.

(c) *Boundary.* The Nashoba Valley viticultural area is located in Worcester County, Massachusetts. The boundary of the viticultural area is as described as follows:

(1) The beginning point is on the Hudson map at the intersection of Route 62 (also known as Central Street) and I–495 in Hudson, Massachusetts. From the beginning point, proceed southwest, then westerly on Route 62 for a total of 4.5 miles, crossing onto the Clinton map, to the point where it intersects and becomes concurrent with Route 70 (also known as Boylston Street); then

(2) Proceed north on Route 70/Route 62 for 2.09 miles to its intersection with Route 110/Main Street in Clinton, Massachusetts; then

(3) Proceed south on Route 110/Main Street as it becomes known as West Boylston Road, and continue along West Boylston Road for a total of 1 mile to its intersection with South Meadow Road; then

(4) Proceed north along South Meadow Road for 0.95 mile to its intersection with Moffett Street in Lancaster, Massachusetts; then

(5) Proceed northwest along Moffett Street to its intersection with an unnamed road known locally as Chace Hill Road; then

(6) Proceed northeast along Chace Hill Road to its intersection with Sterling Street (also known as Route 62); then

(7) Proceed northwesterly along Sterling Street/Route 62 to its intersection with an unnamed road known locally as Chocksett Road; then

(8) Proceed northwesterly along Chocksett Road to its intersection with Pratts Junction Road; then

(9) Proceed northwesterly along Pratts Junction Road to its intersection with I–190; then

(10) Proceed northerly along I–190 for 2.35 miles to its intersection with Route 117 in Leominster, Massachusetts; then

(11) Proceed southeasterly along Route 117 for 7.8 miles, crossing onto the Hudson map, to its intersection with I–495; then

(12) Proceed southerly along I–495 to the beginning point.

Signed: December 19, 2023.

Mary G. Ryan,

Administrator.

Approved: December 20, 2023.

Thomas C. West, Jr.,

Deputy Assistant Secretary (Tax Policy).

[FR Doc. 2024–00060 Filed 1–4–24; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2023–0010; Notice No. 228]

RIN 1513–AD01

Proposed Establishment of the Conneaut Creek Viticultural Area

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the 70,437-acre ''Conneaut Creek'' American viticultural area (AVA) in Ashtabula County, Ohio. The proposed AVA is located entirely within the boundaries of the existing Lake Erie AVA. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on these proposals.

DATES: TTB must receive your comments on or before March 5, 2024.

ADDRESSES: You may electronically submit comments to TTB on this proposal, and view copies of this document, its supporting materials, and any comments TTB receives on it within Docket No. TTB–2023–0010 as posted on *Regulations.gov* (*https://www.regulations.gov*), the Federal e-rulemaking portal. Please see the ''Public Participation'' section of this document below for full details on how to comment on this proposal via *Regulations.gov* or U.S. mail, and for full details on how to obtain copies of this document, its supporting materials, and any comments related to this proposal.

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

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act provisions pursuant to section 1111(d) of the Homeland Security Act of 2002, as codified at 6 U.S.C. 531(d). In addition, the Secretary of the Treasury has delegated certain administrative and enforcement authorities to TTB through Treasury Order 120–01.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and, once approved, a name and a delineated boundary codified in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions to establish or modify AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.
- If the proposed AVA is to be established within, or overlapping, an existing AVA, an explanation that both identifies the attributes of the proposed AVA that are consistent with the existing AVA and explains how the proposed AVA is sufficiently distinct from the existing AVA, and therefore appropriate for separate recognition.

Petition To Establish the Conneaut Creek AVA

TTB received a petition from Andrew Kirk, a research specialist at Ohio State University—Ashtabula Agricultural Research Station, proposing to establish the ''Conneaut Creek'' AVA on behalf of the Committee for Establishment of the ''Conneaut Creek AVA,'' comprised of local industry and institutional stakeholders. The proposed AVA is located in Ashtabula County, Ohio, and is entirely within the established Lake Erie AVA (27 CFR 9.83). The proposed AVA consists of the land within 2 miles of Conneaut Creek within the State of Ohio, for a total of approximately 37,116 acres. There are six commercial vineyards covering a total of approximately 45 acres within the proposed AVA, as well as three wineries. The distinguishing feature of the proposed Conneaut Creek AVA is its climate.

Proposed Conneaut Creek AVA

Name Evidence

The proposed AVA takes its name from Conneaut Creek, which runs through the region and empties into Lake Erie near the Ohio-Pennsylvania border. According to the petition, one of the earliest examples of the use of the name ''Conneaut Creek'' comes from the diary of Moses Cleveland, a surveyor who landed at the mouth of the creek on the Lake Erie shoreline in 1796 and referred to the creek as ''Conneaught Creek,'' an anglicized spelling of the Seneca name for the creek. The creek also gives its name to the city of Conneaut, Ohio, which is within the

proposed AVA. The petition includes several examples of businesses and organizations within the proposed AVA that use the name ''Conneaut'' or ''Conneaut Creek,'' including Conneaut Creek Veterinary Wellness and Urgent Care, Conneaut Creek Float and Fly Shop, the Conneaut Creek Club, Conneaut Creek Ship Repair, Friends of Conneaut Creek, and Conneaut Creek Fishing Lodge.

Boundary Evidence

The proposed Conneaut Creek AVA encompasses the portion of Conneaut Creek that is in Ohio. Although the creek originates in Pennsylvania, the petition states that the Ohio-Pennsylvania border is used as the eastern boundary of the proposed AVA because at the time the petition was submitted, commercial viticulture did not exist along Conneaut Creek in Pennsylvania. The boundary of the proposed AVA begins at the point where Conneaut Creek intersects the Ohio-Pennsylvania State line. The proposed AVA then encompasses all land within 2 miles of the creek within the State of Ohio, to the point where the creek empties into Lake Erie. The petition states that a 2-mile radius around the creek encapsulates the climate, topography, and soil type of the proposed AVA, the primary characteristic being a climate that is strongly influenced by winds blowing inland from Lake Erie. According to the petition, the climatic influence of these winds lessens the farther one travels from both the Lake Erie shoreline and the banks of Conneaut Creek.

Distinguishing Feature

According to the petition, the distinguishing feature of the proposed Conneaut Creek AVA is its climate, which is influenced by air moving inland from Lake Erie via Conneaut Creek. The headwaters of the creek are in Pennsylvania, and it primarily flows south to north within that State. However, within the proposed AVA, Conneaut Creek flows from east to west for some time, parallel to Lake Erie, before resuming a northward trajectory into the lake. The proposed AVA is also located along a considerable northeasterly curve of the shoreline. The petition states that due to the shape of the shoreline, air flowing into the proposed AVA has travelled across the waters of Lake Erie for a longer distance than at locations along the shoreline that are farther to the west. Therefore, the air has more time to be affected by the temperature of the water it is passing over. The result is that temperatures in the proposed AVA are typically cooler for longer in the spring growing season, when the water temperature is generally cooler than the air temperature; less extreme in the summer; and warmer in the winter, when the water temperature is generally warmer than the air temperature. By comparison, temperatures in locations farther from the lake are typically warmer in the summer and cooler in the winter than the proposed AVA.

To demonstrate how airflow over Lake Erie affects temperatures, the petition included the average growing degree day [1] (GDD) accumulations from 2015 to 2020 from within the proposed Conneaut Creek AVA and from the city of Fremont, Ohio, which is located within the western portion of the Lake Erie AVA and is not as close to the lake as the proposed AVA. The average GDD accumulation for the proposed AVA was 2,996.6, while the average GDD accumulation from Fremont was 3,379. The petition states that the difference of 382.4 GDDs is equivalent to 3.5 to 4 extra weeks of heat accumulation, indicating a warmer climate in Fremont.

According to the petition, the cooler temperatures of the proposed Conneaut Creek AVA affect grape maturation and levels of malic acid, sugar (measured in degrees Brix), and phenols (which affect flavor, smell, and color). The petition provided information about must from pinot noir grapes harvested on the same date in 2019 from a vineyard in the proposed AVA and from two vineyards in the nearby Grand River Valley AVA (27 CFR 9.87), which is located within the Lake Erie AVA to the southwest of the proposed AVA. The information is set out in the following table. The petition notes that within the proposed AVA, the farthest a vineyard can be from Lake Erie is 6.5 miles, with most existing vineyards being within three miles of Lake Erie. In the Grand River Valley AVA, the closest a vineyard could be to the lake is 7.5 miles.

TABLE 1—COMPARISON OF PROPOSED AVA AND GRAND RIVER VALLEY AVA PINOT NOIR MUST

Location	Brix	Total phenolics (mg/L)	Titratable acidity (g/L)
Proposed AVA	17	317	10.4
Grand River Valley AVA Site #1	20.8	608	7.4
Grand River Valley AVA Site #2	20	584	8.1

According to the petition, the cooler growing season temperatures of the proposed Conneaut Creek AVA are reflected in the higher levels of acid in the grape must. Malic acid degradation is primarily a function of temperature, both ambient and in the leaf canopy, with warmer temperatures reducing acid levels. Cooler growing season temperatures also slow the development of sugar and phenolic components in the grapes, resulting in grape must with lower degrees of Brix and fewer total phenolics.

The petition also included similar information for juice from pinot noir grapes harvested on the same day in 2018 from a vineyard within the proposed AVA and from a vineyard in the city of Vermilion, Ohio, which is located west of the proposed AVA along the central portion of the Lake Erie shoreline and is also within the Lake Erie AVA. The information is set out in the following table.

[1] *See* Albert J. Winkler et al., *General Viticulture* (Berkeley: University of California Press, 2nd ed.), pages 61–64 (1974). In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual GDDs, defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees F, the minimum temperature required for grapevine growth.

TABLE 2—COMPARISON OF PROPOSED AVA AND LAKE ERIE AVA PINOT NOIR JUICE

Location	GDD on date of harvest	Brix	Total phenolics
Proposed AVA	2,407	16	406
Vermilion, OH	2,703	19.8	669

The data indicates that Brix levels and the number of total phenolics in the juice from grapes grown in the proposed AVA are lower than those in the juice from the Vermilion vineyard grapes. The lower sugar and phenolics levels, along with the lower GDD accumulations, demonstrate that the proposed AVA has cooler temperatures, even though the proposed AVA and the city of Vermilion are both close to the Lake Erie shore. The data also supports the petition's claim that the proposed Conneaut Creek AVA's location on the northeasterly curve of Lake Erie shoreline allows the air passing over the lake during the growing season to cool for a greater length of time than air that reaches the shoreline farther to the west.

The petition states that lower sugar and phenolic levels and higher acid levels can also be found when comparing cabernet franc grapes grown in the proposed Conneaut Creek AVA to the same varietal grown in the Grand River Valley AVA and the western end of the Lake Erie AVA. The petition notes that cabernet franc grapes typically ripen later than pinot noir, regardless of where they are grown. The following table sets out the information.

TABLE 3—COMPARISON OF CABERNET FRANC FRUIT MATURITY

Year	Harvest date	Grape components	Proposed Conneaut Creek AVA	Grand River Valley AVA	Western portion of Lake Erie AVA
2018	October 10	Brix	19.6	20.2	21
		Total phenolics (mg/L)	399	544	488
		Titratable acidity (mg/L)	6	4.6	N/A
2019	October 10	Brix	20.4	22.2	N/A
		Total phenolics (mg/L)	469	531	N/A
		Titratable acidity (mg/L)	9.6	6	N/A
2020	October 9	Brix	21.8	22	N/A
		Total phenolics (mg/L)	320	380	N/A
		Titratable acidity (mg/L)	10.1	7.9	N/A

The petition did not include data related to growing season temperatures within the region to the east of the proposed AVA, in Pennsylvania, because the region lacked viticulture at the time the petition was submitted.

Comparison of the Proposed Conneaut Creek AVA to the Existing Lake Erie AVA

The Lake Erie AVA was established by T.D. ATF–156, which was published in the **Federal Register** on October 21, 1983 (48 FR 48819). T.D. ATF–156 states that the AVA is distinguished by its proximity to Lake Erie, which ''exerts a moderating influence'' on temperatures. Locations adjacent to the lake are more protected from extreme minimum and maximum temperatures than regions farther from the lake. T.D. ATF–156 also states that ''[s]oils, elevations, and other physiographic features are diverse and * * * do not directly form the basis'' for distinguishing the AVA.

The proposed Conneaut Creek AVA also has the lake-influenced climate that is the primary feature of the Lake Erie AVA. However, due to its location on the northeastern edge of the Lake Erie AVA and its maximum distance of 6.5 miles from the lake, the proposed AVA has a cooler growing season than locations within the Lake Erie AVA that are farther west or farther inland.

TTB Determination

TTB concludes that the petition to establish the approximately 37,116-acre ''Conneaut Creek'' AVA merits consideration and public comment, as invited in this document.

Boundary Description

See the narrative boundary descriptions of the petitioned-for AVA in the proposed regulatory text published at the end of this document.

Maps

The petitioner provided the required maps, and they are listed below in the proposed regulatory text. You may also view the proposed Conneaut Creek AVA boundary on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

If TTB establishes this proposed AVA, its name, ''Conneaut Creek,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using ''Conneaut Creek'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that

the product is eligible to use the viticultural area's name ''Conneaut Creek.'' The approval of the proposed Conneaut Creek AVA would not affect any existing AVA, and any bottlers using ''Lake Erie'' as an appellation of origin or in a brand name for wines made from grapes grown within the Conneaut Creek AVA would not be affected by the establishment of this new AVA. If approved, the establishment of the proposed Conneaut Creek AVA would allow vintners to use ''Conneaut Creek,'' ''Lake Erie,'' or both AVA names as appellations of origin for wines made from grapes grown within the proposed AVA, if the wines meet the eligibility requirements for the appellation.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether TTB should establish the proposed Conneaut Creek AVA. TTB is interested in receiving comments on the sufficiency and accuracy of the name, boundary, and other required information submitted in support of the AVA petition. TTB invites comments on whether the boundary description, which only includes land within the proposed boundary that is also within 2 statute miles of Conneaut Creek within the AVA, is sufficient to identify the proposed AVA and different enough from areas outside that boundary. In addition, because the proposed Conneaut Creek AVA would be within the existing Lake Erie AVA, TTB is interested in comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the existing AVA. TTB is also interested in comments on whether the geographic features of the proposed AVA are so distinguishable from the Lake Erie AVA that the proposed Conneaut Creek AVA should not be part of the established AVA. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Conneaut Creek AVA on wine labels that include the term ''Conneaut Creek'' as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed area names and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the proposed AVA.

Submitting Comments

You may submit comments on this proposal by using one of the following methods:

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Please submit your comments by the closing date shown above in this document. Your comments must reference Notice No. 228 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

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Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866, as amended. Therefore, it requires no regulatory assessment.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Add § 9.____ to read as follows:

§ 9.____ Conneaut Creek.

(a) *Name.* The name of the viticultural area described in this section is ''Conneaut Creek''. For purposes of part 4 of this chapter, ''Conneaut Creek'' is a term of viticultural significance.

(b) *Approved maps.* The 4 United States Geological Survey (USGS) 1:24,000 scale topographic map used to determine the boundary of the viticultural area are as follows:

(1) Conneaut, OH-PA, 2019;

(2) North Kingsville, OH, 2019;

(3) Gageville, OH, 2019; and

(4) Pierpoint, OH, 2019.

(c) *Boundary.* The Conneaut Creek viticultural area is located in Ashtabula County, Ohio. The boundary of the Conneaut Creek viticultural area is as described as follows:

(1) The beginning point is on the Conneaut map at the intersection of the Ohio-Pennsylvania State line and Conneaut Creek.

(2) From the beginning point, proceed westerly, then easterly, then northerly along Conneaut Creek, crossing onto the North Kingsville map and back onto the Conneaut map, to the point where Conneaut Creek flows into Lake Erie.

(3) The Conneaut Creek viticultural area consists of all land within 2 statute miles of Conneaut Creek on the Conneaut, North Kingsville, Gageville, and Pierpoint maps.

Signed: December 19, 2023.

Mary G. Ryan,

Administrator.

Approved: December 20, 2023.

Thomas C. West, Jr.,

Deputy Assistant Secretary (Tax Policy).

[FR Doc. 2024–00059 Filed 1–4–24; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2023–0009; Notice No. 227]

RIN 1513–AC80

Proposed Renaming of the Mendocino Ridge Viticultural Area

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to rename the established ''Mendocino Ridge'' American viticultural area (AVA) in Mendocino County, California, as ''Mendocino Coast Ridge.'' The proposed name change would not affect the size or boundary description of the AVA. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposal.

DATES: TTB must receive your comments on or before March 5, 2024.

ADDRESSES: You may electronically submit comments to TTB on this proposal using the comment form for this document as posted within Docket No. TTB–2023–0009 on the ''*Regulations.gov*'' website at *https://www.regulations.gov*. Within that docket, you also may view copies of this document, its supporting materials, and any comments TTB receives on this proposal. A direct link to that docket is available on the TTB website at *https://www.ttb.gov/wine/notices-of-proposed-rulemaking* under Notice No. 227. Alternatively, you may submit comments via postal mail to the Director, Regulations and Ruling Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005. Please see the Public Participation section below for further information on the comments requested regarding this proposal and on the submission, confidentiality, and public disclosure of comments.

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

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs), including changes to AVA names, and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement

by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon;
- If the proposed AVA is to be established within, or overlapping, an existing AVA, an explanation that both identifies the attributes of the proposed AVA that are consistent with the existing AVA and explains how the proposed AVA is sufficiently distinct from the existing AVA and therefore appropriate for separate recognition; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

If the petition seeks to change the name of an existing AVA, the petition must establish the suitability of the name change by providing the same types of name evidence required for the establishment of a new AVA.

Establishment of the Mendocino Ridge AVA

On April 7, 1997, TTB's predecessor agency, the Bureau of Alcohol, Tobacco, and Firearms (ATF), published Notice No. 848 in the **Federal Register** proposing the establishment of the Mendocino Ridge AVA (62 FR 16502). The notice was in response to a petition ATF received from Steve Alden of Alden Ranch Vineyards, on behalf of the Mendocino Ridge Quality Alliance, proposing the establishment of a new AVA to be called ''Mendocino Ridge.''

ATF received no comments in response to that notice. On October 27, 1997, ATF published in T.D. ATF–392 in the **Federal Register** (62 FR 55512), establishing the Mendocino Ridge AVA as proposed. The Mendocino Ridge AVA is located within the established North Coast AVA (27 CFR 9.30). The AVA is located on the coastal ridgelines of Mendocino County, California. There are about 262,400 acres within the outer boundaries of the AVA; however, only elevations at or above 1,200 feet are included in the AVA, resulting in an AVA comprised of non-contiguous sites located on ridgetops above the fog line.

Petition To Rename the Mendocino Ridge AVA

TTB has received a petition from the Mendocino Ridge AVA Board of Directors, proposing to rename the Mendocino Ridge AVA as the ''Mendocino Coast Ridge'' AVA. The petition was signed by representatives of six vineyards and wineries within the AVA, including two people who signed the original petition to establish the Mendocino Ridge AVA. The petition states that at the time the Mendocino Ridge AVA was established, the focus was on the ridgetop locations of the vineyards. Over time, the vineyard owners realized that the coastal location is ''equally a dominant defining feature of the AVA and should be part of the name * * *.'' The petition claims that many producers in the AVA have ''struggled with significant confusion in the marketplace and within our community about where exactly the Mendocino Ridge is * * * within Mendocino County.'' The petition goes on to say, ''Some assume that Mendocino Ridge indicates ridge vineyards inland where viticultural growing conditions are dramatically different'' from the coastal region of the AVA. The petition also notes that ''Mendocino Ridge'' is the name of a massive underwater ridgeline in the Pacific Ocean.[1] Internet searches for ''Mendocino Ridge'' can produce results for the underwater ridge as well as for the AVA, which may cause confusion for people expecting to find results relating to wine. The petition states that the name ''Mendocino Coast Ridge'' would more precisely describe the geographic location and viticultural conditions of the AVA and alleviate consumer confusion.

Name Evidence

According to the petition, the proposed name ''Mendocino Coast Ridge'' is appropriate for the AVA because the AVA exists entirely within the coastal climate zone of Mendocino County. The petition included a map showing the climate zones of Mendocino County, which includes four climate zones from west to east—maritime, coastal, transitional, and interior.[2] The Mendocino Ridge AVA boundary is superimposed on the map and is entirely in the ''coastal'' zone, while the more inland regions of the county are in the ''transitional'' and ''interior'' zones. The petition included a second map of Caltrans Pavement Climate Regions, which also places the region of the Mendocino Ridge AVA in a coastal climate zone, this one named the ''North Coast'' region.[3] By contrast, the inland region of Mendocino County is in the ''Low Mountain'' region.

The petition provided several examples showing the use of ''coast ridge'' or ''coastal ridge'' to describe the region of the AVA. A real estate listing from the town of Gualala, which is within the Mendocino Ridge AVA, describes a house as a ''sunny Mendocino coast ridge-top estate.''[4] A second real estate listing for a property in Philo, California, notes that the property's vineyard is ''located both in the Anderson Valley and the Mendocino Ridge (also known as the Mendocino Coast Ridge area) appellations.''[5] A vacation rental site lists another property ''atop of southern Mendocino County's coastal ridge.''[6] The Port Arena Schools web page, which serves students within the Mendocino Ridge AVA, also describes the location of the town of Point Arena as on the ''coastal ridge range.''[7]

Finally, the petition included examples from several wine publications that refer to the coastal location of the AVA and its vineyards as evidence that ''coast'' should be part of the AVA name. A 2021 article from International Wine Review notes that ''Mendocino Ridge is a coastal appellation * * * with a series of ridges that run northwesterly along the coast.''[8] A 2018 article about the wines of Mendocino County states, ''It is a large and sprawling region which can be arguably cleaved into two pieces:

[1] *http://oceanexplorer.noaa.gov/explorations/14mendocino/welcome.html.*

[2] See Exhibit C to the petition in the public docket at *www.regulations.gov.*

[3] See Exhibit E to the petition in the public docket at *www.regulations.gov.*

[4] *https://www.zillow.com/homes/45601-Seaside-School-Rd-Gualala,-CA-95445_rb/19217570_zpid/.*

[5] *https://mendocountry.com/real-estate-listings/22400-philo-greenwood-rd.*v.

[6] *https://www.vrbo.com/829531.*

[7] *https://pointarenaschools.org.*

[8] *https://i-winereview.com/blog/index.php/2021/01/12/drew-winery-brilliant-winemaking-in-the-mendocino-ridge-and-anderson-valley.*

coastal and inland. Anderson Valley, Mendocino Ridge, Yorkville Highlands, and Cole Ranch belong to the former category, as they are very much defined by their relationship to the coast.'' [9] Another article about wine regions in Mendocino County states, ''The coastal appellations are Anderson Valley, Mendocino Ridge, and Yorkville Highlands * * *.'' [10] A review of Witching Stick Winery's 2011 Gianoli Vineyard Pinot Noir wine notes, ''The Gianoli Vineyard is located roughly 1800 feet up in the Mendocino Coastal Ridge * * *.'' [11] A description of a 2005 Zinfandel wine from Claudia Springs Winery notes, ''The Mendocino Ridge Appellation is one of California's most unique—all vineyards must be in the Mendocino Coast ridge [sic] and at an elevation of at least 1,200 feet above sea level.'' [12] The website for Gianoli Ranch and Vineyard notes that the property is located ''along the beautiful Mendocino Coast Ridge.'' [13] Lastly, a 2010 article from the wine blog PinotFile states that in 1988, Kendall–Jackson Winery declared that ''the Mendocino Coastal Ridge was one of the world's greatest Zinfandel regions.'' [14]

TTB Determination

TTB concludes that the petition to rename the established Mendocino Ridge AVA as ''Mendocino Coast Ridge'' merits consideration and public comment, as invited in this document.

Boundary Description

The proposed renaming would not affect the boundary description of the Mendocino Ridge AVA as codified in the Code of Federal Regulations at 27 CFR 9.158.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

If TTB approves this proposed AVA name change, the new name, ''Mendocino Coast Ridge,'' will be recognized as the name of the AVA. This name change would affect vintners who currently use the ''Mendocino Ridge'' name as an appellation of origin because only the approved viticultural name may be so used. As a result, ''Mendocino Ridge'' would no longer be eligible for use as an AVA appellation of origin on wine labels.

Although ''Mendocino Ridge'' would no longer be an approved AVA name, TTB would still recognize it as a term of viticultural significance. With some exceptions, a brand name of viticultural significance may not be used unless the wine meets the appellation of origin requirements for the geographic area named. (27 CFR 4.39(i)(1)). ''Mendocino Ridge'' has been recognized as a term of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)) since the establishment of the Mendocino Ridge AVA. Changing the name of the AVA to add ''Coast'' to the AVA name would not affect the viticultural significance of the term ''Mendocino Ridge.'' As a term of viticultural significance, ''Mendocino Ridge'' could not appear as a brand name or elsewhere on a wine label unless the wine is also eligible to be labeled with the ''Mendocino Coast Ridge'' AVA appellation.

Transition Period for ''Mendocino Ridge'' Labels

If TTB adopts a final rule renaming this AVA, current holders of labels that were approved before the effective date of such a final rule that use the name ''Mendocino Ridge'' to designate a viticultural area would be permitted to use those approved labels during a 2-year transition period. At the end of the 2-year period, holders of approved ''Mendocino Ridge'' viticultural area wine labels would have to discontinue their use, as their certificates of label approval (COLAs) would be revoked by operation of the final rule. (*See* 27 CFR 13.51 and 13.72(a)(2).) The proposed regulatory text at the end of this document includes a statement to this effect as a new paragraph (d) in 27 CFR 9.158. TTB believes the 2-year period would provide label holders with adequate time to use up their supply of previously approved labels.

TTB notes that label holders who continue to use labels showing the ''Mendocino Ridge'' during the transition period would also be able to apply for COLAs with the ''Mendocino Coast Ridge'' name and use such labels, if approved.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on the appropriateness of changing the name of the established Mendocino Ridge AVA to ''Mendocino Coast Ridge,'' and on the proposed 2-year transition period. TTB is particularly interested in receiving comments on any possible effects that this name change would have on label holders using the Mendocino Ridge appellation of origin. TTB is also interested in comments regarding any negative economic impact, which might result from the proposed name change, and whether a longer transition period would be more appropriate to reduce any negative impact.

Submitting Comments

You may submit comments on this proposal as an individual or on behalf of a business or other organization via the *Regulations.gov* website or via postal mail, as described in the **ADDRESSES** section of this document. Your comment must reference Notice No. 227 and must be submitted or postmarked by the closing date shown in the **DATES** section of this document. You may upload or include attachments with your comment. You also may submit a comment requesting a public hearing on this proposal. The TTB Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality and Disclosure of Comments

All submitted comments and attachments are part of the rulemaking record and are subject to public disclosure. Do not enclose any material in your comments that you consider confidential or that is inappropriate for disclosure.

TTB will post, and you may view, copies of this document, the related petition, supporting materials, and any

[9] *https://www.guildsomm.com/public_content/features/articles/b/kelli-white/posts/mendocino-county.*

[10] *https://www.vikingrange.com/consumer/products/print_friendly/tvl_print.jsp;jsessionid=cJNmb4t26Be-j0HUOFDlbw**.node1?id=prod7350195.*

[11] *https://chuckfuruya.wordpress.com/2013/05/02/2011-witching-stick-pinot-noirs.*

[12] *https://www.klwines.com/p/i?i=1034162&searchId=8b9c4e47-d24c-403a-a363-8df4a465b6b4&searchServiceName=klwines-prod-productsearch&searchRank=1.*

[13] *https://gianoliranch.com/about/.*

[14] *Princeofpinot.com/article/835.*

comments TTB receives about this proposal within the related *Regulations.gov* docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB's Regulations and Rulings division by email using the web form available at *https://www.ttb.gov/contact-rrd,* or by telephone at 202–453–2265, if you have any questions regarding comments on this proposal or to request copies of this document, its supporting materials, or the comments received.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866, as amended. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this document.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Section 9.158 is amended by revising the section heading, paragraphs (a), (b) introductory text, and (c) introductory text, and by adding paragraph (d) to read as follows:

§ 9.158 Mendocino Coast Ridge.

(a) *Name.* The name of the viticultural area described in this section is ''Mendocino Coast Ridge''. For purposes of part 4 of this chapter, ''Mendocino Coast Ridge'' and ''Mendocino Ridge'' are both terms of viticultural significance.

(b) *Approved maps.* The appropriate maps for determining the boundary of the Mendocino Coast Ridge viticultural area are four 1:62,500 scale U.S.G.S. topographical maps. They are titled:

* * * * *

(c) *Boundary.* The Mendocino Coast Ridge viticultural area is located within Mendocino County, California. Within the boundary description that follows, the viticultural area starts at the 1,200-foot elevation contour and encompasses all areas at or above the 1,200-foot elevation contour. The boundary of the Mendocino Coast Ridge viticultural area is as follows:

* * * * *

(d) *Transition period.* A label containing the words ''Mendocino Ridge'' as an appellation of origin approved prior to [the effective date of the final rule] may be used on wine bottled before [two years after the effective date of the final rule], if the wine conforms to the standards for use of the label set forth in § 4.25 or § 4.39(i) of this chapter in effect prior to [effective date of the final rule]. Existing certificates of label approval showing ''Mendocino Ridge'' as an appellation of origin are revoked by operation of this regulation on [two years after the effective date of the final rule].

Signed: December 19, 2023.

Mary G. Ryan,

Administrator.

Approved: December 20, 2023.

Thomas C. West, Jr.,

Deputy Assistant Secretary (Tax Policy).

[FR Doc. 2024–00057 Filed 1–4–24; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

[Docket No. DOI–2022–0016; 4500176944]

RIN 1090–AB26

Natural Resource Damages for Hazardous Substances

AGENCY: Office of Restoration and Damage Assessment, Interior.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Office of Restoration and Damage Assessment is seeking comments and suggestions from State, Tribal, and Federal natural resource co-trustees, other affected parties, and the interested public on revising the simplified Type A procedures in the regulations for conducting natural resource damage assessment and restoration for hazardous substance releases.

DATES: We will accept comments through March 5, 2024.

Information Collection Requirements: If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to the Departmental Information Collection Clearance Officer, U.S. Department of the Interior (see ''Information Collection Requirements'' section below under **ADDRESSES**) by March 5, 2024.

ADDRESSES: You may submit comments to Office of Restoration and Damage Assessment (ORDA) on this notice of proposed rulemaking (NPRM); request for public comment by any of the following methods. Please reference the Regulation Identifier Number (RIN) 1090–AB26 in your comments.

- *Electronically:* Go to *http://www.regulations.gov.* In the ''Search'' box enter ''DOI–2022–0016''. Follow the instructions to submit public comments. We will post all comments.
- Hand deliver or mail comments to the Office of Restoration and Damage Assessment, U.S. Department of the Interior, 1849 C Street Northwest, Mail Stop/Room 2627, Washington, DC 20240.

Information Collection Requirements: Send your comments on the information collection request to the Departmental Information Collection Clearance Officer, U.S. Department of the Interior, Jeffrey Parrillo, 1849 C Street NW, Washington, DC 20240; or by email to *jeffrey_parrillo@ios.doi.gov.* Please reference OMB Control Number 1090–AB26 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Emily Joseph, Director, Office of Restoration and Damage Assessment at (202) 208–4438 or email to *emily_joseph@ios.doi.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or

TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. In compliance with the Providing Accountability Through Transparency Act of 2023, the plain language summary of the proposal is available on *Regulations.gov* in the docket for this rulemaking.

SUPPLEMENTARY INFORMATION: This preamble is organized as follows:

I. Background

What These Natural Resource Damage Type A Regulations Are About

The regulations describe how to conduct a natural resource damage assessment and restoration (NRDAR) for hazardous substance releases under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601, 9607) (CERCLA) and the Federal Water Pollution Control Act (33 U.S.C. 1251, 1321) (Clean Water Act). CERCLA required the President to promulgate these regulations. 42 U.S.C. 9651(c). The President delegated this rule writing responsibility to the Department of the Interior (DOI). E.O. 12316, as amended by E.O. 12580. The regulations appear at 43 CFR part 11.

A natural resource damage assessment is an evaluation of the need for, and the means of, securing restoration of public natural resources following the release of hazardous substances or oil into the environment. The Department of the Interior has previously developed two types of natural resource damage assessment regulations: Standard procedures for simplified assessments requiring minimal field observations (Type A Rule); and site-specific procedures for detailed assessments in individual cases (Type B Rule). The Type A Rule was last revised in November 1997. It provides two distinct formulas for modeling damages for natural resource injuries caused by hazardous substance releases to coastal and marine environments and Great Lakes environments, respectively. In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) 42 U.S.C. 9601 *et seq.,* damages calculated in accordance with Type A or Type B procedures are entitled to a ''rebuttable presumption'' of correctness in any administrative or judicial proceeding. The rebuttable presumption for the Type A procedure under the current version of the rule is limited to damages of $100,000 or less.

The regulations we are proposing to revise only cover natural resource damage assessments for releases of hazardous substances under CERCLA and the Clean Water Act. There are also natural resource damage assessment regulations at 15 CFR part 990 that cover oil spills under the Oil Pollution Act, 33 U.S.C. 2701, (the OPA regulations). The current hazardous substance natural resource damage assessment and restoration regulations, this preamble, and the proposed revisions to the regulation use ''restoration'' as an umbrella term for all types of actions CERCLA and Clean Water Act authorize to address injured natural resources, including restoration, rehabilitation, replacement, or acquisition of equivalent resources.

Natural resource damage assessments are conducted by government officials designated to act as ''trustees'' to bring claims on behalf of the public for the restoration of injured natural resources. Trustees are designated by the President, State governors, or Tribes. If trustees determine, through an assessment, that hazardous substance releases have injured natural resources, they may pursue claims for damages against potentially responsible parties. ''Damages'' include funds needed to plan and implement restoration, compensation for public losses pending restoration, reasonable assessment costs, and any interest accruing after funds are due.

The regulations establish an administrative process for conducting assessments that include technical criteria for determining whether releases have caused injury, and if so, what funds are needed to implement restoration. The regulations are for the optional use of trustees. Trustees can use the regulations to structure damage assessment work, frame negotiations, and inform restoration planning. If litigation is necessary to resolve the claim, courts will give additional deference—referred to as a ''rebuttable presumption'' in CERCLA—to assessments performed by Federal and State trustees in accord with the regulations.

II. Description of Changes

Why We Are Proposing To Revise the Regulations

Since its promulgation, the Type A Rule has rarely been utilized to resolve CERCLA Natural Resource Damage Assessment and Restoration (NRDAR) claims. This may be partly due to the Type A Rule's restrictive scope—to two specific aquatic environments when relatively low-impact, single substance spills occur. Additionally, the model equation for each Type A environment is the functional part of the rule itself—with no provisions to reflect evolving toxicology, ecology, technology, or other scientific understanding without a formal amendment to the Type A Rule each time a parameter is modified. The result is an inefficient and inflexible rule that is not currently useful as a means to resolve NRDAR claims and promote natural resource restoration. For these reasons, the Department is now seeking to modernize the Type A process and develop a more flexible and enduring rule than what is provided by the two existing static models.

The Department is proposing to re-formulate the Type A Rule as a procedural structure for negotiated settlements by utilizing tools tailored to incidents of smaller scale and scope. We believe that this aligns better with the original statutory purpose of providing a streamlined and simplified assessment process as a companion to the more complex Type B Rule—to reduce transaction costs and expedite restoration in a broader range of less complex and contentious cases. Our objective is to essentially formalize beneficial practices that have evolved since the 1997 promulgation of the Type A Rule. Specifically, Trustees have utilized well-established methodologies such as habitat equivalency analysis (HEA), resource equivalency analysis (REA), and other relatively simple models to assess natural resource injury in smaller incidents that do not necessarily warrant the more prescriptive Type B procedures.

III. Major Issues Addressed by the Proposed Revisions

Our proposed revisions would largely leave the framework of the existing rule intact. We are not proposing any substantive changes to legal standards for reliability of assessment data and methodologies. The rest of this section discusses the major issues addressed by the proposed revisions. The following

section references the OPA regulations. These references are solely for the purpose of providing context and background. We are soliciting comments only on the proposed revisions to the CERCLA Type A regulations. For guidance on conducting natural resource damage assessments under OPA, see 15 CFR part 990.

a. Specifying When a Type A Procedure May Be Used

The Trustee has decided that existing models (for replacement of resources or habitats, equivalency analysis, recreational losses, benefits transfer, etc.) are appropriate for determining damages to fund restoration activities at the site.

b. Increasing the Damages Amount for Which Type A Can Be Used

Either (i) the claim that will be resolved using the Type A procedure is expected to be less than $3 million (excluding reasonable assessment costs); or (ii) the claim relates to injury resulting from a hazardous substance release over a relatively short period of time (*e.g.,* a discrete spill) with a small number of potentially responsible parties and is expected to be less than $5 million.

c. Identifying Which Scenarios Allow for the Use of Type A

At least one PRP has voluntarily agreed to utilize the Type A and a tolling agreement for at least one year is in place.

IV. Required Determinations

Regulatory Planning and Review—Executive Orders 12866, E.O. 13563, and 14094

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this proposed rule is not significant. Executive Order 14094 amends E.O. 12866 and reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and be consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review).

These revisions do not fall under other criteria in E.O. 12866:

a. This rule will not have an annual economic effect of $200 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government.

The regulations we are revising apply only to natural resource trustees by providing technical and procedural guidance for the assessment of natural resource damages under CERCLA and the Clean Water Act. The revisions are not intended to change the balance of legal benefits and responsibilities among any parties or groups, large or small. It does not directly impose any additional cost. In fact, we believe the proposed revisions can help reduce natural resource damage assessment transaction costs by allowing trustees to utilize simpler and more transparent methodologies to assess damages when appropriate. The proposed revisions do not sanction or bar the use of any particular methodology, so long as it meets the acceptance criteria for relevance and cost effectiveness that is set out in the rule. Of course, in litigation, any methodology used would be evaluated by courts to further ensure relevance and reliability.

We also believe that in many cases an early focus on feasible restoration and appropriate restoration actions, rather than on the monetary economic value of public losses, can result in less contention and litigation and faster, more cost-effective restoration. Meanwhile, existing criteria in the rule for evaluating restoration alternatives—including cost effectiveness—remain intact (see 43 CFR 11.82(d)). The likely result will be the encouragement of settlements, less costly and more timely restoration, and reduced transaction costs. To the extent any are affected by the proposed revisions, it is anticipated that all parties will benefit by increasing the focus on restoration in lieu of monetary damages.

b. The proposed revisions will not create inconsistencies with other agencies' action. The general approach to losses pending restoration set forth in this rule is consistent with the OPA regulations. Both allow for basing damages on the cost of restoration actions to address public losses associated with natural resource injuries.

Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements. This proposed rule is consistent with E.O. 13563, including with the requirement of retrospective analysis of existing rules, designed ''to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.''

Regulatory Flexibility Act

We certify that this rule revision will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601) (see Regulatory Planning and Review—Executive Orders 12866, E.O. 13563, and 14094 section above for discussion of potential economic effects).

Congressional Review Act

This rule revision is not a major rule under the Congressional Review Act (5 U.S.C. 804(2)). This rule revision:

(a) Does not have an annual effect on the economy of $100 million or more (see Regulatory Planning and Review—Executive Orders 12866, E.O. 13563, and 14094 section above for discussion of potential economic effects).

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions (see Regulatory Planning and Review—Executive Orders 12866, E.O. 13563, and 14094 section above for discussion of potential economic effects).

(c) Does not have significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises (see Regulatory Planning and Review—Executive Orders 12866, E.O. 13563, and 14094 section above for discussion of potential economic effects).

Unfunded Mandates Reform Act

This rule revision does not mandate any actions. The existing regulations do not require trustees to conduct assessment or pursue damage claims, and trustees who choose to conduct assessments and pursue damage claims are not required to do so in a manner described in the regulations. The proposed revisions do not change the optional nature of the existing regulations. The revisions themselves do not replace existing procedures, they merely give trustees the option of employing other procedures. Therefore, this rule revision will not produce a Federal mandate of $100 million or greater in any year.

Takings Analysis Under E.O. 12630

A takings implication assessment is not required by E.O. 12630 because no party can be compelled to pay damages

for injury to natural resources until they have received ''due process'' through a legal action in Federal court. This rule and the proposed revisions merely provide a framework for assessing injury and developing the claim.

Federalism (E.O. 13132)

Federal agencies are required to consult with elected State officials before issuing proposed rules that have ''federalism implications'' and either impose unfunded mandates or preempt State law. A rule has federalism implications if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' The NRDAR regulations are already in compliance with E.O. 13132, and this rule does not alter that status. Specifically, this rule does not require State trustees to take any action; therefore, it does not impose any unfunded mandates. The States already have maximum administrative discretion and the ability to develop their own NRDAR policies and programs, which many have implemented (compliance with sections 2 and 3 of E.O. 13132). The rule has no significant effect on intergovernmental relations because it does not alter the rights and responsibilities of government entities (section 3). The rule does not preempt State law (section 4). If trustees elect to use this rule to assess natural resource damages, there is a consultation requirement with other affected trustees, which is not significantly different from the current rule (section 6). Therefore, a federalism summary impact statement is not required under section 6 of the Executive Order. In the spirit of the E.O., though, State trustees, who are representatives of State elected officials, were given the opportunity to respond to the proposed revisions as part of the public comment period. In addition, ORDA discussed the revisions with the NRDAR State Alliance and at our national workshop.

Civil Justice Reform Under E.O. 12988

Our Office of the Solicitor has determined that the proposed revisions do not unduly burden the judicial system and meet the requirements of section 3(a) and 3(b)(2) of the E.O. The proposed revisions are intended to provide the option for an early focus on restoration, utilization of simpler and more cost-effective assessment methodologies, and increased opportunities for cooperation among trustees and potentially responsible parties. This should minimize litigation.

Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

Tribes were given the opportunity to respond to the proposed revisions as part of the public comment period. In addition, we discussed the revisions with our NRDAR Tribal Group on our monthly calls and at our national workshop. We also plan to invite all Tribes to participate in one of the monthly calls to discuss the proposed revisions.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

This proposed rule contains existing information collections (ICs) which were in use without approval. All information collections require approval under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. We will ask OMB to review and approve the below listed ICs contained in 43 CFR part 11:

(1) *Type A Report (Existing/Modified)*—If a Type A is used, the Report already must include the information specified in subpart D (43 CFR 11.90(b)). This rulemaking seeks to clarify the content of the Type A Report based on the proposed changes in the sections itemized below. The Type A report must be made available to the public and provide for a comment period of at least 30 days.

Information collected in a Type A Report includes:

(a) The Type A Report is a document to provide the public with notice of, and an opportunity to comment on, the use of the Type A Procedure.

(b) The Type A Report must:

(1) State that the Trustee is following this rule and provide a citation to the rule;

(2) Explain the basis for concluding that conditions for pursuing an assessment were met;

(3) Describe any agreements among Co-Trustees and potentially responsible parties;

(4) Identify ongoing or planned response activities that could affect the natural resources being assessed;

(5) Explain how conditions for using a Type A Procedure listed in 11.34 of this part are met;

(6) Identify and describe the model(s) selected to determine damages to fund restoration activities, including the following;

(i) Data inputs and the assumptions used for the model(s);

(ii) Possible existing restoration alternatives that make these model assumptions valid for the purpose of restoration;

(iii) Results of the modeling exercise;

(7) Note the establishment of an administrative record for the assessment and explain how to gain access to that record;

(8) Explain how to submit comments and state the deadline for comments; and

(9) Identify a contact person.

Administrative Record for Type A Report includes:

(a) Evidence of efforts to coordinate with response agencies (this need not include any evidence of the substance of discussions, nor documentation of every contact);

(b) Evidence of efforts to consult with other Co-trustees (this need not include any evidence of the substance of discussions, nor documentation of every contact) and documentation of any agreements among Co-trustees;

(c) The invitation to potentially responsible parties inviting them to participate in the Type A Procedure and documentation of any agreements reached with potentially responsible parties.

(d) Information considered when developing data inputs and assumptions for modeling, including complete citations to any literature used;

(e) A printout of the model(s) sufficient for reproducibility (or a copy of the file used to generate the model(s));

(f) Documentation of any assessment costs incurred, if Trustees plan to seek reimbursement of such costs.

(g) Copy of the final Type A Report and each published version of the Type A Report.

Revising Type A Report:

(d) If the Trustees decide after their review to select different model(s), or substantially change the model data inputs or assumptions to conduct the Type A Procedure, the Trustees must prepare a revised Type A Report that reflects the changes, provides any new information about the modified data inputs and assumptions, and substantively responds to significant comments received during the comment period. Minor changes require a statement of explanation of the changes, explanation of why they are not considered substantial, and discussion of any effects on results to be appended to the original Type A Report.

Revision to Existing IC in Proposed Rulemaking: The information to be included in the modified and/or revised

Type A Report will allow for a wider range of models to be used as opposed to the ones currently listed which focus on Coastal and Marine Environments and the Great Lakes Environments exclusively. These changes will allow Trustees to use a variety of models and include their results in the Type A Report.

(2) *Type B Report of Assessment (Existing)*—The completion of an assessment is documented in the Report of Assessment (ROA), which consists of the Preliminary Assessment Screen (PAS), Preliminary Estimate of Damages (PED), Assessment Plan (AP), Restoration and Compensation Determination Plan (RCDP), Restoration Plan (RP; when prepared for settlement), and response to public comments:

- The PAS is a rapid review of readily available information to make a determination as to whether an NRDAR will be carried out (43 CFR 11.23, 11.24 and 11.25).
- The purpose of the PED is to inform the Assessment Plan to ensure that the choice of the scientific, cost estimating, and valuation methodologies expected to be used in the NRDAR are reasonable cost. The PED typically relies on available information (43 CFR 11.38).
- The AP must identify and document the use of all of the Type A and/or Type B procedures that will be performed, including any proposed injury studies, as well as potential studies to identify early restoration opportunities and potential effectiveness. The AP is published for public comment (43 CFR part 11 subpart C).
- The RCDP provides a reasonable number of possible restoration alternatives, identifies the preferred one and the actions required for implementation, and describes the methods and results of the injury determination, injury quantification, and damages determination (monetary or in-kind projects). The RCDP uses literature, site data, and study data, and Trustees' decision making; it is published for public comment (43 CFR 11.81).
- Although the RP is identified as part of a post-assessment activity, ORDA addressed Departmental and Congressional interest in timely restoration through policy by defining a ''restoration-based settlement'' to include a legally binding Consent Decree and concurrent final Restoration Plan. Therefore, the RP may be produced before or after settlement, and is published for public comment. The level of effort on a post-settlement RP is assumed to be the same as for settlement. For purposes of this ICR, the RP is considered to be part of the Type B ROA (43 CFR 11.93; ORDA Restoration Policy).

Title of Collection: Natural Resource Damage Assessments (43 CFR part 11).

OMB Control Number: 1090–New.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Private sector (consultants and potentially responsible parties) and State and Tribal governments.

Total Estimated Number of Annual Respondents: 10.

Total Estimated Number of Annual Responses: 155.

Estimated Completion Time per Response: Varies from 40 hours to 18,627.45 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 513,926.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) 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, *e.g.,* permitting electronic submission of response.

Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Departmental Information Collection Clearance Officer, U.S. Department of the Interior, Jeffrey Parrillo, 1849 C Street NW, Washington, DC 20240; or by email to *jeffrey_parrillo@ios.doi.gov.* Please reference OMB Control Number 1090–AB26 in the subject line of your comments.

National Environmental Policy Act

We have analyzed the proposed revisions in accordance with the criteria of the National Environmental Policy Act, 43 U.S.C. 433 *et seq.* (NEPA). Restoration actions identified through the proposed revisions may sometimes involve major Federal action significantly affecting the quality of the human environment. In those cases, Federal trustees will need to comply with NEPA. However, the proposed revisions do not require trustees to take restoration action. Further, if the trustees decide to pursue restoration, they are not required to follow the rule when selecting restoration actions. Finally, the rule and the proposed revisions do not determine the specific restoration actions that trustees can seek. Therefore, the rule and the proposed revisions do not significantly affect the quality of the human environment. Even if the rule revisions were considered to significantly affect the quality of the human environment, they would fall under DOI's categorical exclusion for regulations that are of a procedural nature or have environmental effects too broad or speculative for meaningful analysis and will be subject later to the NEPA process.

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action because it

(1) is not a significant regulatory action under E.O. 12866; and

(2) is not likely to have a significant adverse effect on the supply, distribution or use of energy or is designated by the Administrator of OMB/OIRA as a significant energy action.

Releases of hazardous substances can adversely affect the supply, distribution, or use of various types of energy. This rulemaking provides simplified procedures to conduct NRDAR activities under CERCLA due to releases of hazardous substances and restore the injured natural resources which may supply energy. A Statement of Energy Effects is not needed.

Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized,

(2) Use the active voice to address readers directly.

(3) Use clear language rather than jargon,

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Availability of Comments

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—might be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review we cannot guarantee that we will do so.

List of Subjects in 43 CFR Part 11

Assessment procedures, Natural resource damages, Potentially responsible parties, Trustees.

Words of Issuance

For the reasons discussed in the preamble, the Department of the Interior proposes to amend 43 CFR part 11 as follows:

PART 11—NATURAL RESOURCE DAMAGE ASSESSMENTS

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

Authority: 42 U.S.C. 9651(c), as amended.

■ 2. Revise §§ 11.33 through 11.37 to read as follows:

Sec.

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§ 11.33 What types of assessment procedures are available?

There are two types of assessment procedures:

(a) Type A procedures are simplified procedures that require minimal field observation. Subpart D of this part describes the Type A procedures.

(b) Type B procedures require more extensive field observation than the Type A procedures. Subpart E of this part describes the Type B procedures.

§ 11.34 When may a Trustee use a Type A procedure?

A Trustee may use a Type A procedure if all of the following are satisfied:

(a) The Trustee has decided that existing models (for replacement of resources or habitats, equivalency analysis, recreational losses, benefits transfer, etc.) are appropriate for determining damages to fund restoration activities at the site.

(b) All Federal, State, and Tribal trustees with probable jurisdiction over the injured natural resources who have elected to participate in the claim concur in the use of the Type A procedure in the circumstances presented;

(c) Either the claim that will be resolved using the Type A procedure is expected to be less than $3 million (excluding reasonable assessment costs); or the claim relates to injury resulting from a hazardous substance release over a relatively short period of time (*e.g.,* a discrete spill) with a small number of potentially responsible parties and is expected to be less than $5 million;

(d) At least one potentially responsible party has voluntarily agreed to utilize the Type A procedure. If a claim involves multiple potentially responsible parties (PRPs), the Type A process may not be appropriate unless resolution of the claim involves all significant PRPs, or the resolution of the claim represents a final settlement of the claim for injury to specific natural resources at the site.

(e) The PRP agrees to toll the running of the statutory limitations period for filing the claim for at least one year and to reimburse the trustees for reasonable Type A assessment costs until the claim is resolved or the PRP gives formal notice of withdrawal from voluntary participation in the Type A procedure.

§ 11.35 How does the Trustee decide whether to use Type A or Type B procedures?

(a) If the Trustee determines under § 11.34 that a Type A procedure is available, the Trustee must then decide whether to use that procedure or use a Type B procedure. The Trustee must make this decision by weighing the difficulty of collecting site-specific data against the suitability of the averaged data and simplifying assumptions in the Type A procedure for the release being assessed. The Trustee may use a Type B procedure if they can be performed at a reasonable cost and if the increase in accuracy provided by those procedures outweighs the increase in assessment costs.

(b) If there is no appropriate Type A procedure, the Trustee must use a Type B procedure to calculate all damages.

§ 11.36 May the Trustee use both a Type A and Type B procedure for the same release?

(a) The Trustee may use both a Type A procedure and Type B procedure for the same release if:

(1) The Type B procedure is cost-effective and can be performed at a reasonable cost;

(2) There is no double recovery; and

(3) The Type B procedure is used only to determine damages for injuries or compensable values that do not fall into the categories addressed by the Type A procedure.

(b) The Type A procedure addresses the following categories of injury and compensable value:

(1) Lethal and sub-lethal injuries to individual organisms within discrete species or guilds;

(2) Injuries to habitat and ecological productivity;

(3) Impairments to human use, cultural use, and enjoyment of natural resources;

(c) If a Trustee elects to use both a Type A procedure and a Type B procedure, the Assessment Plan must explain how the double recovery will be prevented.

(d) When the Trustee uses a Type B procedure for injuries not addressed in a Type A procedure, they must follow all of subpart E of this part (which contains standards for determining and quantifying injury as well as determining damages), § 11.31(c) (which addresses content of the Assessment Plan), and § 11.37 (which addresses confirmation of exposure). When the Trustee uses a Type B procedure for compensable values that are not included in a Type A procedure but that result from injuries that are addressed in the Type A procedure, they need not follow all of subpart E, § 11.31(c), and § 11.37. Instead, the Trustee may rely on the injury predictions of the Type A procedure and simply use the valuation methodologies authorized by § 11.83(c) to calculate compensable value. When using valuation methodologies, the Trustee must comply with § 11.84.

§ 11.37 Must the Trustee confirm exposure before implementing the Type B Assessment Plan?

(a) Before including any Type B methodologies in the Assessment Plan, the Trustee must confirm that at least one of the natural resources identified as potentially injured in the preassessment screen has in fact been exposed to the released substance.

(b) Whenever possible, exposure shall be confirmed by using existing data, such as those collected for response actions by the On-Scene Coordinator, or other available studies or surveys of the assessment area.

(c) Where sampling has been done before the completion of the preassessment screen, chemical analyses of such samples may be performed to confirm that exposure has occurred.

(d) Where existing data are unavailable or insufficient to confirm exposure, one or more of the analytical methodologies provided in the Injury Determination phase may be used.

(e) Type B assessment methodologies shall be included in the Assessment Plan only upon meeting the requirements of this section.

■ 3. Revise subpart D to read as follows:

Subpart D—Using the Type A Procedures

Sec.

Subpart D—Using the Type A Procedures

§ 11.40 How does a Trustee use the Type A Procedure?

Once a Trustee has decided that the Type A Procedure is appropriate to resolve a claim and the potentially responsible party has agreed to utilize the Type A Procedure, the Trustee should notify and invite other affected Co-trustees to participate in the Type A Procedure. The Type A Procedure must be documented in a Type A Report.

§ 11.41 What information is included in a Type A Report?

(a) The Type A Report is a document to provide the public with notice of, and an opportunity to comment on, the use of the Type A Procedure.

(b) The Type A Report must:

(1) State that the Trustee is following this rule and provide a citation to the rule;

(2) Explain the basis for concluding that conditions for pursuing an assessment were met;

(3) Describe any agreements among Co-Trustees and potentially responsible parties;

(4) Identify ongoing or planned response activities that could affect the natural resources being assessed;

(5) Explain how conditions for using a Type A Procedure listed in § 11.34 are met;

(6) Identify and describe the model(s) selected to determine damages to fund restoration activities, including the following;

(i) Data inputs and the assumptions used for the model(s);

(ii) Possible existing restoration alternatives that make these model assumptions valid for the purpose of restoration;

(iii) Results of the modeling exercise;

(7) Note the establishment of an administrative record for the assessment and explain how to gain access to that record;

(8) Explain how to submit comments and state the deadline for comments; and

(9) Identify a contact person.

(c) The Type A report must be made available to the public and provide for a comment period of at least 30 days.

§ 11.42 What documents must be in the Administrative Record when the Type A Report is published?

(a) Evidence of efforts to coordinate with response agencies (this need not include any evidence of the substance of discussions, nor documentation of every contact);

(b) Evidence of efforts to consult with other Co-trustees (this need not include any evidence of the substance of discussions, nor documentation of every contact) and documentation of any agreements among Co-trustees;

(c) The invitation to potentially responsible parties inviting them to participate in the Type A Procedure and documentation of any agreements reached with potentially responsible parties.

(d) Information considered when developing data inputs and assumptions for modeling, including complete citations to any literature used;

(e) A printout of the model(s) sufficient for reproducibility (or a copy of the file used to generate the model(s));

(f) Documentation of any assessment costs incurred, if Trustees plan to seek reimbursement of such costs.

(g) Copy of the final Type A Report and each published version of the Type A Report.

§ 11.43 What is the process for Type A Report comments?

(a) Comments received during the comment period must be placed in the Administrative Record and reviewed by the Trustees.

(b) If the Trustees decide after their review that no changes to the Type A Report are needed, the Trustees must publish a notice that:

(1) States that the Type A Report has been finalized; and

(2) Provides substantive responses to significant comments received during the comment period.

(c) If the Trustees decide after their review that it is inappropriate to use the Type A Procedure, the Trustees may decide to use a Type B Procedure for the assessment or stop the assessment.

(d) If the Trustees decide after their review to select different model(s), or substantially change the model data inputs or assumptions to conduct the Type A Procedure, the Trustees must prepare a revised Type A Report that reflects the changes, provides any new information about the modified data inputs and assumptions, and substantively responds to significant comments received during the comment period. Minor changes require a statement of explanation of the changes, explanation of why they are not considered substantial, and discussion of any effects on results to be appended to the original Type A Report.

(e) The Trustees must provide an additional comment period of at least 30 days for a revised Type A Report.

§ 11.44 How do the Trustees conclude the Type A Procedure?

(a) After the Type A Report is finalized, Trustees may enter into a settlement agreement with potentially responsible parties.

(b) Damages to fund or undertake restoration activities must be utilized pursuant to a publicly reviewed Restoration Plan consistent with subpart F of this part.

(c) The comment period for Administrative Settlement Agreements, Consent Decrees, and Restoration Plans may run concurrently with the comment period for the Type A Report, if appropriate.

Joan M. Mooney,

Principal Deputy Assistant Secretary, Exercising the Delegated Authority of the Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2024–00005 Filed 1–4–24; 8:45 am]

BILLING CODE 4334–63–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 25 and 76

[MB Docket No. 23–405; FCC 23–106; FRS ID 192513]

Promoting Competition in the American Economy: Cable Operator and DBS Provider Billing Practices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission (FCC) proposes to adopt customer service protection rules that prohibit cable operators and direct broadcast satellite (DBS) service providers from imposing early termination fees and billing cycle fees on subscribers. This document addresses certain billing practices of cable and DBS providers that penalize subscribers for terminating video service or switching video service providers, and seeks comment on proposals to further protect consumers and promote competition in the video programming marketplace.

DATES: Submit comments on or before February 5, 2024. Submit reply comments on or before March 5, 2024.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Katie Costello, Policy Division, Media Bureau at *Katie.Costello@fcc.gov* or (202) 418–2233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, (NPRM) FCC 23–106, adopted on December 13, 2023, and released on December 14, 2023. These documents will also be available via ECFS *https://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.) To request these documents in accessible formats for people with disabilities, send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis. Introduction. This Notice of Proposed Rulemaking (NPRM) initiates a proceeding to consider certain billing practices that may have the effect of inhibiting video service subscribers from choosing the video services they want or result in consumers paying fees for video services they did not choose to receive. We propose to adopt customer service protections that prohibit cable operators and direct broadcast satellite (DBS) service providers from imposing early termination fees (ETFs) and billing cycle fees (BCFs) on subscribers. We have initiated proceedings to review how the Commission's existing cable customer service standards may be updated to protect consumers from misleading pricing and be applied to DBS providers. This item builds upon those efforts and addresses additional junk fee billing practices of cable and DBS providers that penalize subscribers for terminating video service or switching video service providers, and further protects consumers and promotes competition in the video programming marketplace.

Background. Billing Practices. ETFs require subscribers to pay a fee for terminating a video services contract prior to its expiration date, making it costly for consumers to switch services during the contract term. Because an ETF may have the effect of limiting consumer choice after a contract is enacted, it may negatively impact competition for services in the marketplace. This billing practice has been used by video service providers for some time and, in 2008, the Commission heard from expert panelists regarding the use of ETFs by communications service providers, including representatives from cable and DBS providers. More recently, the *Executive Order on Promoting Competition in the American Economy* encouraged the Commission to consider ''prohibiting unjust or unreasonable early termination fees for end-user communication contracts; enabling consumers to more easily switch providers'' in order to promote competition and lower prices.

BCFs require video service subscribers to pay for a complete billing cycle even if the subscriber terminates service prior to the end of that billing cycle. As such, BCFs penalize consumers for terminating service by requiring them to pay for services they choose not to receive. Video service subscribers may terminate service for any number of reasons, including moving, financial hardship, or poor service. Recently, some states have enacted laws restricting BCFs. The U.S. Court of Appeals for the First Circuit in *Spectrum Northeast, LLC* v. *Frey* recently decided that one such BCF regulation imposed by the State of Maine was not impermissible cable service rate regulation. Likewise, the Supreme Court of New Jersey recently reached the same conclusion regarding a similar New Jersey statute in the *Alleged Failure of Altice* case.

Customer Service Standards. The 1984 Cable Act added Title VI to the Communications Act of 1934 (Act). Section 632, entitled ''Consumer Protection,'' addressed one particular type of consumer protection—''customer service requirements,'' providing specifically that ''[a] franchising authority may require . . . provisions for enforcement of . . . customer service requirements . . .'' Although the term ''customer service'' is not defined in the statute, the legislative history of the 1984 Cable Act defined ''customer service'' as ''the direct business relation between a cable operator and a subscriber'' and ''customer service requirements'' as including requirements related to ''rebates and credits to consumers.'' In 1992, Congress amended section 632 to ''provide protection for consumers against . . . poor customer service'' in part by requiring the Commission to ''establish standards by which cable operators may fulfill their customer service requirements.'' The legislative history of the 1992 Cable Act explained that Congress considered cable customer service ''an area of paramount concern,'' and that the standards are intended to ''provide increased consumer protection.'' In 1993, the Commission implemented this mandate in section 76.309 of its rules, adopting baseline customer service requirements for cable operators. Although section 632 specifies certain topics that must be addressed in the Commission's cable customer service rules, such as ''communications between the cable operator and the subscriber (including standards governing bills and refunds),'' the list is not exhaustive. Because section 632(b) states that the standards must address these topics ''at a minimum,'' the Commission has broad authority to adopt customer service requirements beyond those enumerated in the statute. Indeed, when enacting its customer service standards, the Commission noted that ''we reserve the right to respond to particular circumstances brought to our attention to ensure that customer service satisfaction is achieved nationwide.''

With regard to DBS providers, section 303(v) of the Act grants the Commission ''exclusive jurisdiction to regulate the provision of direct-to-home satellite services,'' and section 335(a) provides broad statutory authority to the Commission to impose ''public interest or other requirements for providing video programming'' on DBS providers. While the Commission has not adopted specific customer service obligations for

DBS providers as it has for cable providers, it has adopted rules implementing other public interest obligations.

Discussion. Consistent with the objectives outlined above, we seek comment on our tentative conclusions with respect to ETFs and BCFs. As more thoroughly discussed below, this includes the scope and substance of our proposed rules, our legal authority to adopt these rules, the benefits and impacts of the proposed rules, and the extent to which any alternatives could achieve our policy goals.

Proposed Rules. First, we propose to prohibit cable and DBS service providers from imposing a fee for the early termination of a cable or DBS video service contract. To *the* extent that the existing terms of service between a cable operator or DBS provider and its subscriber provide for an ETF, we seek comment on whether to deem such a provision unenforceable if we were to prohibit ETFs. We seek comment on this proposal to regulate video service ETFs. We tentatively find that our proposed prohibition on ETFs is a reasonable customer service requirement in an area, billing practices, where the Commission receives hundreds of complaints annually. When the Commission first established its customer service standards, it acknowledged that a ''key objective'' of the Act was to ''ensure that cable operators nationwide provide satisfactory service to their customers.'' We tentatively find that the imposition of ETFs inhibits subscribers from switching providers and making choices about the video services they wish to receive. We tentatively find that the prohibition of ETFs will create a standard that protects consumers from a billing practice that may effectively limit their ability to switch video service providers. Limiting such restrictions imposed on consumer choice could serve the public interest by allowing consumers to freely choose among providers, which promotes vibrant competition in the market for video services and encourages providers to maintain high customer service standards to retain subscribers to their service. Although in the past video service providers have generally claimed that ETFs decrease overall consumer costs, individual consumers maintain in general that ETFs are unreasonably restrictive. We tentatively find that our proposed rule preventing ETFs will protect consumers from billing practices that may deter or make it more difficult for consumers to switch providers, and thereby impede competition in the video marketplace. We seek comment on these tentative conclusions.

We also propose to require cable and DBS service providers to grant subscribers a prorated credit or rebate for the remaining whole days in a monthly or periodic billing cycle after the cancellation of service. We seek comment on this proposal, and whether the specific language reflects our intent of relieving a subscriber from payment obligations as of the date the provider receives a cancellation request. To the extent that the existing terms of service between a cable operator or DBS provider and its subscriber provide for a BCF, we seek comment on whether to deem such a provision unenforceable if we were to prohibit BCFs. We tentatively find that this prohibition on BCFs is a reasonable customer service requirement because this practice requires consumers to pay for service they no longer wish to receive. As with ETFs, we tentatively find that prohibition of BCFs will create a standard that protects consumers from poor customer service, specifically, paying for services that have been cancelled, and that such a standard will serve the public interest by protecting consumers from unfair billing practices. BCFs impose significant costs on consumers for services they have cancelled and no longer wish to receive. For instance, based on the average price for cable service, subscribers cancelling mid-billing cycle could pay a significant price even after cancelling their service: the average monthly price for basic tier cable service is $42.63, for expanded basic tier service it is $101.54, for the next most popular cable service tier it is $115.67, and the price for services comparable to expanded basic tier service from DIRECTV and DISH average $123.52 and $90.44 per month, respectively. We tentatively find that our proposed rule preventing BCFs will protect consumers from charges for cancelled cable or DBS service they no longer want. We seek comment on these tentative conclusions.

Legal Authority. We seek comment on our authority to adopt ETF and BCF regulations for cable and DBS providers. We tentatively conclude that adoption of restrictions on both ETFs and BCFs is a proper exercise of the Commission's authority under section 632 to ''establish standards by which cable operators may fulfill their customer service requirements.'' Section 632(b)(3) directs the Commission to establish standards governing ''communications between the cable operator and the subscriber (including standards governing bills and refunds).'' Because ETFs and BCFs involve cable operators' billing and refund practices, we tentatively conclude that these are customer service matters within the meaning of section 632(b)(3). In addition, we tentatively find that we may regulate these practices under our general authority in 632(b) to establish ''customer service'' standards. Although the term ''customer service'' is not defined in the statute, the legislative history defines the term ''customer service'' to mean ''in general'' ''the direct business relation between a cable operator and a subscriber,'' and goes on to explain that ''customer service requirements'' include requirements related to ''rebates and credits to consumers.'' We tentatively conclude that the proposed restriction on ETFs and BCFs satisfies the definition of a ''customer service requirement'' because billing practices governing the termination of service, such as ETFs and BCFs, involve the ''direct business relation between a cable operator and a subscriber.'' Additionally, we tentatively find that pro-rata refunds are properly considered ''rebates [or] credits'' given to consumers, which, according to the legislative history, are customer service matters. Furthermore, the list of topics Congress required the Commission to address in terms of customer service was not exhaustive. We tentatively conclude that fees—both those inhibiting subscribers from making choices about the video services they wish to receive and those imposing significant costs on consumers for services they did not choose to receive—are precisely the type of customer service concerns that Congress meant to address when it enacted section 632. Thus, we tentatively find that restrictions on such practices are within the statute's grant of authority. We seek comment on this analysis. We also seek comment on whether there are alternative or additional statutes or arguments that provide a legal basis for our authority to adopt this customer service requirement for cable operators.

We also seek comment on our authority to adopt ETF and BCF regulations for DBS providers. We tentatively find that restrictions on ETFs are in the public interest because the fees unreasonably inhibit competition and consumer choice among video service providers. We tentatively find that restrictions on BCFs are in the public interest because the practice imposes fees on subscribers for services that they did not choose to receive and that the fees can be significant. Excluding DBS from these rules would mean that their subscribers would remain vulnerable to these practices. Do

we have authority under section 335(a) to adopt ETF and BCF regulations for DBS providers? Do we have authority under other provisions of Title III? We also seek comment on whether we have—and should exercise—ancillary authority under section 4(i) of the Act to adopt such regulations and whether it is necessary to undertake this regulation for the Commission to effectively perform its responsibilities under the foregoing primary sources of statutory authority? By doing so, we will ensure uniformity of regulation between and among cable operators (regulated under Title VI and by various state consumer protection laws and local franchising provisions) and DBS providers (under Title III), thereby preventing DBS providers from gaining a competitive advantage over their competitors through the use of ETFs and BCFs. We seek comment on this analysis. We also seek comment on whether there are alternative or additional statutes or arguments that provide a legal basis for our authority to adopt these customer service requirements for DBS providers.

Finally, as noted above, based on the language and structure of section 632, Congress authorized the Commission to establish customer service requirements, and franchising authorities to adopt additional laws above and beyond the Commission's baseline requirements. Therefore, we tentatively find that this proposed rule would not preempt existing state and local laws that prohibit ETFs and BCFs or otherwise exceed the requirements we adopt in this proceeding, so long as they are not inconsistent with Commission regulations. We seek comment on this analysis.

Rate Regulation versus Customer Service Regulation. In *Spectrum Northeast, LLC* v. *Frey,* the First Circuit determined that a state regulation prohibiting BCFs substantially similar to the prohibition we propose here is not rate regulation pursuant to the Act. We tentatively conclude that this same analysis (as described in further detail below) applies to our proposed BCF prohibition. We seek comment on this tentative conclusion. While *Spectrum Northeast, LLC* v. *Frey* addresses the issue of whether a BCF prohibition is impermissible rate regulation, the court did not address ETFs. We tentatively conclude that cable ETF regulations are not rate regulations under section 623 of the Act. We seek comment on this tentative conclusion. The statute does not define the term ''rates'' or explain the meaning of the phrase ''rates for the provision of cable service'' for purposes of section 623. Historically, the Commission's cable rate regulations have not covered service termination fees or termination rebates. The Commission has previously found the regulation of fees similar to the proposed regulation of ETFs and BCFs is not rate regulation. For instance, the Commission has found that limits on late fees are considered customer service regulation and not rate regulation. And, in practice, the Media Bureau and its predecessor bureau (the Cable Services Bureau) have found that local regulations similar to the proposed ETF and BCF regulations herein, were not properly categorized as rate regulation and therefore not pre-empted. Such findings have included local regulations that address unreturned equipment fees, pay-by-phone fees, late fees, returned check fees, and other miscellaneous cable subscriber charges that were found not to be included as part of the Commission's rate regulations. Thus, we tentatively conclude that Commission practice and precedent supports the notion that ETF regulations also are not rate regulation.

Furthermore, our tentative conclusion is consistent with recent court precedent. In the First Circuit's recent decision in *Spectrum Northeast, LLC* v. *Frey,* the court determined that a state BCF regulation is not rate regulation pursuant to the Act. The Maine regulation was enacted after a cable company implemented a new practice of declining to provide refunds when cable service was terminated prior to the end of a billing cycle. The regulation then required cable operators to issue prorated credits or rebates for the days remaining in a billing period after termination of cable service. The court determined that the federal preemption of cable rate regulation ''did not extend to the regulation of termination rebates'' and concluded that the Maine law is not a law governing ''rates for the provision of cable service'' but rather is a ''consumer protection law'' that is not preempted. The court based its decision on four aspects of the structure and legislative history of the Act. First, the court explained that the legislative history of the Act and the Commission's regulations ''focused on preempting monthly 'rates' charged for the provision of basic cable service'' and do not ''suggest that the term 'rates for the provision of cable service' includes termination fees or termination rebates.'' Second, the court noted that Congressional silence concerning termination fees or rebates is ''particularly significant'' because Congress included regulation of rates for ''installation'' fees, but not termination fees, as rates ''for the provision of cable service.'' Third, the court observed that Congress acknowledged multiple potential sources of competition but did not identify termination credits as being controlled by effective competition. Instead, termination credits encourage competition ''by prohibiting cable companies from creating artificial barriers to switching between competitors by charging consumers beyond termination of service.'' Finally, the court found that Congress expressed a purpose to ''preserve state consumer protection laws'' despite preempting the regulation of ''rates for the provision of cable service,'' and this favors ''a narrow reading of the scope of the preemption provision.''

The New Jersey Supreme Court also recently concluded that a New Jersey statute banning BCFs was not rate regulation preempted by federal law. The New Jersey code states that ''[b]ills for cable television service shall be rendered monthly, bi-monthly, quarterly, semi-annually or annually and shall be prorated upon establishment and termination of service.'' In *Alleged Failure of Altice,* the Supreme Court of New Jersey concluded that New Jersey's BCF regulation does not regulate cable rates or control the rates for the provision of cable service. The court based its decision on the ''ordinary meaning'' of the text from the New Jersey statute and the Cable Act. The court determined that ''the plain and ordinary meaning of rate regulation . . . is not so broad as to encompass all laws that affect or concern cable prices.'' With regard to the New Jersey BCF regulation, the court concluded that ''the challenged regulation does not even indirectly affect the actual rate Altice charges . . . the regulation merely uses the rate that the cable provider sets to enforce a price proportional to the quantity of service provided.''

With regard to cable ETFs, we tentatively conclude that the courts' logic in *Spectrum Northeast, LLC* v. *Frey* and *Alleged Failure of Altice* applies to the ETF regulation we propose in this *NPRM.* Similar to a BCF, an ETF is assessed upon *termination* of service, *i.e.,* it concerns the time period when cable service ends. Thus, a restriction on ETFs does not appear to cap the amount a cable operator can charge for the provision of cable service; rather, it regulates only the charge that a cable operator may impose on a customer *after* the customer has elected to *terminate* service. Further, we tentatively find that the structure and legislative history of the Act does not support treating ETFs as a form of rate

regulation, just as the courts found with regard to BCFs. Also, we tentatively find that an ETF does not fall within the plain and ordinary meaning of rate regulation, similar to the court's reasoning regarding BCFs. Thus, we tentatively conclude that regulation of ETFs is not ''rate regulation.'' In addition, our tentative conclusion is consistent with case law evaluating whether State regulation of cellular telephone ETFs is preempted by federal rate regulation. In *In re Cellphone Termination Fee Cases,* the California Court of Appeals for the First District concluded that a cellular telephone ETF regulation was not preempted by federal law. Although the court was not addressing cable rate regulation specifically, it was addressing a similar statutory provision that carves out the universe of ''other terms and conditions'' from rate regulation of wireless services, similar to how ''consumer protection'' and ''customer service'' is distinct from rate regulation in the cable statute. The scope of both carveouts appears to be similar in nature and includes billing issues, consumer protection, and customer service. The court concluded that the ''purpose in adopting the cellular telephone ETF was to control churn'' and prevent customers from leaving, and because the State law invalidating the ETFs had ''only an indirect and incidental effect on . . . rates,'' it was not preempted by federal law. We find this reasoning and that of the BCF cases discussed above to be applicable to the question of whether cable ETF regulations are rate regulations under the Act, and tentatively conclude that they are not. We therefore tentatively conclude that, consistent with case law and the Commission's own precedent, regulations concerning cable ETFs also are not rate regulations. Thus, we tentatively find inapplicable section 623's prohibition on the Commission's regulation of ''the rates for the provision of cable service'' in franchise areas where effective competition exists. Nearly all, if not all, cable operators now face effective competition and are not subject to rate regulation. However, there is no such prohibition found in section 632's customer service provision. Accordingly, the applicability of ETF and BCF regulations are not affected by the existence of effective competition in a community. We seek comment on this analysis.

Implementation. We seek comment on how to tailor our rules to best protect consumers and promote competition. As an initial matter, we seek specific comment on the interplay of our proposed rules and any state or local ETF and BCF regulations. To what extent are State and local authorities currently regulating ETFs and BCFs with respect to cable and DBS services? Do local authorities have adequate resources to enforce the proposed rules effectively? To the extent the Commission were to enforce its own rules in individual cases, how could it best coordinate enforcement with local authorities?

We also seek specific comment from State and local authorities on our proposed prohibition on cable and DBS ETFs and BCFs as proposed in appendix A. Should we adopt something less than a total ban and allow variations within States or communities? Given our shared jurisdiction with local authorities over cable customer service issues, we seek comment regarding their local subscriber complaints and regulation experiences. We seek comment on what enforcement mechanisms should be implemented at the federal level. We also seek comment on what enforcement mechanisms have been or could be implemented at the local level and how those might inform enforcement mechanisms at the federal level. To the extent we adopt a ban on DBS ETFs and BCFs, would this need to be enforced by the Commission given that DBS providers are not required to have local or state franchises? If so, are there additional rules we should adopt to ensure an effective enforcement scheme?

If the Commission adopts the proposals to ban ETFs and BCFs, what is a reasonable amount of time for cable and satellite providers to implement this change? How should our proposed rule banning BCFs be implemented for the benefit of current subscribers? Do operators require time to implement changes to their current billing systems? What effect, if any, will our proposed rule banning ETFs have on consumers' existing contracts? If commenters argue that our proposed rule should apply only to new contracts entered into after its effective date, what are the legal and policy justifications for treating agreements of existing customers differently than new customers? Should there be a grace period to accommodate existing contracts with ETF provisions? If so, what effect, if any, will our proposed rule have on existing ETFs? In lieu of the rules proposed in appendix A, we seek comment on whether the Commission should, on the other hand, adopt more detailed cable and DBS regulations that include grace periods, limiting or extenuating circumstances, or other factors for determining when an ETF or BCF might be appropriate. Is there any justification for less than a total ban on ETFs and BCFs? For example, should our rules exempt small cable operators or rural cable operators? Any party advocating for an exception should explain the reason they believe a carve-out from the prohibition is necessary. We seek comment on these issues.

To the extent cable or DBS video service is part of a bundled package with non-video services, could ETF and BCF rules be applied to the entire bundle, and if so, under what authority? We therefore seek comment on enforcement issues relating to an ETF or BCF ban when video services are bundled with non-video services. With respect to cable, does permitting state and local government enforcement of an ETF or BCF ban conflict with other sections of Title VI of the Act or the scope of local franchise authority under Title VI when video services are included as part of a bundle? We recognize that section 624(b)(1) provides that franchising authorities ''may not . . . *establish* requirements for . . . information services.'' Does this provision limit franchising authorities' ability to enforce a Commission-established ban on ETFs or BCFs when video services are part of a bundle with non-video services? We seek comment on these issues.

State of the Video Marketplace. We seek comment on how cable operators and DBS providers currently handle ETFs and BCFs. As noted above, BCFs are a more recent development than ETFs. Were there changes in the video marketplace that prompted introduction of ETFs and/or BCFs? Are there video service providers who currently do not impose ETFs and/or BCFs? Are there providers that offer multiple subscription choices including plans with and without ETFs? Are providers offering long term contracts at reduced prices without ETFs? If so, what other differences are there between offerings with and without ETFs? How likely are consumers to elect a plan that does not include ETFs when such offerings are available? If such offerings are available, what is the cable operator's or DBS provider's rationale for offering that plan or option? Would the absence or presence of an ETF impact a consumer's choice of provider? Are there any cable operators or DBS providers that offer multiple subscription choices including plans with and without BCFs? If so, what is the cable operator's or DBS provider's rationale for offering that plan or option? Are there cable operators or DBS providers that only impose BCFs in certain circumstances

and not in other circumstances? If so, what are the circumstances in which the BCF is not imposed? What is the cable operator's or DBS provider's rationale for not imposing the BCF in those circumstances? Would the absence or presence of BCFs impact a consumer's choice of provider? How would prohibiting or limiting cable operators and DBS providers from imposing ETFs and/or BCFs change providers' current customer services?

Cost/Benefit Analysis. If a ban on ETFs were implemented, we expect consumers to benefit because they would have the ability to switch video service providers more easily and cancel video service without cost. In addition, a ban on BCFs would benefit consumers because it would prevent consumers from paying for services they choose not to receive. If ETFs are eliminated, would video service providers still choose to offer long term contracts for reasons other than price, for instance in order to avoid churn? Could the elimination of ETFs alter the price of long term contracts and if so how? What would be the impact of such changes on consumers? If video service providers were to decide not to offer long term contracts or to offer them at higher prices, would the higher prices be offset by the consumer savings in avoiding ETFs? How would these possible outcomes affect low-income and new consumers? Further, would eliminating ETFs and BCFs affect billing cycles? We seek comment on how the Commission should assess the likelihood and magnitude of these potential benefits and costs to consumers.

We also seek comment on how a ban on ETFs and BCFs would affect competition among video providers. By reducing consumer switching costs, could a ban on ETFs foster competition between developing online video services and cable and satellite video providers? For example, might consumers who have signed multi-year contracts with cable and satellite video providers benefit from earlier opportunities to choose among all options? Would this additional choice enhance competition? For cable and satellite video customers, what are the shares of customers with month-to-month, one-year, two-year, or other service agreements subject to ETFs or BCFs?

We also seek comment on any potential costs that would be imposed on regulatees if we adopt the proposals contained in this *NPRM.* Do these costs differ between large and small cable providers? Would a ban on ETFs and BCFs impose substantial or unnecessary burdens on small cable operators? Further, would a ban on ETFs limit entry by new providers by limiting their ability to recoup upfront costs through an ETF? Would a ban on ETFs and BCFs have a positive impact on video service provider negotiations with broadcast stations and cable networks for programming by allowing consumers more freedom to switch providers to obtain preferred programming? Could programming costs be affected by a ban on ETFs and BCFs? What amounts do cable and DBS operators charge for early termination fees? Comments should be accompanied by specific data and analysis supporting claimed costs and benefits.

Digital Equity and Inclusion. Finally, the Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

Ex Parte Rules—Permit-But-Disclose. The proceeding this Notice initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Filing Requirements—Comments and Replies. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

Electronic Filers: Comments may be filed electronically using the internet by accessing the ECFS: *https://apps.fcc.gov/ecfs/.*

Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554. Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible/potential impact of the rule and policy changes contained in this *NPRM*. The IRFA is set forth below. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *NPRM* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

Paperwork Reduction Act. This document does not contain any proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Providing Accountability Through Transparency Act. Consistent with the Providing Accountability Through Transparency Act, Public Law 118–9, a summary of this document will be available on *https://www.fcc.gov/proposed-rulemakings*.

People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

Initial Regulatory Flexibility Act Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified in the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules. The NPRM initiates a proceeding to consider billing practices that inhibit video service subscribers from choosing the video services they want and that result in consumers paying fees for video services they choose not to receive. The Commission has received numerous complaints from cable and DBS subscribers about two billing practices: early termination fees (ETFs) and billing cycle fees (BCFs). An ETF is a fee that a provider charges a subscriber when the subscriber terminates its service contract prior to its expiration. ETFs remove consumer choice, negatively impacting competition for services in the marketplace. A BCF is a fee that subscribers pay when they cancel service prior to the end of a billing cycle and the service provider refuses to refund a pro-rated share of the billing cycle charge for the unused service. BCFs harm consumers by requiring them to pay for services they did not choose to receive. Both of these fees place a financial burden on subscribers and can create barriers to competition. The proposed rules in the NPRM will prevent the imposition of ETFs and BCFs, protecting consumers and promoting competition.

Legal Basis. The proposed action is authorized under §§ 1, 4(i), 303(v), 335(a) and 632(b), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(v), 335(a) and 552(b).

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act (SBA). A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

Cable and Other Subscription Programming. The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (*e.g.,* limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA small business size standard for this industry classifies firms with annual receipts less than $41.5 million as small. Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year. Of that number, 149 firms operated with revenue of less than $25 million a year and 44 firms operated with revenue of $25 million or more. Based on this data, the Commission estimates that a majority of firms in this industry are small.

Cable Companies and Systems (Rate Regulation). The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Based on industry data, there are about 420 cable companies in the U.S. Of these, only seven have more than 400,000 subscribers. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Based on industry data, there are about 4,139 cable systems (headends) in the U.S. Of these, about 639 have more than 15,000 subscribers. Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, contains a size standard for a ''small cable operator,'' which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator. Based on industry data, only six cable system operators have more than 498,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are

affiliated with entities whose gross annual revenues exceed $250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

Direct Broadcast Satellite (''DBS'') Service. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.

The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service—DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation. DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements. The *NPRM* proposes to adopt rules that prohibit cable and DBS service providers from imposing ETFs and BCFs. This may impose new or additional compliance obligations on small entities. When subscribers wish to terminate their services contract prior to its expiration date, small entity cable operators may need to use additional accounting and finance processes to determine the prorated credit or rebate to provide subscribers for the remaining days in a billing cycle. These operators must then determine how to return this fee to the subscriber. The *NPRM* seeks comment on any potential costs that would be imposed on regulatees and whether a ban on ETFs and BCFs would impose unnecessary burdens on small cable operators. The Commission anticipates the information received in comments including where requested, cost and benefit analyses, will help identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries made in the *NPRM*.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

To assist in the Commission's evaluation of the economic impact on small entities, as a result of actions that have been proposed in the *NPRM,* and to better explore options and alternatives, the Commission seeks comment on whether any of the burdens associated with the compliance requirements described above can be minimized for small entities. An alternative option that may reduce burdens on small entities considered in the *NPRM* is whether the Commission should adopt more detailed cable and DBS regulations that include grace periods, limiting or extenuating circumstances, or other factors for determining when an ETF or BCF might be appropriate. Additionally, the Commission seeks comment on whether potential costs associated with a ban on small entities imposing ETFs and BCFs would impose unnecessary burdens on small cable operators. The Commission expects to more fully consider the economic impact and alternatives for small entities based on its review of the record and any comments filed in response to the *NPRM* and this IRFA.

Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule. None.

It is ordered that, pursuant to the authority found in §§ 1, 4(i), 303(v), 335(a) and 632(b), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(v), 335(a) and 552(b), this Notice of Proposed Rulemaking *is adopted. It is further ordered* that the Commission's Office of the Secretary, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 25

Administrative practice and procedure, Satellites.

47 CFR Part 76

Television.

Federal Communications Commission

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 25 and 76 as follows:

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for Part 25 is revised to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 335, 605, and 721, unless otherwise noted.

■ 2. Amend § 25.701 by revising the introductory text of paragraph (a) and by adding paragraph (g) to read as follows:

§ 25.701 Other DBS Public interest obligations.

(a) DBS providers are subject to the public interest obligations set forth in paragraphs (b), (c), (d), (e), (f) and (g) of this section. * * *

* * * * *

(g) Customer service obligations. A DBS provider shall not charge a subscriber a fee for terminating a DBS services contract before its expiration date. A DBS provider must provide a subscriber a prorated credit or rebate for the remaining days in a billing cycle after the cancellation of DBS service.

* * * * *

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 3. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 4. Amend § 76.309 by adding paragraph (c)(5) to read as follows:

§ 76.309 Customer service obligations.

* * * * *

(c) * * *

(5) A cable operator shall not charge a subscriber a fee for terminating a cable services contract before its expiration date. A cable operator must provide a subscriber a prorated credit or rebate for the remaining days in a billing cycle after the cancellation of cable service.

* * * * *

[FR Doc. 2023–28622 Filed 1–4–24; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 89, No. 4
Friday, January 5, 2024

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.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Colorado Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Colorado Advisory Committee (Committee) to the U.S. Commission on Civil Rights will convene a monthly virtual business meeting on Wednesday, January 17, 2024, at 3:00 p.m. Mountain Time. The purpose of the meeting is to continue working on its project on public school attendance zones in Colorado.

DATES: Wednesday, January 17, 2024, at 3:00 p.m. Mountain Time.

ADDRESSES: The meeting will be held via Zoom.

Meeting Link (Audio/Visual): https://tinyurl.com/279fjudv; password: USCCR–CO.

Join by Phone (Audio Only): 1–833 435 1820; Meeting ID: 160 614 2807#.

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez, Designated Federal Official at *bdelaviez@usccr.gov.* 312–353–8311.

SUPPLEMENTARY INFORMATION: These committee meeting is available to the public through the meeting link above. Any interested member of the public may listen to the meeting. At the meeting, an open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email *ebohor@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meetings. Written comments may be emailed to Barbara Delaviez at *bdelaviez@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–312–353–8311.

Records generated from these meetings may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meetings. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Colorado Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *ebohor@usccr.gov.*

Agenda

I. Welcome and Roll Call
II. Discussion: Draft Report Status on Public School Attendance Zones
III. Discuss Next Steps
IV. Public Comment
V. Adjournment

Dated: December 21, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–28562 Filed 1–4–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Rescission of Antidumping and Countervailing Duty Administrative Reviews

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

SUMMARY: Based upon the timely withdrawal of all review requests, the Department of Commerce (Commerce) is rescinding the administrative reviews covering the periods of review for the antidumping duty (AD) and countervailing duty (CVD) orders identified in the table below.

DATES: Applicable January 5, 2024.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Based upon timely requests for review, Commerce initiated administrative reviews of certain companies for the periods of review and the AD and CVD orders listed in the table below, pursuant to 19 CFR 351.221(c)(1)(i).[1] All requests for these reviews have been timely withdrawn.[2]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested the review withdraw their review requests within 90 days of the date of publication of the notice of initiation for the requested review. All parties withdrew their requests for the reviews listed in the table below within the 90-day deadline. No other parties requested administrative reviews of these AD/CVD orders for the periods noted in the table. Therefore, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding, in their entirety, the administrative reviews listed in the table below.

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 44262 (July 12, 2023); *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 51271 (August 3, 2023); *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 62322 (September 11, 2023); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 71829 (October 18, 2023); *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 78298 (November 12, 2023).

[2] The letters withdrawing the review requests may be found in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.*

	Period of review
AD Proceedings	
Germany: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, A–428–845	6/1/2022–5/31/2023
Italy: Certain Pasta, A–475–818	7/1/2022–6/30/2023
Japan:	
Carbon and Alloy Steel Cut-to Length Plate, A–588–875	5/1/2022–4/30/2023
Stainless Steel Sheet and Strip in Coils, A–588–845	7/1/2022–6/30/2023
Mexico: Emulsion Styrene-Butadiene Rubber, A–201–848	9/1/2022–8/31/2023
Republic of Korea: Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe, A–580–909	8/1/2022–7/31/2023
Socialist Republic of Vietnam:	
Certain Steel Nails, A–552–818	7/1/2022–6/30/2023
Oil Country Tubular Goods, A–552–817	9/1/2022–8/31/2023
Switzerland: Cold-Drawn Mechanical Tubing, A–441–801	6/1/2022–5/31/2023
Taiwan:	
Forged Steel Fittings, A–583–863	9/1/2022–8/31/2023
Passenger Vehicle and Light Truck Tires, A–583–869	7/1/2022–6/30/2023
The People's Republic of China:	
Certain Kitchen Appliance Shelving and Racks, A–570–941	9/1/2022–8/31/2023
Polyethylene Retail Carrier Bags, A–570–886	8/1/2022–7/31/2023
Ukraine: Silicomanganese, A–823–805	8/1/2022–7/31/2023
CVD Proceedings	
Socialist Republic of Vietnam:	
Certain Steel Nails, C–552–819	1/1/2022–12/31/2022
Passenger Vehicle and Light Truck Tires, C–552–829	1/1/2022–12/31/2022
The People's Republic of China: Aluminum Extrusions, C–570–968	1/1/2022–12/31/2022

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping and/or countervailing duties on all appropriate entries during the periods of review noted above for each of the listed administrative reviews at rates equal to the cash deposit of estimated antidumping or countervailing duties, as applicable, required at the time of entry, or withdrawal of merchandise from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this recission notice in the **Federal Register** for rescinded administrative reviews of AD/CVD orders on countries other than Canada and Mexico. For rescinded administrative reviews of AD/CVD orders on Canada or Mexico, Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of this recission notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers of merchandise subject to AD orders of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in these segments of these proceedings. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: January 2, 2024.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–00035 Filed 1–4–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of an open meeting of a Federal advisory committee.

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) will hold a hybrid meeting, accessible in-person and online, on Tuesday January 23, 2024 at the U.S. Department of Commerce in Washington, DC The meeting is open to the public with registration instructions provided below. This notice sets forth the schedule and proposed topics for the meeting. DATES: The meeting is scheduled for Tuesday, January 23, 2024 from 9:30 a.m. to 3:30 p.m. Eastern Standard Time (EST). The deadline for members of the public to register to participate, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. EST on Wednesday, January 17, 2024.

ADDRESSES: The meeting will be held virtually as well as in-person in the Commerce Research Library at the U.S. Department of Commerce Herbert Clark Hoover Building, 1401 Constitution Avenue NW, Washington, DC 20230. Requests to register to participate in-person or virtually (including to speak

or for auxiliary aids) and any written comments should be submitted via email to Ms. Megan Hyndman, Office of Energy & Environmental Industries, International Trade Administration, at *Megan.Hyndman@trade.gov.* This meeting has a limited number of spaces for members of the public to attend in-person. Requests to participate in-person will be considered on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Ms. Megan Hyndman, Office of Energy & Environmental Industries, International Trade Administration (Phone: 202–823–1839; email: *Megan.Hyndman@trade.gov*).

SUPPLEMENTARY INFORMATION: The ETTAC is mandated by Section 2313(c) of the Export Enhancement Act of 1988, as amended, 15 U.S.C. 4728(c), to advise the Environmental Trade Working Group of the Trade Promotion Coordinating Committee, through the Secretary of Commerce, on the development and administration of programs to expand U.S. exports of environmental technologies, goods, services, and products. The ETTAC was most recently re-chartered through August 16, 2024.

On Tuesday, January 23, 2024 from 9:30 a.m. to 3:30 p.m. EST, the ETTAC will hold the sixth meeting of its current charter term. During the meeting, committee members will participate in breakout discussions to discuss issues of interest to specific environmental technology sectors and to deliberate on potential recommendation topics. The committee will also hear briefings on U.S. government resources and programs to support U.S. environmental technology exporters, including the International Trade Administration's efforts to strengthen U.S. supply chains and U.S. Export-Import Bank tools for U.S. exporters. An agenda will be made available one week prior to the meeting upon request to Megan Hyndman.

The meeting will be open to the public and time will be permitted for public comment before the close of the meeting. Members of the public seeking to attend the meeting are required to register by Wednesday, January 17, at 5:00 p.m. EST, via the contact information provided above. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at *Megan.Hyndman@trade.gov* or (202) 823–1839 no less than one week prior to the meeting. Requests received after this date will be accepted, but it may not be possible to accommodate them.

Written comments concerning ETTAC affairs are welcome any time before or after the meeting. To be considered during the meeting, written comments must be received by Wednesday, January 17, 2024, at 5:00 p.m. EST to ensure transmission to the members before the meeting. Draft minutes will be available within 30 days of this meeting.

Dated: January 2, 2024.

Man K. Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2024–00054 Filed 1–4–24; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States Investment Advisory Council

AGENCY: SelectUSA, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), this notice announces, the United States Investment Advisory Council (IAC) will hold a public meeting on February 8, 2024. In August 2022, U.S. Secretary of Commerce Gina M. Raimondo appointed a new cohort of members to serve two-year terms. Members of this cohort will meet for the fifth time to continue to discuss matters related to foreign direct investment (FDI) in the United States and the programs and policies to promote and retain such investments across the country.

DATES: Thursday, February 8, 2024, 1:30 p.m.–3 p.m. ET.

ADDRESSES: The meeting will be held virtually via WebEx. Please note that registration is required both to attend the meeting and to make a statement during the public comment portion of the meeting. Please limit comments to five minutes or less and submit a brief statement summarizing your comments to: *IAC@trade.gov* or United States Investment Advisory Council, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 30011, Washington, DC 20230. The deadline for members of the public to register, including requests to make comments during the meeting, or to submit written comments for dissemination prior to the meeting is 5 p.m. ET on February 1, 2024. Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Claire Pillsbury, United States Investment Advisory Council, 1401 Constitution Avenue NW, Washington, DC 20230, phone: 202–578–8239, email: *IAC@trade.gov.*

SUPPLEMENTARY INFORMATION: The IAC was established under the discretionary authority of the Secretary of Commerce (Secretary) and in accordance with the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*).

The IAC advises the Secretary on matters relating to the promotion and retention of foreign direct investment in the United States. At the meeting, the IAC members will discuss work done within the three subcommittees: Economic Competitiveness, Workforce, and SelectUSA 2.0. The final agenda will be posted on the Department of Commerce website for the IAC at: *https://www.trade.gov/selectusa-investment-advisory-council,* prior to the meeting.

Public Participation: The meeting will be open to the public and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the **ADDRESSES** caption. Last minute requests will be accepted but may be impossible to fill. There will be fifteen (15) minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for public comments may be limited to three (3) minutes per person. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name and address of the proposed speaker and a brief statement summarizing the comments. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers.

Speakers are requested to submit a written copy of their prepared remarks by 5 p.m. ET on February 1, 2024, for inclusion in the meeting records and for circulation to the Members of the IAC.

In addition, any member of the public may submit pertinent written comments concerning the IAC's affairs at any time before or after the meeting. Comments may be submitted to Claire Pillsbury at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5 p.m. ET on February 1, 2024, to ensure transmission to the IAC members

prior to the meeting. Comments received after that date and time will be distributed to the members but may not be considered during the meeting.

Comments and statements will be posted on the IAC website (*https://www.trade.gov/selectusa-investment-advisory-council*) without change, including any business or personal information provided such as it includes names, addresses, email addresses, or telephone numbers. All comments and statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make publicly available.

Copies of the meeting minutes will be available within 90 days of the meeting date.

Jasjit Kalra,

Executive Director, SelectUSA.

[FR Doc. 2024–00022 Filed 1–4–24; 8:45 am]

BILLING CODE 3510–DR–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; Small Business Innovation Research (SBIR) Program Application Cover Sheet

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 October 4, 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: Small Business Innovation Research (SBIR) Program Application Cover Sheet.

OMB Control Number 0693–0072.

Form Number(s): None.

Type of Request: Extension of a current information collection.

Number of Respondents: 138.

Average Hours per Response: 30 minutes.

Burden Hours: 69 hours.

Needs and Uses: The information collected in the Cover Sheet provides identifying information and demographic data for use in NIST's annual report to the SBA on the program. The technical abstract is used in prevention of fraud, waste, and abuse by providing a method to compare similar applications to other agency SBIR programs. The abstract and potential commercial applications of successful applicants are posted on the agency website.

Affected Public: Applicants to the NIST SBIR Program.

Frequency: Annually.

Respondent's Obligation: Mandatory.

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 0693–0072.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–00037 Filed 1–4–24; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD610]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of modification to expiration date of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico (GOM), notification is hereby given that NMFS has modified the expiration date of a Letter of Authorization (LOA) issued to LLOG Exploration Offshore, L.L.C. (LLOG) for the take of marine mammals incidental to geophysical survey activity in the GOM.

DATES: This LOA is effective through December 31, 2026.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *https://www.fisheries.noaa.gov/marine-mammal-protection/issued-letters-authorization-oil-and-gas-industry-geophysical-survey.* In case of problems accessing these documents, please call the contact listed below (**FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which:

(i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in U.S. waters of the GOM over the course of 5 years (86 FR 5322, January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

NMFS issued an LOA to LLOG on January 20, 2022, for the take of marine mammals incidental to the following vertical seismic profile (VSP) survey types: Zero Offset, Offset, Walk Away, Salt Proximity and/or Check Shots after reaching total depth of any of the proposed wells operated by LLOG within the Keathley Canyon Area, effective March 1, 2022 through December 31, 2022. Please see the **Federal Register** notice of issuance (87 FR 3084, January 20, 2022) for additional detail regarding the LOA and the survey activity.

LLOG subsequently requested modification of the December 31, 2022, expiration date to December 31, 2023, due to survey delays and NMFS modified the LOA accordingly (87 FR 41670, July 13, 2022). More recently, LLOG informed NMFS that the survey would be further delayed, and requested a second modification to the expiration date of the LOA (from December 31, 2023, to December 31, 2026) to accommodate the delays. There are no other changes to LLOG's planned activity. Since issuance of the LOA, no survey work has occurred.

Authorization

NMFS has changed the expiration date of the LOA from December 31, 2023, to December 31, 2026. There are no other changes to the LOA as described in the January 20, 2022, **Federal Register** notice of issuance (87 FR 3084): the specified survey activity; estimated take by incidental harassment; and small numbers analysis and determination remain unchanged and are incorporated here by reference.

Dated: December 27, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–00007 Filed 1–4–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Socioeconomics of Coral Reef Conservation

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites 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. This notice pertains to a revision and extension of the approved collection of information for Socioeconomics of Coral Reef Conservation. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before March 5, 2024.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0646 in the subject line of your comments. Written comments NOAA receives are considered part of the public record, and the entirety of the comment, including the name of the commenter, email address, attachments, and other supporting materials, will be publicly accessible. Sensitive personally identifiable information, such as account numbers and Social Security numbers or Confidential Business Information, should not be included with the comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Mary Allen, NOAA Office for Coastal Management, Coral Reef Conservation Program, 1305 East-West Highway, Silver Spring, MD 20910, Telephone (240) 528–8151 or *Mary.Allen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for revision and extension to an approved collection of information, OMB Control Number 0648–0646, under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* and implementing regulations at 5 CFR part 1320. This previously-approved information collection assists NOAA in the administration of the National Coral Reef Monitoring Program (NCRMP), which was established by the NOAA Coral Reef Conservation Program (CRCP) under the authority of the Coral Reef Conservation Act of 2000, 16 U.S.C. 6401 *et seq.* This act authorizes CRCP to, among other things, conserve and restore the condition of United States coral reef ecosystems and enhance public awareness, understanding, and appreciation of coral reefs and coral reef ecosystems and their ecological and socioeconomic value. In accordance with its mission goals, NOAA developed a survey to track relevant information regarding each jurisdiction's population, social and economic structure, the benefits of coral reefs and related habitats, the impacts of society on coral reefs, and the impacts of coral management on communities. The survey is repeated in each jurisdiction every five to seven years in order to provide longitudinal

data and information for managers to effectively conserve coral reefs for current and future generations.

The purpose of this information collection is to obtain human dimensions information from residents in the seven United States (U.S.) jurisdictions containing coral reefs: Florida, U.S. Virgin Islands (USVI), Puerto Rico, Hawai'i, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI). Specifically, NOAA is seeking information on the behaviors and activities related to coral reefs, as well as information on perceptions of coral reef conditions and attitudes toward specific reef conservation activities. Each survey has a core set of questions that are asked across all jurisdictions to allow for information to be tracked over time and across jurisdictions. To account for geographical, cultural and linguistic differences between jurisdictions, the survey questions include items that are specific to the local context and developed based on jurisdictional partner feedback.

We intend to use the information collected through this instrument for research purposes, as well as for measuring and improving the results of our reef protection programs. Because many of our efforts to protect reefs rely on education and changing attitudes toward reef protection, the information collected will allow CRCP to ensure that programs are designed appropriately at the start, future program evaluation efforts are as successful as possible, and outreach efforts are targeting the intended recipients with useful information.

Pursuant to a request from the Office of Management and Budget (OMB), this collection of information was restructured in 2021 as a hybrid-generic collection. That structure is maintained herein.

II. Method of Collection

Information will be collected using the most efficient and effective methodology that is feasible in the individual jurisdiction. Dependent upon the jurisdiction, data will be collected via in-person or mail recruitment, in-person interviews, and/or push-to-web online survey platforms. For the three years covered by this clearance, data collection will target the USVI, Florida, and Hawai'i and will be collected as such: in-person interviews with an online option in the USVI and via mail push-to-web in Florida and Hawai'i.

III. Data

OMB Control Number: 0648–0646.
Form Number(s): None.

Type of Review: Regular submission. Revision and extension to a currently approved information collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 9,840.

Estimated Time per Response: 20 minutes per response.

Estimated Total Annual Burden Hours: 469 hours.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

Respondent's Obligation: Voluntary.

Legal Authority: Coral Reef Conservation Act of 2000, 16 U.S.C. 6401 *et seq.*

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection request. 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. If you would rather make an anonymous comment, please submit comments through *regulations.gov*.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–00040 Filed 1–4–24; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD557]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Off New York, New Jersey, Delaware, and Maryland

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 Atlantic Shores Offshore Wind, LLC (Atlantic Shores) for authorization to take marine mammals incidental to marine site characterization surveys in waters off of New York, New Jersey, Delaware, and Maryland, including in the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Lease Areas OCS–A 0499, OCS–A 0541, OCS–A 0549, and associated export cable corridor (ECC) areas. 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 February 5, 2024.

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.clevenstine@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: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* In case of problems accessing these documents, please call the contact listed 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/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Alyssa Clevenstine, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On August 31, 2023, NMFS received a request from Atlantic Shores for an IHA to take marine mammals incidental to conducting marine site characterization surveys in waters off of New York, New Jersey, Delaware, and Maryland, specifically within BOEM Lease Areas OCS–A 0499, OCS–A 0541, OCS–A 0549, and associated ECC areas. Following NMFS' review of the application, Atlantic Shores submitted revised versions on October 11 and November 17, 2023. The application was deemed adequate and complete on November 20, 2023. Atlantic Shores' request is for take of small numbers of 14 species (15 stocks) of marine mammals by Level B harassment. Neither Atlantic Shores nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued IHAs to Atlantic Shores for similar work (85 FR 21198, April 16, 2020; 86 FR 21289, April 22, 2021; 87 FR 24103, April 20, 2022; 87 FR 50293, August 10, 2022; 88 FR 38821, June 9, 2023; 88 FR 54575, August 10, 2023). Atlantic Shores complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHAs and did not exceed authorized levels of take under previous IHAs issued for surveys offshore of New York and New Jersey. These previous monitoring results are available to the public on our website: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-llc-marine-site-characterization* and *https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-bight-llcs-marine-site.*

Description of Proposed Activity

Overview

Atlantic Shores proposes to conduct marine site characterization surveys, including high-resolution geophysical (HRG) surveys, in waters off of New York, New Jersey, Delaware, and Maryland, specifically within BOEM Lease Areas OCS–A 0499, OCS–A 0541, OCS–A 0549, and associated ECC areas, collectively considered the Survey Area.

Atlantic Shores currently has two active IHAs associated with ongoing HRG survey activities: one in BOEM Lease Areas OCS–A 0499 and OCS–A 0549 effective June 9, 2023 through June 8, 2024 (88 FR 38821) and another in BOEM Lease Area OCS–A 0541 effective August 10, 2023 through August 9, 2024 (88 FR 54575). The purpose of the IHA request addressed herein is to combine all ongoing HRG survey activities, including remaining survey activity associated with the two existing IHAs as well as new activity, under a single IHA. The new activity includes additional areas not currently covered under either currently active Atlantic Shores HRG survey IHAs. If NMFS ultimately makes the required determinations and issues the requested IHA, NMFS will concurrently modify the effective dates of the two active IHAs to reflect an end date that is one day earlier in time than the start date of the requested IHA.

The proposed marine site characterization surveys are designed to obtain data sufficient to meet BOEM guidelines for providing geophysical, geotechnical, and geohazard information for site assessment plan surveys and/or construction and operations plan development. The objective of the surveys is to support the site characterization, siting, and engineering design of offshore wind project facilities including wind turbine generators, offshore substations, and submarine cables within the Survey Area. Up to two vessels may conduct survey efforts concurrently. Underwater sound resulting from Atlantic Shores'

marine site characterization survey activities, specifically HRG surveys, have the potential to result in incidental take of marine mammals in the form of Level B harassment.

Dates and Duration

The proposed activity is planned to begin on April 1, 2024. The proposed surveys are estimated to require a maximum of 300 survey days within a single year across a maximum of two vessels, which would include one vessel operating nearshore (less than 10 meters (m; 33 feet (ft)) depth) and one vessel operating offshore (greater than 10 m (33 ft) depth). The survey days are proposed to occur any month throughout the year as the exact timing of the surveys during the year is not yet certain. A ''survey day'' is defined as a 24-hour (hr) activity period in which an active acoustic sound source is used offshore and a 12-hr activity period when a vessel is operating nearshore. Surveyed at a speed of approximately 3.5 knots (kn; 6.5 kilometer (km) per hr (km/hr)), it is expected that the nearshore vessel would cover approximately 30 km (18.6 miles (mi)) of trackline per day, and the offshore vessel would cover approximately 140 km (87 mi) of trackline per day, based on Atlantic Shores' data acquisition efficiency expectations.

TABLE 1—PROPOSED SURVEY DAYS

Survey area	Number of active survey days expected	Survey distance per day (km)	Annual survey distance (km)
Nearshore	120	30	3,600
Offshore	180	140	25,200

Specific Geographic Region

Atlantic Shores' proposed activities would occur in the Northwest Atlantic Ocean within Federal and State waters off of New York, New Jersey, Delaware, and Maryland in BOEM Lease Areas OCS–A 0499, OCS–A 0541, OCS–A 0549, and along the associated ECC areas (Figure 1). Overall, the Survey Area is approximately 20,251 square kilometers (km^2; 7,819 mi^2) and extends from the shoreline to approximately 74 km (46 mi) offshore and a maximum depth of approximately 60 m (197 ft).

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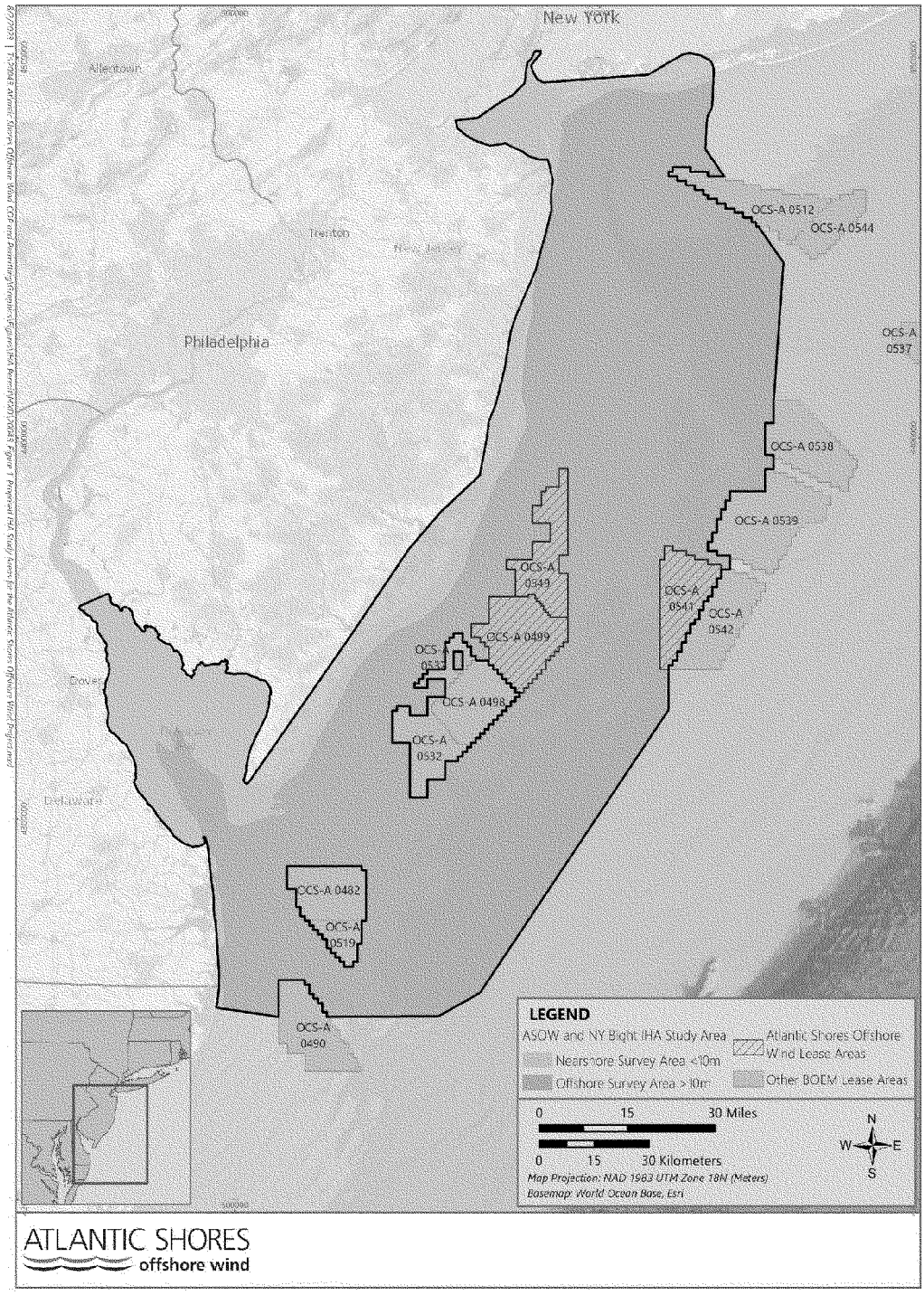

Figure 1 – Map of the Proposed Project Area

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Detailed Description of the Specified Activity

Atlantic Shores' marine site characterization surveys within the Survey Area include geotechnical and geophysical surveys, including depth sounding to determine water depth, site bathymetry, and general seafloor topography using a single beam and multibeam echosounder (MBES); magnetic intensity measurements using a gradiometer; seafloor imaging using a side scan sonar; shallow penetration sub-bottom profilers (SBPs; parametric); and a medium penetration SBP (sparker). NMFS does not expect the following acoustic sources to present a reasonably anticipated risk of causing incidental take of marine mammals, and these activities are not discussed further in this notice:

- Single and MBES and side-scan sonars are used to determine water depths and general seafloor topography. The proposed MBES and side-scan sonar both have operating frequencies greater than 180 kilohertz (kHz) and are,

therefore, outside the general hearing range of marine mammals.

- Gradiometers are used to detect local variations in regional magnetic field from geological strata and potential ferrous objects on and below the seafloor. The proposed gradiometer has an operating frequency greater than 180 kHz and is, therefore, outside the general hearing range of marine mammals.
- Parametric SBPs are shallow penetration non-impulsive sources used to map the near-surface stratigraphy (soil down to 5 m) of sediment below seabed and can provide high data density in subsurface profiles that are typically required for cable routes, very shallow water, and archaeological surveys. These sources generate short, very narrow-beam (1 to 3.5 degrees (°)) signals at high frequencies (generally around 85–115 kHz). The narrow beamwidth significantly reduces the potential that a marine mammal could be exposed to the signal while the high frequency of operation means that the signal is rapidly attenuated in seawater (and cannot be heard by mysticetes). These sources are typically deployed on a pole rather than towed behind the vessel.

Atlantic Shores proposes to use a sparker during HRG survey activities that has the potential to cause incidental take of marine mammals. Sparkers are medium penetration impulsive sources used to map deep subsurface stratigraphy (soils down to at least 100 m (328 ft) below the seabed in sand and at least 125 m (410 ft) below the seabed in mixed sediments). Sparkers create omnidirectional acoustic pulses from 50 hertz (Hz) to 4 kHz, are typically towed behind the vessel, and may be operated with different numbers of electrode tips to allow tuning of the acoustic waveform for specific applications. There is one sparker system planned for use: GeoMarine Geo-Source 400, which would collect two-dimensional (2D) single-channel ultra-high resolution seismic (SUHRS) data while operating 400 tips at a power level of 400 Joules (J; table 2).

TABLE 2—REPRESENTATIVE SURVEY EQUIPMENT EXPECTED TO RESULT IN TAKE OF MARINE MAMMALS

HRG survey equipment (sub-bottom profiler)	Representative equipment type	Operating frequency ranges (kHz)	Operational source level (dB_{RMS})	Beamwidth (degree)	Typical pulse duration RMS_{90} (ms)	Pulse repetition rate (Hz)
Sparker	Geo Marine Survey System 2D SUHRS.	0.2 to 5	195	180	7.2	0.41

Note: Atlantic Shores proposes to use the data provided for the SIG ELC 820 operating at a power of 400 J using 100 electrode tips as a proxy for the sparker system listed above (see Estimated Take section for additional discussion).

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*).

Table 3 lists all species or stocks for which take is expected and proposed to be authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality (annual M/SI) from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. 2022 SARs. All values presented in table 3 are the most recent available at the time of publication and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 3—SPECIES AND STOCKS LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES [1]

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [2]	Stock abundance (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [4]
Order Artiodactyla—Cetacea—Mysticeti (baleen whales)						
Family Balaenidae:						
N Atlantic Right Whale [5]	*Eubalaena glacialis*	Western Atlantic	E, D, Y	338 (0, 332, 2020)	0.7	31.2
Family Balaenopteridae (rorquals):						
Fin Whale	*Balaenoptera physalus*	Western N Atlantic	E, D, Y	6,802 (0.24, 5,573, 2016)	11	1.8
Humpback Whale	*Megaptera novaeangliae*	Gulf of Maine	-, -, N	1,396 (0, 1380, 2016)	22	12.15
Minke Whale	*Balaenoptera acutorostrata*	Canadian Eastern Coastal	-, -, N	21,968 (0.31, 17,002, 2016)	170	10.6

TABLE 3—SPECIES AND STOCKS LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES [1]—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [2]	Stock abundance (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [4]
Sei Whale	*Balaenoptera borealis*	Nova Scotia	E, D, Y	6,292 (1.02, 3,098, 2016)	6.2	0.8
Family Delphinidae:						
Long-Finned Pilot Whale	*Globicephala melas*	Western N Atlantic	-, -, N	39,215 (0.30, 30,627, 2016)	306	9
Atlantic Spotted Dolphin	*Stenella frontalis*	Western N Atlantic	-, -, N	39,921 (0.27, 32,032, 2016)	320	0
Atlantic White-Sided Dolphin.	*Lagenorhynchus acutus*	Western N Atlantic	-, -, N	93,233 (0.71, 54,443, 2016)	544	27
Bottlenose Dolphin	*Tursiops truncatus*	Northern Migratory Coastal	-, -, Y	6,639 (0.41, 4,759, 2016)	48	12.2-21.5
Bottlenose Dolphin	*Tursiops truncatus*	Western N Atlantic Offshore	-, -, N	62,851 (0.23, 51,914, 2016)	519	28
Risso's Dolphin	*Grampus griseus*	Western N Atlantic	-, -, N	35,215 (0.19, 30,051, 2016)	301	34
Common Dolphin	*Delphinus delphis*	Western N Atlantic	-, -, N	172,974 (0.21, 145,216, 2016)	1,452	390
Family Phocoenidae (porpoises):						
Harbor Porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	-, -, N	95,543 (0.31, 74,034, 2016)	851	164
Order Carnivora—Pinnipedia						
Family Phocidae (earless seals):						
Gray Seal [6]	*Halichoerus grypus*	Western N Atlantic	-, -, N	27,300 (0.22, 22,785, 2016)	1,458	4,453
Harbor Seal	*Phoca vitulina*	Western N Atlantic	-, -, N	61,336 (0.08, 57,637, 2018)	1,729	339

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/;* Committee on Taxonomy (2022)).

[2] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[3] NMFS marine mammal SARs online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[4] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

[5] Linden (2023) estimated the population size in 2022 as 356 individuals, with a 95 percent credible interval ranging from 346 to 363. NMFS acknowledges this most recent estimation in addition to the 2022 SAR stock abundance estimate.

[6] NMFS's stock abundance estimate (and associated PBR value) applies to the U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,600. The annual M/SI given is for the total stock.

As indicated above, all 14 species (15 managed stocks) in table 3 temporally and spatially co-occur with the proposed activity to the degree that take is reasonably likely to occur. While other species have been documented in the area (see table 3–1 of the IHA application), the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further.

North Atlantic Right Whale

North Atlantic right whales (NARW) range from calving grounds in the southeastern United States to feeding grounds in New England waters and into Canadian waters (Hayes *et al.,* 2023). They are observed year round in the Mid-Atlantic Bight, and surveys have demonstrated the existence of seven areas where NARW congregate seasonally in Georges Bank, off Cape Cod, and in Massachusetts Bay (Hayes *et al.,* 2023). In the late fall months (*e.g.,* October), NARW are generally thought to depart from the feeding grounds in the North Atlantic and move south to their calving grounds off Georgia and Florida. However, recent research indicates our understanding of their movement patterns remains incomplete (Davis *et al.,* 2017). A review of passive acoustic monitoring data from 2004 to 2014 throughout the western North Atlantic demonstrated nearly continuous year-round NARW presence across their entire habitat range (for at least some individuals), including in locations previously thought of as migratory corridors, suggesting that not all of the population undergoes a consistent annual migration (Davis *et al.,* 2017). Given that Atlantic Shores' surveys would be concentrated in the New York Bight and Mid-Atlantic Bight, some NARW may be present year round. However, the majority of NARW in the vicinity of the Survey Area are likely to be transient, migrating through the area.

Recent aerial surveys in the New York Bight showed NARW in the proposed Survey Area in the winter and spring, preferring deeper waters near the shelf break (NARW observed in depths ranging from 33–1,041 m) but were observed throughout the aerial survey area (Zoidis *et al.,* 2021, Robinson *et al.,* 2021). Similarly, passive acoustic data collected from 2018 to 2020 in the New York Bight showed detections of NARW throughout the year (Estabrook *et al.,* 2021). Seasonally, NARW acoustic presence was highest in the fall. NARW can be anticipated to occur in the proposed Survey Area year-round but with lower levels in the summer from July–September.

Since 2010, the NARW population has been in decline (Pace III *et al.,* 2017), with a 40 percent decrease in calving rate (Kraus *et al.,* 2016). In 2018, no new NARW calves were documented in their calving grounds; this represented the first time since annual NOAA aerial surveys began in 1989 that no new NARW calves were observed. Calf numbers have increased since 2018 with 20 NARW calves documented in 2021 and 15 in 2022.

Elevated NARW mortalities have occurred since June 7, 2017, along the U.S. and Canadian coast. This event has been declared an unusual mortality event (UME), with human interactions, including entanglement in fixed fishing gear and vessel strikes, implicated in at least 60 of the mortalities or serious injuries thus far. As of October 4, 2023, a total of 121 confirmed cases of mortality, serious injury, or morbidity (sublethal injury or illness) have been documented. The preliminary cause of most of these cases is from rope entanglements or vessel strikes. More information is available online at: *https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2023-*

north-atlantic-right-whale-unusual-mortality-event.

The proposed Survey Area is within a migratory corridor biologically important area (BIA) for NARW that extends from Massachusetts to Florida (LaBrecque *et al.,* 2015). There is possible migratory behavior that could occur in this area between November and April. Off the coast of New Jersey, the migratory BIA extends from the coast to beyond the shelf break.

NMFS' regulations at 50 CFR 224.105 designated nearshore waters of the Mid-Atlantic Bight as Mid-Atlantic U.S. Seasonal Management Areas (SMA) for NARW in 2008. SMAs were developed to reduce the threat of collisions between ships and NARW around their migratory route and calving grounds. The New York/New Jersey SMA, which occurs in the New York Bight, is in the proposed Survey Area and is active from November 1 through April 30 of each year. Within SMAs, the regulations require a mandatory vessel speed (less than 10 kn (18.52 km/hr)) or 5.14 m/sec for all vessels longer than 19.8 m (65 ft).

On August 1, 2022, NMFS announced proposed changes to the existing NARW vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (87 FR 46921, August 1, 2022). Should a final vessel speed rule be issued and become effective during the effective period of this IHA (or any other MMPA incidental take authorization), the authorization holder would be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization would remain in place. These changes would become effective immediately upon the effective date of any final vessel speed rule and would not require any further action on NMFS's part.

Fin Whale

Fin whales are present north of 35° N latitude in every season and are broadly distributed throughout the western North Atlantic for most of the year (Hayes *et al.,* 2022). They are typically found in small groups of up to five individuals (Brueggeman *et al.,* 1987). The main threats to fin whales are fishery interactions and vessel collisions (Hayes *et al.,* 2022).

The western North Atlantic stock of fin whales includes the area from central Virginia to Newfoundland/Labrador, Canada. This region is primarily a feeding ground for this migratory species that tend to calve and breed in lower latitudes or offshore. There is currently no critical habitat designated for this species.

Aerial surveys in the New York Bight observed fin whales year-round throughout the proposed Survey Area, but they preferred deeper waters near the shelf break (Robinson *et al.,* 2021). Passive acoustic data from 2018–2020 also detected fin whales throughout the year (Estabrook *et al.,* 2021).

Humpback Whale

On September 8, 2016, NMFS divided the once single species of humpback whales into 14 distinct population segments (DPSs), removed the current species-level listing, and, instead, listed four DPSs as endangered and one DPS as threatened (81 FR 62259, September 8, 2016). The remaining nine DPSs were not listed. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whale that is expected to occur in the Survey Area. Members of the West Indies DPS disperse to multiple western North Atlantic feeding populations, including the Gulf of Maine stock designated under the MMPA. Whales occurring in the proposed survey area are considered to be from the West Indies DPS but are not necessarily from the Gulf of Maine stock. Barco *et al.* (2002) estimated that, based on photo-identification, only 39 percent of individual humpback whales observed along the mid- and south Atlantic U.S. coast are from the Gulf of Maine stock. Bettridge *et al.* (2015) estimated the size of this population at 12,312 (95 percent confidence interval (CI) 8,688–15,954) whales in 2004–2005, which is consistent with previous population estimates of approximately 10,000–11,000 whales (Stevick *et al.,* 2003, Smith *et al.,* 1999) and the increasing trend for the West Indies DPS (Bettridge *et al.,* 2015).

Humpback whales utilize the mid-Atlantic as a migration pathway between calving/mating grounds to the south and feeding grounds in the north (Waring *et al.,* 2007a, Waring *et al.,* 2007b). A key question with regard to humpback whales off the Mid-Atlantic States is to which feeding population whales in these waters belong.

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. Partial or full necropsy examinations have been conducted on approximately half of the 209 known cases (as of November 2, 2023). Of the whales examined, about 40 percent had evidence of human interaction, either vessel 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. NOAA 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. More information is available at: *https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2023-humpback-whale-unusual-mortality-event-along-atlantic-coast.*

Minke Whale

Minke whales can be found in temperate, tropical, and high-latitude waters. The Canadian East Coast stock can be found in the area from the western half of the Davis Strait (45° W longitude) to the Gulf of Mexico (Hayes *et al.,* 2022). This species generally occupies waters less than 100 m deep on the continental shelf. There appears to be a strong seasonal component to minke whale distribution in the Survey Area, in which spring to fall are times of relatively widespread and common occurrence while during winter the species appears to be largely absent (Hayes *et al.,* 2022). Aerial surveys in the New York Bight area found that minke whales were observed throughout the proposed Survey Area with highest numbers sighting in the spring months (Robinson *et al.,* 2021).

Since January 2017, elevated minke whale mortalities have occurred along the Atlantic coast from Maine through South Carolina, with a total of 160 strandings (as of September 26, 2023). This event has been declared a UME; as of 2023, it is pending closure. Full or partial necropsy examinations were conducted on more than 60 percent of the stranded 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/2017-2023-minke-whale-unusual-mortality-event-along-atlantic-coast.*

Sei Whale

The Nova Scotia stock of sei whales can be found in deeper waters of the continental shelf edge waters of the northeastern U.S. and northeastward to south of Newfoundland. Sei whales occur in shallower waters to feed. Currently there is no critical habitat for sei whales, though they can be observed along the shelf edge of the continental shelf. The main threats to this stock are interactions with fisheries and vessel collisions.

Aerial surveys conducted in the New York Bight observed sei whales in both winter and spring, though they preferred deeper waters near the shelf break (Robinson *et al.,* 2021). Passive acoustic data in the proposed Survey Area detected sei whales throughout the year except January and July with highest detections in March and April (Estabrook *et al.,* 2021).

Long-Finned Pilot Whale

Only long-finned pilot whales are expected to occur in this project area due to their more northerly distribution and association with colder water compared to short-finned pilot whales (Garrison and Rosel, 2017). Long-finned pilot whales are found from North Carolina to Iceland, Greenland, and the Barents Sea (Hayes *et al.,* 2022). In U.S. Atlantic waters, the Western North Atlantic stock is distributed principally along the continental shelf edge off the northeastern U.S. coast in winter and early spring. In late spring, pilot whales move onto Georges Bank and into the Gulf of Maine and more northern waters and remain in these areas through late autumn (Hayes *et al.,* 2022).

Atlantic Spotted Dolphin

Atlantic spotted dolphins are found in tropical and warm temperate waters ranging from southern New England, south to the Gulf of Mexico and the Caribbean to Venezuela (Hayes *et al.,* 2020). The Western North Atlantic stock regularly occurs in continental shelf waters south of Cape Hatteras, North Carolina and in continental shelf edge and continental slope waters north of this region (Hayes *et al.,* 2020).

Atlantic White-Sided Dolphin

White-sided dolphins are found in temperate and sub-polar waters of the North Atlantic, primarily in continental shelf waters to the 100-m depth contour from central west Greenland to North Carolina (Hayes *et al.,* 2022). The Gulf of Maine stock is most common in continental shelf waters from Hudson Canyon to Georges Bank and in the Gulf of Maine and lower Bay of Fundy. Sighting data indicate seasonal shifts in distribution (Northridge *et al.,* 1997). During January to May, low numbers of white-sided dolphins are found from Georges Bank to Jeffreys Ledge (off New Hampshire) with even lower numbers south of Georges Bank as documented by a few strandings collected on beaches of Virginia to South Carolina. From June through September, large numbers of white-sided dolphins are found from Georges Bank to the lower Bay of Fundy. From October to December, white-sided dolphins occur at intermediate densities from southern Georges Bank to southern Gulf of Maine (Payne and Heinemann, 1990). Sightings south of Georges Bank, particularly around Hudson Canyon, occur year round but at low densities. Aerial studies confirmed observations in fall and winter in the New York Bight area with preference for deep water at the shelf break throughout the year (Robinson *et al.,* 2021).

Bottlenose Dolphin

There are two distinct bottlenose dolphin morphotypes in the Western North Atlantic: coastal and offshore (Hayes *et al.,* 2020, Hayes *et al.,* 2021). Coastal morphotype dolphins generally reside in waters along the inner continental shelf (within 7.5 km (4.6 mi) of shore), around islands, and are continuously distributed south of Long Island, New York, into the Gulf of Mexico. Coastal dolphins in this area are expected to belong to the Northern Migratory Coastal Stock. Torres *et al.* (2003) found a statistically significant break in the distribution of the morphotypes at 34 km from shore based upon the genetic analysis of tissue samples collected in nearshore and offshore waters from New York to central Florida. Both morphotypes are likely to occur in the proposed Survey Area. The offshore stock is distributed primarily along the outer continental shelf and continental slope in the Northwest Atlantic Ocean from Georges Bank to the Florida Keys.

Risso's Dolphin

The Western North Atlantic stock of Risso's dolphin occurs from Florida to eastern Newfoundland. They are common on the northwest Atlantic continental shelf in summer and fall with lower abundances in winter and spring. Aerial surveys in the New York Bight area sighted Risso's dolphins throughout the year at the shelf break with highest abundances in spring and summer (Robinson *et al.,* 2021).

Common Dolphin

Common dolphins within the U.S. Atlantic Exclusive Economic Zone (EEZ) belong to the Western North Atlantic stock, generally occurring from Cape Hatteras to the Scotian Shelf (Hayes *et al.,* 2022). Common dolphins are a highly seasonal, migratory species. Within the U.S. Atlantic EEZ, this species is distributed along the continental shelf and typically associated with Gulf Stream features (Cetacean and Turtle Assessment Program, 1982, Hamazaki, 2002, Selzer and Payne, 1988, Hayes *et al.,* 2022). They are commonly found over the continental shelf between the 100-m and 2,000-m isobaths and over prominent underwater topography and east to the mid-Atlantic Ridge (Hayes *et al.,* 2022). Common dolphins occur from Cape Hatteras northeast to Georges Bank (35° N to 42° N latitude) during mid-January to May and move as far north as the Scotian Shelf from mid-summer to fall (Selzer and Payne, 1988). Migration onto the Scotian Shelf and continental shelf off Newfoundland occurs when water temperatures exceed 51.8 °F (11° Celsius; (Sergeant *et al.,* 1970, Gowans and Whitehead, 1995). Breeding usually takes place between June and September (Hayes *et al.,* 2022). Summer surveys included observations of the most individuals followed by fall, winter, and then spring.

Harbor Porpoise

In the project area, only the Gulf of Maine/Bay of Fundy stock of harbor porpoises may be present in the fall and winter. This stock is found in U.S. and Canadian Atlantic waters and is concentrated in the northern Gulf of Maine and southern Bay of Fundy region, generally in waters less than 150 m deep (Hayes *et al.,* 2022). During fall (October–December) and spring (April–June), they are more widely dispersed from New Jersey to Maine with lower densities farther north and south. In winter (January–March), intermediate densities of harbor porpoises can be found in waters off New Jersey to North Carolina with lower densities found in waters off New York to New Brunswick, Canada (Hayes *et al.,* 2022). They are seen from the coastline to deep waters (greater than 1,800 m; (Westgate and Read, 1998), although the majority of the population is found over the continental shelf (Hayes *et al.,* 2022). The main threat to the species is interactions with fisheries, with documented take in the U.S. northeast sink gillnet, mid-Atlantic gillnet, and northeast bottom trawl fisheries and in the Canadian herring weir fisheries (Hayes *et al.,* 2022).

Pinnipeds (Gray Seal and Harbor Seal)

Gray seals have been observed in the proposed Survey Area and these seals belong to the western North Atlantic stock. The range for this stock is thought to be from New Jersey to Labrador Sea. Current population trends show that gray seal abundance is likely increasing in the U.S. Atlantic EEZ (Hayes *et al.,* 2021). Although the rate of increase is unknown, surveys conducted since their arrival in the 1980s indicate a steady increase in abundance in both Maine and Massachusetts (Hayes *et al.,* 2021). It is believed that recolonization by Canadian gray seals is the source of the U.S. population increase (Hayes *et al.,* 2021). Documented haulouts for gray seals exist in the Long Island area, with a possible rookery on Little Gull Island.

Since June 2022, elevated numbers of sick and dead harbor seals and gray seals have been documented along the southern and central coast of Maine. This event has also been declared a UME; as of late 2023, it is pending closure. Preliminary testing of samples found that some harbor and gray seals were positive for the highly pathogenic avian influenza. NMFS and other partners are working on an ongoing investigation of this UME. From June 1, 2022–July 16, 2023, there have been 492 seal strandings. Information on these UMEs are available online at: *https://www.fisheries.noaa.gov/2022-2023-pinniped-unusual-mortality-event-along-maine-coast.*

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), Southall *et al.* (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 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006, Kastelein *et al.,* 2009, Reichmuth *et al.,* 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. Detailed descriptions of the potential effects of similar specified activities have been provided in other recent **Federal Register** notices, including for survey activities using the same methodology by Atlantic Shores (87 FR 4200, January 27, 2022; 87 FR 24103, April 22, 2022; 87 FR 38067, June 27, 2022; 87 FR 50293, August 16, 2022). At present, there is no new information on potential effects that would impact our analysis and we incorporate by reference the detailed discussions in those documents rather than repeating the details here.

The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Summary on Specific Potential Effects of Acoustic Sound Sources

For general information on sound, its interaction with the marine environment, and a description of acoustic terminology, please see, *e.g.,* (Institute, 1986, Institute, 1995, Au and Hastings, 2008, Hastings and Popper, 2005, Mitson, 1995, Health, 1998, Southall *et al.,* 2007, Urick, 1983). Underwater sound from active acoustic sources can cause one or more of the following: temporary or permanent hearing impairment, behavioral disturbance, masking, stress, and non-auditory physical effects. The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. 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). TS can be permanent (PTS; permanent threshold shift), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS; temporary threshold shift), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007).

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 consider TTS to constitute auditory injury.

Animals in the vicinity of Atlantic Shores' proposed HRG survey activities are unlikely to incur even TTS due to the characteristics of the sound source, which include generally very short pulses and potential duration of exposure. These characteristics mean that instantaneous exposure is unlikely to cause TTS because it is unlikely that exposure would occur close enough to the vessel for received levels to exceed peak pressure TTS criteria, and the cumulative duration of exposure would be insufficient to exceed cumulative sound exposure level (SEL) criteria. Even for high-frequency cetacean species (*e.g.,* harbor porpoises), which have the greatest sensitivity to potential TTS, individuals would have to make a very close approach and remain very close to the vessel operating the source in order to receive multiple exposures at relatively high levels as would be necessary to cause TTS. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS). Moreover, most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a sub-bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS and would likely exhibit avoidance behavior to the area near the transducer rather than swim through at such a close range.

Behavioral disturbance to marine mammals from sound 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. 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.

In addition, 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). 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. Marine mammal communications would not likely be masked appreciably by the acoustic signals given the directionality of the signals for the HRG survey equipment planned for use (table 2) and the brief period for when an individual mammal would likely be exposed.

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton) (*i.e.,* effects to marine mammal habitat). 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. The most likely impacts, if any, for most prey species in a given area would be temporary avoidance of the area. Surveys using active acoustic sound sources move through an area, limiting exposure to multiple pulses. In all cases, sound levels would return to ambient once a survey 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. Finally, the HRG survey equipment will not have significant impacts to the seafloor and does not represent a source of pollution.

Vessel Strike

Vessel collisions with marine mammals, or vessel strikes, can result in death or serious injury of the animal. These interactions are typically associated with large whales, which are less maneuverable than are smaller cetaceans or pinnipeds in relation to large vessels. Vessel strikes generally involve commercial shipping vessels, which are normally larger and of which there is much more traffic in the ocean than geophysical survey vessels. Jensen *et al.* (2003) 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). For vessels used in geophysical survey activities, vessel speed while towing gear is typically only 4–5 kn (2.1–2.6 m/s). At these speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are so low as to be discountable. At average transit speed for geophysical survey vessels, 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 low given the smaller size of these vessels proposed for use and generally slower speeds. Notably in the Jensen and Silber study, no strike incidents were reported for geophysical survey vessels during that time period.

The potential effects of Atlantic Shores' specified survey activity are expected to be limited to Level B behavioral harassment. No permanent or temporary auditory effects or significant impacts to marine mammal habitat, including prey, are expected.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through the IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment);

or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to sound produced by the sparker. Based on the characteristics of the signals produced by the acoustic source planned for use (*i.e.,* sparker), Level A harassment is neither anticipated (even absent mitigation) nor proposed to be authorized. As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below, we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, Southall *et al.,* 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 RMS 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 (*e.g.,* conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

Atlantic Shores' marine site characterization surveys include the use of an impulsive (*i.e.,* sparker) source, and therefore the SPL threshold of 160 dB re 1 µPa is applicable.

Level A Harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0; (NMFS, 2018)) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive).

The 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.*

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.

NMFS has developed a user-friendly methodology for estimating the extent of the Level B harassment isopleths associated with relevant HRG survey equipment (NMFS, 2020). This methodology incorporates frequency and directionality (when relevant) to refine estimated ensonified zones. For acoustic sources that operate with different beamwidths, the maximum beamwidth was used, and the lowest frequency of the source was used when calculating the frequency-dependent absorption coefficient (table 2). Atlantic Shores used 180° beamwidth in the calculation for the proposed sparker system as is appropriate for an omnidirectional source.

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG survey equipment and, therefore, recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to harassment thresholds. In cases where the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that, in instances where data from a suitable proxy is presented, Crocker and Fratantonio (2016) be used, or, alternatively, when no suitable proxy is available, source levels provided by the manufacturer may be used instead. Table 2 shows the HRG equipment type used during the proposed surveys and the source levels associated with the HRG equipment type.

Atlantic Shores proposes to use the GeoMarine Geo-Source 400 Marine Multi-tip Sparker System (400 tip/400 J). No data are provided by Crocker and Fratantonio (2016) for the GeoMarine Geo-Source sparker system, therefore, Atlantic Shores proposes to use the data provided for the SIG ELC 820 operating at 400 J with 100 electrode tips as a proxy for the GeoMarine Geo-Source operating at 400 J with 400 electrode tips. Crocker and Fratantonio (2016) indicates an operational source level of 195 dB_{RMS} for the SIG ELC 820 while operating at a power of 400 J using 100 electrode tips, and Atlantic Shores has determined that an increase in the number of electrode tips decreases the overall peak source pressure translating to a lower operational source level. NMFS concurs with this selection, which is described in table 2. Using the proxy source level of 195 dB RMS SPL

results in an estimated distance of 56 m to the Level B harassment isopleth.

Marine Mammal Occurrence

In this section, we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2023) represent the best available information regarding marine mammal densities in the proposed Survey Area. These density data incorporate aerial and shipboard line-transect survey data from NMFS and other organizations and incorporate data from numerous physiographic and dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic in 2016 and models for all taxa were updated in 2022 (Roberts *et al.,* 2023). More information is available online at: *https://seamap.env.duke.edu/models/Duke/EC/.* Marine mammal density estimates in the proposed Survey Area (animals/km^2) were obtained using the most recent model results for all taxa.

For the exposure analysis, density data from Roberts *et al.* (2023) were mapped using a geographic information system (GIS). For the proposed Survey Area, the monthly densities of each species as reported by Roberts *et al.* (2023) were averaged by season; thus, a density was calculated for each species for spring, summer, fall, and winter. Density seasonal averages were calculated for both the nearshore and offshore areas (*i.e.,* inside and outside the 10-m isobath) for each species to assess the greatest average seasonal densities for each species. To be conservative since the exact timing for the survey during the year is uncertain, the greatest average seasonal density calculated for each species was carried forward in the exposure analysis, with exceptions noted later in this discussion. Estimated greatest average seasonal densities (animals/km^2) of marine mammal species that may be taken incidental to the proposed survey can be found in tables C–1 and C–2 of Atlantic Shores' IHA application. Below, we discuss how densities were assumed to apply to specific species for which the Roberts *et al.* (2023) models provide results at the genus or guild level.

There are two stocks of bottlenose dolphins that may be impacted by the surveys (Western North Atlantic Northern Migratory Coastal Stock (coastal stock) and Western North Atlantic Offshore Stock (offshore stock)), however, Roberts *et al.* (2023) do not differentiate by stock. These two stocks are considered geographically separated and multiple isobaths, including the 20-m (Hayes *et al.* 2021) and 25-m (Hayes *et al.* 2020), have been considered as the delineation between the two. Atlantic Shores used the 25-m isobath in their calculation and NMFS has accepted this interpretation. The nearshore area of the proposed Survey Area is considered waters less than 10 m depth and only the coastal stock would occur and potentially be taken by survey effort in that area. Both stocks could occur in the offshore area (greater than 10 m depth), so Atlantic Shores calculated separate mean seasonal densities to use for estimating take of the coastal and offshore stocks of bottlenose dolphins, respectively.

In addition, the Roberts *et al.* (2023) density model does not differentiate between the different pinniped species. For seals, given their size and behavior when in the water, seasonality, and feeding preferences, there is limited information available on species-specific distribution. Density estimates from Roberts *et al.* (2023) include all seal species that may occur in the Western North Atlantic combined (*i.e.,* gray, harbor, harp, hooded). For this IHA, only gray seals and harbor seals are reasonably expected to occur in the proposed Survey Area; densities of seals were split evenly between these two species.

Finally, the Roberts *et al.* (2023) density model does not differentiate between pilot whale species. While the exact latitudinal ranges of the two species are uncertain, only long-finned pilot whales are expected to occur in this project area due to their more northerly distribution and tolerance of shallower, colder shelf waters (Hayes *et al.,* 2022). Short-finned pilot whales are not anticipated to occur as far north as the Survey Area so we assume that all pilot whales near the project area would be long-finned pilot whales (Garrison and Rosel, 2017). For this IHA, densities of pilot whales are assumed to be only long-finned pilot whale.

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 harassment, radial distances to predicted isopleths corresponding to Level B harassment thresholds were calculated, as described above. The distance (*i.e.,* 56 m distance associated with the sparker system) to the Level B harassment criterion and the total length of the survey trackline were then used to calculate the total ensonified area, or harassment zone, around the survey vessel. Atlantic Shores proposes to conduct HRG surveys for a maximum total of 28,800 km trackline length, of which 25,200 km are in the offshore area and 3,600 km are in the nearshore area. Based on the maximum estimated distance to the Level B harassment threshold (56 m) for the sparker system and maximum total survey length, the total ensonified area is 3,228 km^2 (2,824 km^2 offshore area and 404 km^2 nearshore area), based on the following formula, where the total estimated trackline length (*Distance/day*) in each area was used and buffered with the horizontal distance to the Level B harassment threshold (*r*) to determine the total area ensonified to 160 dB SPL.

$$Harassment\ Zone = (Distance/day \times 2r) + \pi r^2$$

The number of marine mammals expected to be incidentally taken during the total survey is then calculated by estimating the number of each species predicted to occur within the ensonified area (animals/km^2), incorporating the greatest seasonal estimated marine mammal densities as described above. The product is then rounded to generate an estimate of the total number of instances of harassment expected for each species over the duration of the survey (up to 300 days). A summary of this method is illustrated in the following formula, where the *Harassment Zone* is multiplied by the highest seasonal mean density (*D*) of each species or stock (animals/km^2; except for pilot whales where annual density was used based on data availability).

$$Estimated\ Take = Harassment\ Zone \times D \times number\ of\ days$$

The resulting take of marine mammals (Level B harassment) is shown in table 5.

TABLE 5—ESTIMATED TAKE NUMBERS AND TOTAL TAKE PROPOSED FOR AUTHORIZATION

Species	Nearshore survey area maximum seasonal density (No./100 km²) [a]	Nearshore survey area calculated take	Offshore survey area maximum seasonal density (No./100 km²) [a]	Offshore survey area calculated take	Total adjusted estimated take requested (No.)	Estimated takes as a percentage of population
N Atlantic right whale	0.058	0	0.075	2	2	<1
Fin whale	0.004	0	0.135	4	4	<1
Humpback whale	0.058	0	0.105	3	3	<1
Minke whale	0.04	0	0.585	17	17	<1
Sei whale	0.004	0	0.046	1	[d] 2	<1
Long-finned pilot whale [b]	0	0	0.071	2	[d] 9	<1
Atlantic spotted dolphin	0.002	0	0.657	19	[d] 25	<1
Atlantic white-sided dolphin	0.009	0	0.731	21	21	<1
Bottlenose dolphin Northern migratory coastal stock	64.596	261	17.155	[e] 194	455	6.9
Bottlenose dolphin offshore stock	NA	NA	17.155	[e] 291	291	<1
Risso's dolphin	0	0	0.078	2	[d] 8	<1
Common dolphin	0.128	0.5	6.517	184	185	<1
Harbor porpoise	0.393	2	3.374	95	97	<1
Gray seal [c]	10.022	41	5.886	166	207	<1
Harbor seal [c]	10.022	41	5.886	166	207	<1

Note: The nearshore survey area is delineated as waters less than 10 m depth while the offshore survey area is delineated as waters greater than 10 m depth.

[a] Cetacean density values from Duke University (Roberts *et al.,* 2023).

[b] Pilot whale density models from Duke University (Roberts *et al.,* 2023) represent pilot whales as a 'guild' rather than by species. However, since the Survey Area is only expected to contain long-finned pilot whales, it is assumed that pilot whale densities modeled by Roberts *et al.* (2023) in the Survey Area only reflect the presence of long-finned pilot whales.

[c] Pinniped density models from Duke University (Roberts *et al.,* 2023) represent 'seals' as a guild rather than by species. These each represent 50 percent of a generic seal density value.

[d] The number of authorized takes (Level B harassment only) for these species has been increased from the calculated take to consider the mean group size. Source for Atlantic spotted dolphin, long-finned pilot whale, Risso's dolphin, and sei whale group size estimates is Annual Report of a Comprehensive Assessment of Marine Mammal, Marine Turtle, and Seabird Abundance and Spatial Distribution in U.S. waters of the Western North Atlantic Ocean (AMAPPS; NEFSC and SEFSC, 2022).

[e] Density and take numbers were proportioned per stock as a function of depth. More information provided in Section 6.3 of the IHA application.

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, 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.

Pursuant to section 7 of the ESA, Atlantic Shores is also required to adhere to relevant Project Design Criteria (PDC) of the NMFS' Greater Atlantic Regional Fisheries Office (GARFO) programmatic consultation (specifically PDCs 4, 5, and 7) regarding geophysical surveys along the U.S. Atlantic coast (*https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation*).

NMFS proposes the following mitigation measures be implemented during Atlantic Shores' proposed marine site characterization surveys.

Visual Monitoring and Shutdown Zones

Atlantic Shores must employ independent, dedicated, trained protected species observers (PSOs), meaning that the PSOs must (1) be employed by a third-party observer provider, (2) have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and (3) have successfully completed an approved PSO training course appropriate for geophysical surveys. Visual monitoring must be performed by qualified, NMFS-approved PSOs. PSO resumes must be provided to NMFS for review and approval prior to the start of survey activities.

During survey operations (*e.g.,* any day in which use of the sparker system is planned to occur, and whenever the sparker system is in the water, whether activated or not), a minimum of one visual marine mammal observer (PSO) must be on duty on each source vessel and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes (min) prior to sunrise through 30 min following sunset). A minimum of two PSOs must be on duty on each source vessel during nighttime hours. Visual monitoring must begin no less than 30 min prior to ramp-up (described below) and must continue until 30 min after use of the sparker system ceases.

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 applicable pre-start clearance and shutdown zones (see below). These zones shall be based upon the radial distance from the

sparker system (rather than being based around the vessel itself).

Two pre-start clearance and shutdown zones are defined, depending on the species and context. Here, an extended pre-start clearance and shutdown zone encompassing the area at and below the sea surface out to a radius of 500 m from the sparker system (0–500 m) is defined for NARW. For all other marine mammals, the pre-start clearance and shutdown zone encompasses a standard distance of 100 m (0–100 m) during the use of the sparker. Any observations of marine mammals by crew members aboard any vessel associated with the survey shall be relayed to the PSO team.

Visual PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least 1 hr between watches and may conduct a maximum of 12 hr of observation per 24-hr period.

Pre-Start Clearance and Ramp-Up Procedures

A ramp-up procedure, involving a gradual increase in source level output, is required at all times as part of the activation of the sparker system when technically feasible. If technically feasible, operators must ramp up sparker to half power for 5 min and then proceed to full power. A 30 min pre-start clearance observation period of the pre-start clearance zones must occur prior to the start of ramp-up. The intent of the pre-start clearance observation period (30 min) is to ensure no marine mammals are within the pre-start clearance zones prior to the beginning of ramp-up. The intent of the ramp-up is to warn marine mammals of pending operations and to allow sufficient time for those animals to leave the immediate vicinity. 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 min prior to the planned ramp-up in order to allow the PSOs time to monitor the pre-start clearance zones for 30 min prior to the initiation of ramp-up (pre-start clearance). During this 30 min pre-start clearance period the entire pre-start clearance zone must be visible, except as indicated below.
- Ramp-ups shall be scheduled so as to minimize the time spent with the sparker activated.
- A visual PSO 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.
- Any PSO on duty has the authority to delay the start of survey operations if a marine mammal is detected within the applicable pre-start clearance zone.
- The operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that mitigation commands are conveyed swiftly while allowing PSOs to maintain watch.

If there is uncertainty regarding identification of a marine mammal species, PSOs may use best professional judgment in making the decision to call for a shutdown.

- Ramp-up may not be initiated if any marine mammal to which the pre-start clearance requirement applies is within the pre-start clearance zone. If a marine mammal is observed within the pre-start clearance zone during the 30 min 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.
- PSOs must monitor the pre-start clearance zones 30 min before and during ramp-up, and ramp-up must cease and the sparker must be shut down upon observation of a marine mammal within the applicable pre-start clearance zone.
- Ramp-up may occur at times of poor visibility, including nighttime, if appropriate visual monitoring has occurred with no detections of marine mammals in the 30 min prior to beginning ramp-up. Sparker activation may only occur at night where operational planning cannot reasonably avoid such circumstances.

If the sparker is shut down for brief periods (*i.e.,* less than 30 min) 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 observation and no detections of marine mammals have occurred within the applicable pre-start clearance zone. For any longer shutdown, pre-start clearance observation and ramp-up are required.

Shutdown Procedures

All operators must adhere to the following shutdown requirements:

- Any PSO on duty has the authority to call for shutdown of the sparker system if a marine mammal is detected within the applicable shutdown zones.
- The operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the source to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch.
- When the sparker system is active and a marine mammal appears within or enters the applicable shutdown zones, the sparker must be shut down. When shutdown is instructed by a PSO, the sparker system must be immediately deactivated and any dispute resolved only following deactivation.
- Two shutdown zones are defined, depending on the species and context. An extended shutdown zone encompassing the area at and below the sea surface out to a radius of 500 m from the sparker system (0–500 m) is defined for NARW. For all other marine mammals, the shutdown zone encompasses a standard distance of 100 m (0–100 m) during the use of the sparker.

The shutdown requirement is waived for small delphinids and pinnipeds. If a small delphinid (individual belonging to the following genera of the Family Delphinidae: *Delphinus, Lagenorhynchus, Stenella,* and *Tursiops*) or pinniped is visually detected within the shutdown zones, no shutdown is required unless the PSO confirms the individual to be of a genus other than those listed, in which case a shutdown is required.

If there is uncertainty regarding identification of a marine mammal species (*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 shutdown zone), PSOs may use best professional judgment in making the decision to call for a shutdown.

Upon implementation of shutdown, the sparker may be reactivated after the marine mammal has been observed exiting the applicable shutdown zone or following a clearance period (30 min for all baleen whale species, long-finned pilot whales, and Risso's dolphins; 15 min for harbor porpoises) with no further detection of the marine mammal.

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the Level B harassment zone (56 m), shutdown must occur.

Vessel Strike Avoidance

Crew and supply vessel personnel must 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(s), or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammals. 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 (species-specific distances are detailed 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 mammal from other phenomena, and (2) broadly to identify a marine mammal as a NARW, other whale (defined in this context as baleen whales other than NARWs), or other marine mammals.

All survey vessels, regardless of size, must observe a 10-kn (18.52 km/hr) speed restriction in specific areas designated by NMFS for the protection of NARWs from vessel strikes. These include all SMAs established under 50 CFR 224.105 (when in effect), any dynamic management areas (DMA) (when in effect), and Slow Zones. See *https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-ship-strikes-north-atlantic-right-whales* for specific detail regarding these areas.

- All vessels must reduce speed to 10 kn or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.
- All vessels must maintain a minimum separation distance of 500 m from NARWs, other ESA-listed species, and any unidentified large whales. If a NARW, other ESA-listed species, and any unidentified large whale is sighted within the relevant separation distance, the vessel must steer a course away at 10 kn or less until the 500-m separation distance has been established. If a whale is observed but cannot be confirmed as a species other than a NARW, the vessel operator must assume that it is a NARW and take appropriate action.
- All vessels must maintain a minimum separation distance of 100 m from all non-ESA-listed 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 must 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, reduce speed and shift the engine to neutral). This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Atlantic Shores and members of the PSO team will consult the NMFS NARW reporting system and Whale Alert, daily and as able, for the presence of NARWs throughout survey operations, and for the establishment of DMAs and/or Slow Zones. It is Atlantic Shores' responsibility to maintain awareness of the establishment and location of any such areas and to abide by these requirements accordingly.

Seasonal Operating Requirements

As described above, a section of the proposed Survey Area partially overlaps with portions of two NARW SMAs off the ports of New York/New Jersey and the entrance to Delaware Bay. These SMAs are active from November 1 through April 30 of each year. The survey vessels, regardless of length, would be required to adhere to vessel speed restrictions (less than 10 kn) when operating within the SMAs during times when the SMAs are active (table 6).

TABLE 6—NORTH ATLANTIC RIGHT WHALE DYNAMIC MANAGEMENT AREA (DMA) AND SEASONAL MANAGEMENT AREA (SMA) RESTRICTIONS WITHIN THE SURVEY AREA

Survey area	Species	DMA restrictions	Slow zones	SMA restrictions
Survey Area (outside SMA).	North Atlantic right whale.	If established by NMFS, all of Atlantic Shores' vessel will abide by the described restrictions.	If established by NMFS, all of Atlantic Shores' vessel will abide by the described restrictions.	N/A.
Survey Area (within SMA).	North Atlantic right whale.	If established by NMFS, all of Atlantic Shores' vessel will abide by the described restrictions.	If established by NMFS, all of Atlantic Shores' vessel will abide by the described restrictions.	November 1 through April 30 (Ports of New York/New Jersey and entrance to the Delaware Bay).

Note: More information on Vessel Strike Reduction for the NARW can be found at NMFS' website: *https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales.*

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient

noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Proposed Monitoring Measures

Visual monitoring must be performed by qualified, NMFS-approved PSOs. Atlantic Shores must submit PSO resumes for NMFS review and approval prior to commencement of the survey. Resumes should include dates of training and any prior NMFS approval, as well as dates and description of last experience, and must be accompanied by information documenting successful completion of an acceptable training course.

For prospective PSOs not previously approved, or for PSOs whose approval is not current, NMFS must review and approve PSO qualifications. Resumes should include information related to relevant education, experience, and training, including dates, duration, location, and description of prior PSO experience. Resumes must be accompanied by relevant documentation of successful completion of necessary training.

NMFS may approve PSOs as conditional or unconditional. A conditionally-approved PSO may be one who is trained but has not yet attained the requisite experience. An unconditionally-approved PSO is one who has attained the necessary experience. For unconditional approval, the PSO must have a minimum of 90 days at sea performing the role during a geophysical survey, with the conclusion of the most recent relevant experience not more than 18 months previous.

At least one of the visual PSOs aboard the vessel must be unconditionally-approved. One unconditionally-approved visual PSO shall be designated as the lead for the entire PSO team. This lead should typically be the PSO with the most experience, who would coordinate duty schedules and roles for the PSO team and serve as primary point of contact for the vessel operator. To the maximum extent practicable, the duty schedule shall be planned such that unconditionally-approved PSOs are on duty with conditionally-approved PSOs.

At least one PSO aboard each acoustic source vessel must have a minimum of 90 days at-sea experience working in the role, with no more than 18 months elapsed since the conclusion of the at-sea experience. One PSO with such experience must be designated as the lead for the entire PSO team and serve as the primary point of contact for the vessel operator. (Note that the responsibility of coordinating duty schedules and roles may instead be assigned to a shore-based, third-party monitoring coordinator.) To the maximum extent practicable, the lead PSO must devise the duty schedule such that experienced PSOs are on duty with those PSOs with appropriate training but who have not yet gained relevant experience.

PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or more) 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. 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. 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 marine mammal surveys; and (3) previous work experience as a PSO (PSO must be in good standing and demonstrate good performance of PSO duties).

Atlantic Shores must work with the selected third-party PSO 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, and to ensure that PSOs are capable of calibrating equipment as necessary for accurate distance estimates and species identification. Such equipment, at a minimum, shall include:

- At least one thermal (infrared) imaging device suited for the marine environment;
- Reticle binoculars (*e.g.,* 7×50) of appropriate quality (at least one per PSO, plus backups);
- Global positioning units (GPS) (at least one plus backups);
- Digital cameras with a telephoto lens that is at least 300-mm or equivalent on a full-frame single lens reflex (SLR) (at least one plus backups). The camera or lens should also have an image stabilization system;
- Equipment necessary for accurate measurement of distances to marine mammal;
- Compasses (at least one plus backups);
- Means of communication among vessel crew and PSOs; and,
- Any other tools deemed necessary to adequately and effectively perform PSO tasks.

The equipment specified above may be provided by an individual PSO, the third-party PSO provider, or the operator, but Atlantic Shores is responsible for ensuring PSOs have the proper equipment required to perform the duties specified in the IHA. Reference materials must be available aboard all project vessels for identification of protected species.

The PSOs will be responsible for monitoring the waters surrounding the survey vessel to the farthest extent permitted by sighting conditions, including pre-start clearance and shutdown zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established pre-start clearance and shutdown zones during survey activities. It will be the responsibility of the PSO(s) on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to shutdown zones. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, appropriate night-vision devices (*e.g.,* night-vision goggles with thermal clip-ons and infrared

technology) would be used. Position data would be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs must also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources and between acquisition periods. Any observations of marine mammals by crew members aboard the vessel associated with the survey would be relayed to the PSO team.

Data on all PSO observations would be recorded based on standard PSO collection requirements (see *Proposed Reporting Measures*). This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal behavior that occurs (*e.g.,* noted behavioral disturbances). Members of the PSO team shall consult the NMFS NARW reporting system and Whale Alert, daily and as able, for the presence of NARWs throughout survey operations.

Proposed Reporting Measures

Atlantic Shores shall submit a draft comprehensive report to NMFS 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 mammals 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 acoustic sources were operating. Tracklines should include points recording any change in acoustic source status (*e.g.,* when the sources began operating, when they were turned off, or when they changed operational status such as from full array to single gun or vice versa). GIS files shall be provided in Environmental Systems Research Institute, Inc. (ESRI) shapefile format and include the Coordinated Universal Time (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 the information. A final report must be submitted within 30 days following resolution of any comments on the draft report. All draft and final marine mammal monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov, nmfs.gar.incidental-take@noaa.gov,* and *ITP.clevenstine@noaa.gov.*

PSOs must use standardized electronic data forms to record data. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of marine mammal to the acoustic source 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 acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:

1. Vessel names (source vessel), vessel size and type, maximum speed capability of vessel;
2. Dates of departures and returns to port with port name;
3. PSO names and affiliations;
4. Date and participants of PSO briefings;
5. Visual monitoring equipment used;
6. PSO location on vessel and height of observation location above water surface;
7. Dates and times (Greenwich Mean Time) of survey on/off effort and times corresponding with PSO on/off effort;
8. Vessel location (decimal degrees) when survey effort begins and ends and vessel location at beginning and end of visual PSO duty shifts;
9. Vessel location at 30-second intervals if obtainable from data collection software, otherwise at practical regular interval;
10. Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any change;
11. Water depth (if obtainable from data collection software);
12. Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;
13. Factors that may contribute to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions); and,
14. Survey activity information (and changes thereof), such as acoustic source power output while in operation, number and volume of airguns operating in an array, tow depth of an acoustic source, and any other notes of significance (*i.e.,* pre-start clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, *etc.*).
15. Upon visual observation of any marine mammal, the following information must be recorded:

a. Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);

b. Vessel/survey activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other);

c. PSO who sighted the animal;

d. Time of sighting;

e. Initial detection method;

f. Sightings cue;

g. Vessel location at time of sighting (decimal degrees);

h. Direction of vessel's travel (compass direction);

i. Speed of the vessel(s) from which the observation was made;

j. Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level or unidentified); also note the composition of the group if there is a mix of species;

k. Species reliability (an indicator of confidence in identification);

l. Estimated distance to the animal and method of estimating distance;

m. Estimated number of animals (high/low/best);

n. Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, *etc.*);

o. 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);

p. 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 before and after point of closest approach);

q. Mitigation actions; description of any actions implemented in response to the sighting (*e.g.,* delays, shutdowns, ramp-up, speed or course alteration, *etc.*) and time and location of the action;

r. Equipment operating during sighting;

s. Animal's closest point of approach and/or closest distance from the center point of the acoustic source; and,

t. Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action.

If a NARW is observed at any time by PSOs or personnel on the project vessel, during surveys or during vessel transit, Atlantic Shores must report the sighting information to the NMFS NARW Sighting Advisory System (866–755–6622) within 2 hr of occurrence, when practicable, or no later than 24 hr after occurrence. NARW sightings in any location may also be reported to the U.S. Coast Guard via channel 16 and through the Whale Alert app (*https://www.whalealert.org*).

In the event that personnel involved in the survey activities discover an injured or dead marine mammal, the incident must be reported to NMFS as soon as feasible by phone (866–755–6622) and by email (*nmfs.gar.incidental-take@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*). The report must include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

2. Species identification (if known) or description of the animal(s) involved;

3. Condition of the animal(s) (including carcass condition if the animal is dead);

4. Observed behaviors of the animal(s), if alive;

5. If available, photographs or video footage of the animal(s); and

6. General circumstances under which the animal was discovered.

In the event of a vessel strike of a marine mammal by any vessel involved in the activities, Atlantic Shores must report the incident to NMFS by phone (866–755–6622) and by email (*nmfs.gar.incidental-take@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*) as soon as feasible. The report would include the following information:

1. Time, date, and location (latitude/longitude) of the incident;

2. Species identification (if known) or description of the animal(s) involved;

3. Vessel's speed during and leading up to the incident;

4. Vessel's course/heading and what operations were being conducted (if applicable);

5. Status of all sound sources in use;

6. Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;

7. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;

8. Estimated size and length of animal that was struck;

9. Description of the behavior of the marine mammal immediately preceding and/or following the strike;

10. If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;

11. 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

12. To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in table 3, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are included as separate sub-sections below. Specifically, we provide additional discussion related to NARW and to other species currently experiencing UMEs.

NMFS does not anticipate that serious injury or mortality would occur as a result from HRG surveys, 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, non-auditory physical effects, auditory physical effects, and vessel strike are not expected to occur. NMFS expects that all potential takes would be in the form of Level B harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007, Ellison *et al.,* 2012).

In addition to being temporary, the maximum expected harassment zone around a survey vessel is 56 m. Therefore, the ensonified area surrounding each vessel is relatively small compared to the overall distribution of the 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 proposed 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 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 proposed 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.

North Atlantic Right Whales

The status of the NARW population is of heightened concern and, therefore, merits additional analysis. As noted previously, elevated NARW mortalities began in June 2017 and there is an active UME. Overall, preliminary findings attribute human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of NARWs. As noted previously, the Survey Area overlaps a migratory corridor BIA for NARWs that extends from Massachusetts to Florida and from the coast to beyond the shelf break. Due to the fact that the proposed survey activities are temporary (will occur for up to 1 year) and the spatial extent of sound produced by the survey would be small relative to the spatial extent of the available migratory habitat in the BIA, NARW migration is not expected to be impacted by the survey. This important migratory area is approximately 269,488 km² in size (compared with the approximately 3,228 km² of total estimated Level B harassment ensonified area associated with the Survey Area) and is comprised of the waters of the continental shelf offshore the East Coast of the United States, extending from Florida through Massachusetts.

Given the relatively small size of the ensonified area, it is unlikely that prey availability would be adversely affected by HRG survey operations. Required vessel strike avoidance measures will also decrease risk of vessel strike during migration; no vessel strike is expected to occur during Atlantic Shores' proposed activities. Additionally, only very limited take by Level B harassment of NARWs has been requested and is being proposed for authorization by NMFS as HRG survey operations are required to maintain and implement a 500-m shutdown zone. The 500-m shutdown zone for NARWs is conservative, considering the Level B harassment zone for the acoustic source (*i.e.,* sparker) is estimated to be 56 m, and thereby minimizes the intensity and duration of any potential incidents of behavioral harassment for this species. As noted previously, Level A harassment is not expected due to the small estimated zones in conjunction with the aforementioned shutdown requirements. NMFS does not anticipate NARW takes that would result from Atlantic Shores' proposed activities would impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

Other Marine Mammal Species With Active UMEs

As noted previously, there are several active UMEs occurring in the vicinity of Atlantic Shores' 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 (*i.e.,* vessel strike, 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.

Elevated numbers of harbor seal and gray seal mortalities were first observed from 2018–2020 and, as part of a separate UME, again in 2022. These have occurred across Maine, New Hampshire, and Massachusetts. Based on tests conducted so far, the main pathogen found in the seals is phocine distemper virus (2018–2020) and avian influenza (2022), although additional testing to identify other factors that may be involved in the UMEs is underway. The UMEs do not provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 60,000 and annual M/SI (339) is well below PBR (1,729) (Hayes *et al.,* 2022). The population abundance for gray seals in the United States is over 27,000, with an estimated abundance, including seals in Canada, of approximately 450,000. In addition, the abundance of gray seals is likely increasing in the U.S. Atlantic as well as in Canada (Hayes *et al.,* 2021, Hayes *et al.,* 2022).

The required mitigation measures are expected to reduce the number and/or severity of takes for all species listed in table 3, 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 before HRG survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury. No Level A harassment is anticipated, even in the absence of mitigation measures, or proposed for authorization.

NMFS expects that takes would be in the form of short-term Level B harassment by way of brief startling reactions and/or temporary vacating of the area, or decreased foraging (if such activity was occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity, with no lasting biological consequences. Since both the sources and marine mammals are mobile, animals would only be exposed briefly to a small ensonified area that might result in take. Additionally, required mitigation measures would further reduce exposure to sound that could result in more severe behavioral 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 proposed to be authorized;
- No Level A harassment (PTS) is anticipated, even in the absence of mitigation measures, or proposed to be authorized;
- Foraging success is not likely to be significantly impacted as effects on species that serve as prey species for marine mammals from the survey are expected to be minimal;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the ensonified areas during the proposed survey to avoid exposure to sounds from the activity;
- Take is anticipated to be by Level B harassment only consisting of brief startling reactions and/or temporary avoidance of the ensonified area;
- Survey activities would occur in such a comparatively small portion of the BIA for the NARW migration that any avoidance of the area due to survey activities would not affect migration. In addition, mitigation measures require shutdown at 500 m (over eight times the size of the Level B harassment zone of 56 m) to minimize the effects of any Level B harassment take of the species; and
- The proposed mitigation measures, including visual monitoring and shutdowns, are expected to minimize potential impacts to marine mammals.

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.

NMFS proposes to authorize incidental take by Level B harassment only of 14 marine mammal species with 15 managed stocks. The total amount of takes proposed for authorization relative to the best available population abundance is less than 1 percent for 14 of the 15 managed stocks (less than 7 percent for the Western North Atlantic Northern Migratory Coastal Stock of bottlenose dolphins; table 5). The take numbers proposed for authorization are considered conservative estimates for purposes of the small numbers determination as they assume all takes represent different individual animals, which is unlikely to be the case.

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 ESA of 1973 (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.

NMFS' Office of Protected Resources is proposing to authorize take of three species of marine mammals which are listed under the ESA (*i.e.,* NARW, fin whale, and sei whale) and has determined these activities fall within the scope of activities analyzed in the NMFS GARFO programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021).

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Atlantic Shores for conducting marine site characterization surveys in waters off of New York, New Jersey, Delaware, and Maryland for a period of 1 year, 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-other-energy-activities-renewable.*

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 site characterization surveys. 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: December 27, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–00008 Filed 1–4–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD593]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The SEDAR 88 assessment of Gulf of Mexico red grouper will consist of a series of webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 88 Red Tide Topical Working Group Webinar I will be held January 23, 2024, from 1 p.m. to 3 p.m. eastern.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (See **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366. Email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the SEDAR process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and Non-Governmental Organizations (NGO's); International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the webinar are as follows:

Participants will discuss red tide modeling work to date available for use in the assessment of Gulf of Mexico red grouper.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: January 2, 2024.

Diane M. DeJames-Daly,

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

[FR Doc. 2024–00043 Filed 1–4–24; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete product(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: February 04, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404 or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
4730–00–470–6625—Kit, Brass Fittings, 88 Automotive Types, 430 Pieces

Designated Source of Supply: The Opportunity Center Easter Seal Facility—The Ala ES Soc, Inc., Anniston, AL

Contracting Activity: DLA LAND AND MARITIME SUPPLIER, COLUMBUS, OH

NSN(s)—Product Name(s):
6515–01–576–8837—Combat Arms Ear Plug, Single Ended, Size Small, BX/50 Pairs
6515–01–576–8861—Combat Arms Ear Plug, Single Ended, Size Medium, BX/50 Pairs
6515–01–576–8869—Combat Arms Ear Plug, Single Ended, Size Large, BX/50 Pairs
6515–00–SAM–0013—Combat Arms Ear Plug, Single Ended, Size Small, PR
6515–00–SAM–0014—Combat Arms Ear Plug, Single Ended, Size Medium, PR
6515–00–SAM–0015—Combat Arms Ear Plug, Single Ended, Size Large, PR
6515–01–686–9817—Combat Arms 4.1 Ear Plug, Single Ended, Size Small, BX/50
6515–01–686–9808—Combat Arms 4.1 Ear Plug, Single Ended Size Medium, BX/50
6515–01–686–9804—Combat Arms 4.1 Ear Plug, Single Ended Size Large, BX/50

Designated Source of Supply: Access: Supports for Living Inc., Middletown, NY

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2024–00021 Filed 1–4–24; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes product(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date deleted from the Procurement List:* February 4, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404 or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On 12/1/2023, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
7520–01–682–7166—Pen, Ballpoint, Stick, Recycled Water Bottle, Blue, Fine Point
Designated Source of Supply: West Texas Lighthouse for the Blind, San Angelo, TX
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):
6840–01–367–2914—Detergent, Disinfectant, Water Soluble, .5 oz
Designated Source of Supply: Goodwill Vision Enterprises, Rochester, NY
Contracting Activity: GSA/FSS GREATER SOUTHWEST ACQUISITI, FORT WORTH, TX

NSN(s)—Product Name(s):
7530–00–NIB–0420—Jacket No. 605–913
Designated Source of Supply: CLOVERNOOK CENTER FOR THE BLIND AND VISUALLY IMPAIRED, Cincinnati, OH
Contracting Activity: Government Printing Office, Washington, DC

NSN(s)—Product Name(s):
1560–00–875–6001—Support, Structural
Designated Source of Supply: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA
Contracting Activity: DLA AVIATION, RICHMOND, VA

NSN(s)—Product Name(s):
6645–01–491–9838—Clock, Wall, Atomic, Mahogany Octagon, 12″ Diameter
6645–01–491–9839—Clock, Wall, Atomic, Mahogany Octagon, Custom Logo, 12″ Diameter
Designated Source of Supply: Chicago Lighthouse Industries, Chicago, IL
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):
3990–00–NSH–0081—Sideboard Pallet, 48″ x 48″
Designated Source of Supply: Knox County Association for Remarkable Citizens, Inc., Vincennes, IN
Contracting Activity: W39Z STK REC ACCT–CRANE AAP, CRANE, IN

NSN(s)—Product Name(s):
8970–00–NSH–0026—Meal Kit, Turkey, Detainees, DHS ICE
8970–00–NSH–0027—Meal Kit, Roast Beef, Detainees, DHS ICE
Designated Source of Supply: The Arc of Cumberland and Perry Counties, Carlisle, PA
Contracting Activity: COMPLIANCE&REMOVALS, WASHINGTON, DC

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2024–00023 Filed 1–4–24; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m. EST, Friday, January 12, 2024.

PLACE: Virtual meeting.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters. 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.cftc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

Authority: 5 U.S.C. 552b.

Dated: January 3, 2024.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2024–00144 Filed 1–3–24; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Uniform Formulary Beneficiary Advisory Panel; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Uniform Formulary Beneficiary Advisory Panel (UFBAP) will take place.

DATES: Open to the public Wednesday, January 3, 2024, 10:00 a.m. to 1:00 p.m. (Eastern Standard Time).

ADDRESSES: The meeting will be held telephonically or via conference call. The phone number for the remote access on January 3, 2024, is: CONUS: 1–800–369–2046; OCONUS: 1–203–827–7030; PARTICIPANT CODE: 8546285.

These numbers and the dial-in instructions will also be posted on the UFBAP website at: *https://www.health.mil/Military-Health-Topics/Access-Cost-Quality-and-Safety/Pharmacy-Operations/BAP.*

FOR FURTHER INFORMATION CONTACT: Designated Federal Official (DFO) Colonel Paul B. Carby, USA, 703–681–2890 (voice), *dha.ncr.j-6.mbx.baprequests@health.mil* (email). Mailing address is 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101. Website: *https://www.health.mil/Military-Health-Topics/Access-Cost-Quality-and-Safety/Pharmacy-Operations/BAP.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer, the Uniform Formulary Beneficiary Advisory Panel was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its January 3, 2024 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41

CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of 5 United States Code (U.S.C.) chapter 10 (commonly known as the Federal Advisory Committee Act or FACA), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The UFBAP will review and comment on recommendations made by the Pharmacy and Therapeutics Committee to the Director, Defense Health Agency regarding the Uniform Formulary.

Agenda:

1. 10:00 a.m. Sign In for UFBAP members
2. 10:10 a.m.–10:40 a.m. Welcome and Opening Remarks
   a. Welcome, Opening Remarks, and Introduction of UFBAP Members by COL Paul B. Carby, DFO, UFBAP
   b. Public Written Comments by COL Paul B. Carby, DFO, UFBAP
   c. Opening Remarks by Mr. Jon Ostrowski, UFBAP Chair
   d. Introductory Remarks by Dr. Edward Vonberg, Chief, Formulary Management Branch
3. 10:40 a.m.–11:45 a.m. Scheduled Therapeutic Class Reviews
4. 11:45 a.m.–12:30 p.m. Newly Approved Drugs Review
5. 12:30 p.m.–12:45 p.m. Pertinent Utilization Management Issues
6. 12:45 p.m.–1:00 p.m. Closing remarks
   a. Closing Remarks by UFBAP Co-Chair
   b. Closing Remarks by DFO, UFBAP

Meeting Accessibility: Pursuant to section 1009(a)(1) of the FACA and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of phone lines, this meeting is open to the public. Telephone lines are limited and available to the first 220 people dialing in. There will be 220 lines total: 200 domestic and 20 international, including leader lines.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140(c), and section 1009(a)(3) of title 5, U.S.C., interested persons or organizations may submit written statements to the UFBAP about its mission and/or the agenda to be addressed in this public meeting. Written statements should be submitted to the UFBAP's DFO. The DFO's contact information can be found in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Written comments or statements must be received by the UFBAP's DFO no later than 8:00 a.m. EST, Wednesday, January 3, 2024, so they may be made available to the UFBAP for its consideration prior to the meeting. Written comments received are releasable to the public. The DFO will review all submitted written statements and provide copies to UFBAP.

Dated: January 2, 2024.

Natalie M. Ragland,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–00050 Filed 1–2–24; 4:15 pm]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0184]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for the Educational Flexibility (Ed-Flex) Program

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before February 5, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Even Skloot, 202–453–6515.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application for the Educational Flexibility (Ed-Flex) Program.

OMB Control Number: 1810–0737.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 32.

Total Estimated Number of Annual Burden Hours: 620.

Abstract: This is a request for a revision to the Educational Flexibility program application to include the annual reporting template. The Educational Flexibility (Ed-Flex) program is authorized under the Education Flexibility Partnership Act of 1999 and was reauthorized by section 9207 of the Every Student Succeeds Act (ESSA). The Ed-Flex program allows the Secretary to authorize a State educational agency (SEA) that serves an eligible State to waive statutory or regulatory requirements applicable to one or more the included programs for any local educational agency (LEAs), educational service agency, or school within the State. Section 4(a)(3) of the Education Flexibility Partnership Act of 1999 requires each SEA desiring to participate in the education flexibility program to submit an application detailing that SEAs education flexibility plan. Section 4(a)(5)(B) requires each SEA that is authorized to become an Ed-Flex Partnership State to submit an annual report on the results of its oversight and the impact of the waivers on school and student performance. Previously, the annual reporting requirement instructions and burden hours were included as part of the application. In order to standardize reporting, we have created an annual reporting template and are increasing the burden hours related to the annual reporting based on feedback from the field. However, overall, there is a decrease in burden due to a change in the estimated number of responses based on past experience with the program.

Dated: January 2, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–00055 Filed 1–4–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: EIA invites public comment on the proposed collection of information, EIA–914, *Monthly Crude Oil and Lease Condensate, and Natural Gas Production Report,* as required under the Paperwork Reduction Act of 1995. EIA is requesting a three-year extension with changes of Form EIA–914 *Monthly Crude Oil and Lease Condensate, and Natural Gas Production Report*. The survey collects monthly data on production and sales of natural gas, and crude oil and lease condensate. The data provide useful information on the nation's production and sales of crude oil and natural gas.

DATES: Comments on this information collection must be received no later than February 5, 2024. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function below ''Currently under Review''. If you anticipate any difficulty in submitting comments within that period, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice as soon as possible.

FOR FURTHER INFORMATION CONTACT: If you need additional information, please contact Rosalyn Berry, U.S. Energy Information Administration, at (202) 586–1026, or by email at *rosalyn.berry@eia.gov*. The form and instructions are available on EIA's website at: *www.eia.gov/survey/#eia-914*.

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* 1905–0205;

(2) *Information Collection Request Title:* Monthly Crude Oil and Lease Condensate, and Natural Gas Production Report;

(3) *Type of Request:* Thee-year extension with changes; revision of the currently approved Form EIA–914.

(4) *Purpose:* Form EIA–914 *Monthly Crude Oil and Lease Condensate, and Natural Gas Production Report* collects monthly data on natural gas production, and crude oil and lease condensate production, and crude oil and lease condensate sales by API gravity category in 22 state/areas (Alabama, Arkansas, California (including State Offshore), Colorado, Federal Offshore Gulf of Mexico, Federal Offshore Pacific, Kansas, Louisiana (including State Offshore), Michigan, Mississippi (including State Offshore), Montana, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Texas (including State Offshore), Utah, Virginia, West Virginia, Wyoming, and Other States (defined as all remaining states, except Alaska)). The data appear in the *Monthly Crude Oil and Lease Condensate, and Natural Gas Production Report* on EIA's website and in the EIA publications; *Monthly Energy Review, Petroleum Supply Annual* volumes, *Petroleum Supply Monthly, Natural Gas Annual,* and *Natural Gas Monthly*.

(4a) *Changes to Information Collection:* EIA proposes to make the following changes to Form EIA–914, Monthly Crude Oil and Lease Condensate, and Natural Gas Production Report:

- Section 4 of Form EIA–914, *Crude Oil and Lease Condensate Run Ticket Volumes (Sales) by API Gravity,* which collected density data for crude oil and lease condensate production for selected States would be discontinued and deleted from Form EIA–914.

(5) *Annual Estimated Number of Respondents:* 400.

(6) *Annual Estimated Number of Total Responses:* 4,800.

(7) *Annual Estimated Number of Burden Hours:* 14,400.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $1,257,984 (14,400 burden hours times $87.36). EIA estimates that respondents will have no additional costs associated with the surveys other than the burden hours and that the information is maintained during the normal course of business.

Comments are invited on whether or not: (a) The proposed collection of information is necessary for the proper performance of agency functions, including whether the information will have a practical utility; (b) EIA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, is accurate; (c) EIA can improve the quality, utility, and clarity of the information it will collect; and (d) EIA can minimize the burden of the collection of information on respondents, such as automated collection techniques or other forms of information technology.

Statutory Authority: 15 U.S.C. 772(b) and 42 U.S.C. 7101 *et seq.*

Signed in Washington, DC, on December 19, 2023.

Samson A. Adeshiyan,

Director, Office of Statistical Methods and Research, U.S. Energy Information Administration.

[FR Doc. 2024–00062 Filed 1–4–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: ER24–777–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to 3 Service Agreements re: FirstEnergy Reorganization to be effective 12/31/9998.

Filed Date: 12/29/23.

Accession Number: 20231229–5133.

Comment Date: 5 p.m. ET 1/19/24.

Docket Numbers: ER24–778–000.

Applicants: Riverstart Solar Park LLC.

Description: § 205(d) Rate Filing: Reactive Power Compensation Filing to be effective 12/30/2023.

Filed Date: 12/29/23.

Accession Number: 20231229–5143.

Comment Date: 5 p.m. ET 1/19/24.

Docket Numbers: ER24–779–000.

Applicants: Horizon West Transmission, LLC.

Description: § 205(d) Rate Filing: Annual TRBAA Filing—2024 to be effective 1/1/2024.

Filed Date: 12/29/23.

Accession Number: 20231229–5162.

Comment Date: 5 p.m. ET 1/19/24.

Docket Numbers: ER24–780–000.

Applicants: GridLiance West LLC.

Description: § 205(d) Rate Filing: Annual TRBAA Filing 2024 to be effective 1/1/2024.

Filed Date: 12/29/23.

Accession Number: 20231229–5165.

Comment Date: 5 p.m. ET 1/19/24.

Docket Numbers: ER24–781–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 6894; Queue No. AF1–122 to be effective 2/28/2024.

Filed Date: 12/29/23.

Accession Number: 20231229–5181.

Comment Date: 5 p.m. ET 1/19/24.

Docket Numbers: ER24–782–000.

Applicants: Puget Sound Energy, Inc.

Description: § 205(d) Rate Filing: Amendatory Agreement No. 3 to PNW AC Intertie Capacity Ownership Agreement to be effective 10/1/2023.

Filed Date: 12/29/23.

Accession Number: 20231229–5188.

Comment Date: 5 p.m. ET 1/19/24.

Docket Numbers: ER24–783–000.

Applicants: Trans Bay Cable LLC.

Description: § 205(d) Rate Filing: Annual TRBAA Filing—2024 to be effective 1/1/2024.

Filed Date: 12/29/23.

Accession Number: 20231229–5191.

Comment Date: 5 p.m. ET 1/19/24.

Docket Numbers: ER24–784–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Kilgeng (Kilgeng BESS Project) LGIA Filing to be effective 12/15/2023.

Filed Date: 12/29/23.

Accession Number: 20231229–5194.

Comment Date: 5 p.m. ET 1/19/24.

Docket Numbers: ER24–785–000.

Applicants: Greenleaf Energy Unit 2, LLC.

Description: Petition for Limited Waiver of Greenleaf Energy Unit 2, LLC.

Filed Date: 12/28/23.

Accession Number: 20231228–5443.

Comment Date: 5 p.m. ET 1/18/24.

Docket Numbers: ER24–786–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to OATT Sch. 12—Appendices re: 2024 RTEP Annual Cost Allocations to be effective 1/1/2024.

Filed Date: 12/29/23.

Accession Number: 20231229–5224

Comment Date: 5 p.m. ET 1/19/24.

Docket Numbers: ER24–787–000.

Applicants: Metropolitan Edison Company.

Description: § 205(d) Rate Filing: 2023–12–29 Notice of Succession of Market-Based Rate Tariffs to be effective 12/31/9998.

Filed Date: 12/29/23.

Accession Number: 20231229–5259.

Comment Date: 5 p.m. ET 1/19/24.

Docket Numbers: ER24–788–000.

Applicants: Pennsylvania Electric Company.

Description: § 205(d) Rate Filing: 2023–12–29 Notice of Succession of Market-Based Rate Tariffs to be effective 12/31/9998.

Filed Date: 12/29/23.

Accession Number: 20231229–5262.

Comment Date: 5 p.m. ET 1/19/24.

Docket Numbers: ER24–789–000.

Applicants: Pennsylvania Power Company.

Description: § 205(d) Rate Filing: 2023–12–29 Notice of Succession of Market-Based Rate Tariffs to be effective 12/31/9998.

Filed Date: 12/29/23.

Accession Number: 20231229–5279.

Comment Date: 5 p.m. ET 1/19/24.

Docket Numbers: ER24–790–000.

Applicants: West Penn Power Company.

Description: § 205(d) Rate Filing: 2023–12–29 Notice of Succession of Market-Based Rate Tariffs to be effective 12/31/9998.

Filed Date: 12/29/23.

Accession Number: 20231229–5282.

Comment Date: 5 p.m. ET 1/19/24.

Docket Numbers: ER24–791–000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: DEC-Central RS No. 633—Supplemental Agmt to be effective 1/1/2024.

Filed Date: 12/29/23.

Accession Number: 20231229–5302.

Comment Date: 5 p.m. ET 1/19/24.

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: December 29, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2024–00030 Filed 1–4–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24–273–000.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreements Filing (Citadel_ExxonMobil_NRG) to be effective 1/1/2024.

Filed Date: 12/28/23.

Accession Number: 20231228–5212.

Comment Date: 5 p.m. ET 1/9/24.

Docket Numbers: RP24–274–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: Compliance filing: Annual Accounting Report on 12–29–23 to be effective N/A.

Filed Date: 12/29/23.

Accession Number: 20231229–5019.

Comment Date: 5 p.m. ET 1/10/24.

Docket Numbers: RP24–275–000.

Applicants: Sea Robin Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Annual Flowthrough Crediting Mechanism Filing 12–29–23 to be effective 2/1/2024.

Filed Date: 12/29/23.

Accession Number: 20231229–5025.

Comment Date: 5 p.m. ET 1/10/24.

Docket Numbers: RP24–276–000.

Applicants: WBI Energy Transmission, Inc.

Description: § 4(d) Rate Filing: 2023 Negotiated and Non-Conforming SA—ONEOK(FT–1916) to be effective 2/1/2024.

Filed Date: 12/29/23.

Accession Number: 20231229–5070.

Comment Date: 5 p.m. ET 1/10/24.

Docket Numbers: RP24–277–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Conoco Jan 2024) to be effective 1/1/2024.

Filed Date: 12/29/23.

Accession Number: 20231229–5106.

Comment Date: 5 p.m. ET 1/10/24.

Docket Numbers: RP24–278–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (TMV Jan 2024) to be effective 1/1/2024.

Filed Date: 12/29/23.

Accession Number: 20231229–5109.

Comment Date: 5 p.m. ET 1/10/24.

Docket Numbers: RP24–279–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Update (Hartree 615843_610670_614700 Jan 24) to be effective 1/1/2024.

Filed Date: 12/29/23.

Accession Number: 20231229–5115.

Comment Date: 5 p.m. ET 1/10/24.

Docket Numbers: RP24–280–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: REX 2023–12–29 Negotiated Rate Agreements and Amendment to be effective 1/1/2024.

Filed Date: 12/29/23.

Accession Number: 20231229–5124.

Comment Date: 5 p.m. ET 1/10/24.

Docket Numbers: RP24–281–000.

Applicants: Ruby Pipeline, L.L.C.

Description: § 4(d) Rate Filing: RP 2023–12–29 GT&C Revisions to be effective 1/29/2024.

Filed Date: 12/29/23.

Accession Number: 20231229–5126.

Comment Date: 5 p.m. ET 1/10/24.

Docket Numbers: RP24–282–000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 20231229 Negotiated Rate to be effective 1/1/2024.

Filed Date: 12/29/23.

Accession Number: 20231229–5168.

Comment Date: 5 p.m. ET 1/10/24.

Docket Numbers: RP24–283–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: § 4(d) Rate Filing: Vol. 2 Filing—Negotiated Rate Agreements—Scout Energy Group III and V to be effective 1/1/2024.

Filed Date: 12/29/23.

Accession Number: 20231229–5173.

Comment Date: 5 p.m. ET 1/10/24.

Docket Numbers: RP24–284–000.

Applicants: Columbia Gas Transmission, LLC.

Description: Compliance filing: Penalty Revenue Crediting Report 2023 to be effective N/A.

Filed Date: 12/29/23.

Accession Number: 20231229–5193.

Comment Date: 5 p.m. ET 1/10/24.

Docket Numbers: RP24–285–000.

Applicants: Columbia Gulf Transmission, LLC.

Description: Compliance filing: Penalty Revenue Credit Report 2023 to be effective N/A.

Filed Date: 12/29/23.

Accession Number: 20231229–5200.

Comment Date: 5 p.m. ET 1/10/24.

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. 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: December 29, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2024–00032 Filed 1–4–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2756–066]

Burlington Electric Department; 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.:* 2756–066.

c. *Date Filed:* October 31, 2023.

d. *Submitted By:* Burlington Electric Department (Burlington).

e. *Name of Project:* Chace Mill Hydroelectric Project (Chace Mill Project).

f. *Location:* The project is located on the Winooski River in the cities of Burlington and Winooski in Chittenden County, Vermont.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Applicant Contact:* James Gibbons, Director of Policy and Planning, Burlington Electric Department, 585 Pine Street, Burlington, VT 05401; Phone at (802) 658–0300, or email at *jgibbons@burlingtonelectric.com.*

i. *FERC Contact:* Joshua Dub at (202) 502–8138 or email at *Joshua.Dub@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 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 Burlington 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. Burlington 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 Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (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 this 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 Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659. 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–2756–066.

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 February 27, 2024.

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. Pursuant to the National Environmental Policy Act (NEPA), Commission staff will prepare either an environmental assessment (EA) or an environmental impact statement (EIS) (collectively referred to as the ''NEPA document'') that describes and evaluates the probable effects, including an assessment of the site-specific and cumulative effects, if any, of the proposed action and alternatives. The Commission's scoping process will help determine the required level of analysis and satisfy the NEPA scoping requirements, irrespective of whether the Commission issues an EA or EIS.

Scoping Meetings

Commission staff will hold two scoping meetings for the project to receive input on the scope of the NEPA document. A daytime meeting will be held at 9:00 a.m. on January 29, 2024, at the Burlington Electric Department's Spark Space, in Burlington, Vermont, and will focus on the concerns of Indian Tribes, resource agencies, and non-governmental organizations (NGOs). An evening meeting will be held at 6:00 p.m. on January 29, 2024, at the Burlington Electric Department's Spark Space, in Burlington, Vermont, and will focus on receiving input from the public. We invite all interested agencies, Indian Tribes, non-governmental organizations, and individuals to attend one or both meetings. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Monday, January 29, 2024.
Time: 9:00 a.m. EST.
Place: Burlington Electric Department, Spark Space.
Address: 585 Pine Street, Burlington, VT 05401.
Phone: (802) 865–0300.

Evening Scoping Meeting

Date: Monday, January 29, 2024.
Time: 6:00 p.m. EST.
Place: Burlington Electric Department, Spark Space.
Address: 585 Pine Street, Burlington, VT 05401.
Phone: (802) 865–0300.

Copies of the SD1 outlining the proposed date and subject areas to be addressed in the NEPA document were distributed to the individuals and entities on the Commission's mailing list and Burlington'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 above. 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 Visit

The potential applicant and Commission staff will conduct an environmental site visit of the project. All interested individuals, agencies, Tribes, and NGOs are invited to attend. Please RSVP Mr. James Gibbons of the Burlington Electric Department via email at *jgibbons@burlingtonelectric.com* or by phone at (802) 865–0300 *on or before January 22, 2024,* if you plan to attend the environmental site visit. The time and location of the environmental site visit is as follows:

Chace Mill Project Site Visit

Date: Monday, January 29, 2024.
Time: 1:00 p.m. EST.
Place: Burlington Electric Department.
Address: 585 Pine Street, Burlington, VT 05401.

Participants should meet at the Burlington Electric Department's parking lot, located at 585 Pine Street, Burlington. From there, Burlington will provide transportation to the project via shuttle. All participants are responsible for their own transportation to the Burlington Electric Department's parking lot, and should wear sturdy, closed-toe shoes or boots.

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: December 29, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2024–00031 Filed 1–4–24; 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: EC24–32–000.

Applicants: OhmConnect, Inc., Resi Station, LLC, Renew Home VPP, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of OhmConnect, Inc., et al.

Filed Date: 12/27/23.

Accession Number: 20231227–5334.

Comment Date: 5 p.m. ET 1/17/24.

Docket Numbers: EC24–33–000.

Applicants: MN8 Energy LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of MN8 Energy LLC.

Filed Date: 12/27/23.

Accession Number: 20231227–5336.

Comment Date: 5 p.m. ET 1/17/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1338–005.

Applicants: Southern Indiana Gas and Electric Company, Inc.

Description: Triennial Market Power Analysis for Central Region of Southern Indiana Gas and Electric Company, Inc.

Filed Date: 12/28/23.

Accession Number: 20231228–5444.

Comment Date: 5 p.m. ET 2/26/24.

Docket Numbers: ER10–1585–023; ER10–1594–023; ER10–1617–023; ER10–1619–007; ER10–1625–010; ER10–1628–023; ER10–1632–025; ER12–60–025; ER16–733–014; ER16–1148–014; ER19–2908–002.

Applicants: Tenaska Clear Creek Wind, LLC, Tenaska Energía de Mexico, S. de R. L. de C.V., LQA, LLC, Tenaska Power Management, LLC, Tenaska Power Services Co., Texas Electric Marketing, LLC, Tenaska Georgia Partners, L.P., Tenaska Alabama Partners, L.P., New Mexico Electric Marketing, LLC, California Electric Marketing, LLC, Alabama Electric Marketing, LLC.

Description: Triennial Market Power Analysis for Southeast Region of Alabama Electric Marketing, LLC, et al.

Filed Date: 12/28/23.

Accession Number: 20231228–5393.

Comment Date: 5 p.m. ET 2/26/24.

Docket Numbers: ER10–1841–030; ER10–1852–084; ER10–1907–029; ER10–1918–030; ER10–1950–030; ER10–1970–029; ER10–1972–029; ER10–2005–030; ER10–2078–028; ER11–4462–083; ER12–1660–029; ER13–2458–024; ER13–2461–024; ER16–1872–020; ER16–2506–022; ER17–838–057; ER17–2270–021; ER18–1771–020; ER18–2224–020; ER18–2246–019; ER19–987–017; ER19–1003–017; ER19–1393–017; ER19–1394–017; ER19–2373–013; ER19–2382–013; ER19–2398–015; ER19–2437–013; ER19–2461–013; ER20–122–011; ER20–1220–011; ER20–1769–011; ER20–1879–012; ER20–1987–012; ER20–2690–011; ER21–1320–007; ER21–1953–009; ER21–2048–009; ER21–2100–008; ER22–2536–004; ER22–2601–004; ER22–2634–004; ER23–568–003; ER23–2321–001; ER23–2324–001; ER23–2694–001.

Applicants: Cereal City Solar, LLC, Cavalry Energy Center, LLC, Dunns Bridge Energy Storage, LLC, Big Cypress Solar, LLC, Buffalo Ridge Wind, LLC, Walleye Wind, LLC, Kossuth County Wind, LLC, Point Beach Solar, LLC, Sac County Wind, LLC, Heartland Divide Wind II, LLC, Crystal Lake Wind Energy III, LLC, Jordan Creek Wind Farm LLC, Cerro Gordo Wind, LLC, Oliver Wind I, LLC, Chicot Solar, LLC, Oliver Wind II, LLC, Crowned Ridge Interconnection, LLC, Crowned Ridge Wind, LLC, Emmons-Logan Wind, LLC, Hancock County Wind, LLC, Story County Wind, LLC, Ashtabula Wind I, LLC, Endeavor Wind II, LLC, Endeavor Wind I, LLC, Crystal Lake Wind Energy II, LLC, Crystal Lake Wind Energy I, LLC, Heartland Divide Wind Project, LLC, Pegasus Wind, LLC, Langdon Renewables, LLC, Stuttgart Solar, LLC, NextEra Energy Marketing, LLC, Oliver Wind III, LLC, Marshall Solar, LLC, Pheasant Run Wind, LLC, Tuscola Wind II, LLC, Tuscola Bay Wind, LLC,NEPM II, LLC, White Oak Energy LLC, Ashtabula Wind II, LLC, NextEra Energy Point Beach, LLC, NextEra Energy Duane Arnold, LLC, Garden Wind, LLC,FPL Energy North Dakota Wind II, LLC,FPL Energy North Dakota Wind, LLC, Florida Power & Light Company, Butler Ridge Wind Energy Center, LLC.

Description: Triennial Market Power Analysis for Central Region of Butler Ridge Wind Energy Center, LLC, et al.

Filed Date: 12/21/23.

Accession Number: 20231221–5415.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER10–2791–019; ER10–2792–019; ER19–289–010; ER10–1827–010; ER10–1575–017; ER10–2876–019; ER19–2462–008; ER18–2264–010.

Applicants: Macquarie Energy Trading LLC, Macquarie Energy LLC, Louisiana Generating LLC, Cottonwood Energy Company, LP, Cleco Power LLC, Cleco Cajun LLC, Big Cajun I Peaking Power LLC, Bayou Cove Peaking Power LLC.

Description: Updated Market Power Analysis for the Central Region of Bayou Cove Peaking Power, LLC, et al.

Filed Date: 12/26/23.

Accession Number: 20231226–5185.

Comment Date: 5 p.m. ET 2/26/24.

Docket Numbers: ER10–3254–005.

Applicants: Cooperative Energy Incorporated (An Electric Membership Corporation).

Description: Triennial Market Power Analysis for Southeast Region of Cooperative Energy Incorporated (An Electric Membership Corporation).

Filed Date: 12/27/23.

Accession Number: 20231227–5332.

Comment Date: 5 p.m. ET 2/26/24.

Docket Numbers: ER18–1977–003; ER18–2194–003; ER18–2217–002; ER19–117–003; ER19–118–003.

Applicants: Innovative Solar 67, LLC, Innovative Solar 54, LLC, Buckleberry Solar, LLC, Fox Creek Farm Solar, LLC, Brantley Farm Solar, LLC.

Description: Triennial Market Power Analysis for Southeast Region of Brantley Farm Solar, LLC, et al.

Filed Date: 12/28/23.

Accession Number: 20231228–5412.

Comment Date: 5 p.m. ET 2/26/24.

Docket Numbers: ER20–649–005; ER14–868–006; ER14–867–005; ER14–594–019.

Applicants: Ohio Power Company, AEP Energy, Inc., AEP Retail Energy Partners, AEP Energy Partners, Inc.

Description: Triennial Market Power Analysis for Central Region of AEP Energy Partners, Inc., et al.

Filed Date: 12/28/23.

Accession Number: 20231228–5442.

Comment Date: 5 p.m. ET 2/26/24.

Docket Numbers: ER21–1735–002.

Applicants: Indianapolis Power & Light Company.

Description: Updated Market Power Analysis for the Central Region of Indianapolis Power & Light Company.

Filed Date: 12/27/23.

Accession Number: 20231227–5338.

Comment Date: 5 p.m. ET 2/26/24.

Docket Numbers: ER24–343–001.

Applicants: Nestlewood Solar I LLC.

Description: Tariff Amendment: Supplement to Petition for Maket-Based Rate Application to be effective 11/4/2023.

Filed Date: 12/29/23.

Accession Number: 20231229–5170.

Comment Date: 5 p.m. ET 1/19/24.

Docket Numbers: ER24–616–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment to Service Agreement Filing NSA, SA No. 7139; Queue No. AD2–086/AE1–090 to be effective 2/10/2024.

Filed Date: 12/29/23.

Accession Number: 20231229–5108.

Comment Date: 5 p.m. ET 1/19/24.

Docket Numbers: ER24–774–000.

Applicants: Central Maine Power Company, ISO New England Inc.

Description: § 205(d) Rate Filing: Central Maine Power Company submits tariff filing per 35.13(a)(2)(iii: CMP; Post-Retirement Benefits Other than Pensions Expenses Refund Report to be effective 2/28/2024.

Filed Date: 12/29/23.

Accession Number: 20231229–5044.

Comment Date: 5 p.m. ET 1/19/24.

Docket Numbers: ER24–775–000.

Applicants: The United Illuminating Company, ISO New England Inc.

Description: § 205(d) Rate Filing: The United Illuminating Company submits tariff filing per 35.13(a)(2)(iii: UI; Post-Retirement Benefits Other than Pensions Expenses Refund Rpt to be effective 2/28/2024.

Filed Date: 12/29/23.

Accession Number: 20231229–5052.

Comment Date: 5 p.m. ET 1/19/24.

Docket Numbers: ER24–776–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: Calpine NITSA Rev 18 to be effective 1/1/2024.

Filed Date: 12/29/23.

Accession Number: 20231229–5075.

Comment Date: 5 p.m. ET 1/19/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

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Dated: December 29, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2024–00033 Filed 1–4–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–104]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed December 22, 2023 10 a.m. EST Through December 29, 2023 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20240000, Draft, NRC, MD, Site-Specific Environmental Impact Statement for License Renewal of Nuclear Plants Supplement 7a, Second Renewal Regarding Subsequent License Renewal for North Anna Power Station Units 1 and 2, Comment Period Ends: 02/20/2024, Contact: Tam Tran 301–415–3617.

Dated: December 30, 2023.

Julie Smith,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2024–00027 Filed 1–4–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1194; FR ID 195228]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of

information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before March 5, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1194.

Title: AM Station Modulation Dependent Carrier Level (MDCL) Notification Form; FCC Form 338.

Form Number: FCC Form 338.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 15 respondents and 15 responses.

Estimated Hours per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 15 hours.

Total Annual Costs: No cost.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 154(i), 303, 310 and 533 of the Communications Act of 1934, as amended.

Needs and Uses: FCC Form 338, AM Station Modulation Dependent Carrier Level (MDCL) Notification Form is used by AM broadcasters to implement MDCL technologies without prior authorization, by electronic notification within 10 days of commencing MDCL operations. In addition to the standard general contact information, FCC Form 338 solicits minimal technical data, as well as the date that MDCL control operations commenced.

In October 2015, the Commission adopted its proposal for wider implementation of MDCL control technologies and amended section 73.1560(a) of the rules. 47 CFR 73.1560(a)(1) is consequentially covered by this information collection. This rule specifies the limits on antenna input power for AM stations. AM stations using MDCL control technologies are not required to adhere to these operating power parameters. The rule provides that an AM station may commence MDCL control technology without prior Commission authority, provided that within ten days after commencing such operation, the AM station licensee submits an electronic notification of commencement of MDCL operation using FCC Form 338.

The Commission is now requesting a three year extension for this collection from the Office of Management and Budget (OMB).

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2024–00002 Filed 1–4–24; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

[Notice-Q–2023–06; Docket No. 2023–0002; Sequence No. 42]

Federal Secure Cloud Advisory Committee Request for Applications

AGENCY: Federal Acquisition Service (Q), General Services Administration (GSA).

ACTION: Notice. The U.S. General Services Administration (GSA) is seeking applications for membership to the Federal Secure Cloud Advisory Committee (the Committee).

SUMMARY: GSA is seeking applications to fill four membership seats on the Federal Secure Cloud Advisory Committee (hereinafter ''the Committee'' or ''the FSCAC''), a Federal advisory committee required by statute.

DATES: GSA will consider complete applications that are received no later than 5:00 p.m. Eastern Standard Time on Monday, January 22, 2024. Applications will be accepted online at *https://gsa.gov/fscac.*

ADDRESSES: Applications will be accepted electronically. Please submit applications via *https://forms.gle/kxscdjX6P7oB9vua7,* and email accompanying documents to *fscac@gsa.gov* with the subject line: FSCAC APPLICATION—[Applicant Name]. The form and associated instructions will also be available online at *https://gsa.gov/fscac.*

FOR FURTHER INFORMATION CONTACT: Michelle White, Designated Federal Officer (DFO), FSCAC, GSA, 703–489–4160, *fscac@gsa.gov.* Additional information about the Committee is available online at *https://gsa.gov/fscac.*

SUPPLEMENTARY INFORMATION:

Background

GSA, in compliance with the FedRAMP Authorization Act of 2022, established the FSCAC, an advisory committee in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. 10). The Federal Risk and Authorization Management Program (FedRAMP) within GSA is responsible for providing a standardized, reusable approach to security assessment and authorization for cloud computing products and services that process unclassified information used by agencies.

The FSCAC will provide advice and recommendations to the Administrator of GSA, the FedRAMP Board, and agencies on technical, financial, programmatic, and operational matters regarding the secure adoption of cloud computing products and services. The FSCAC will ensure effective and ongoing coordination of agency adoption, use, authorization, monitoring, acquisition, and security of cloud computing products and services to enable agency mission and administrative priorities. The purposes of the Committee are:

- To examine the operations of FedRAMP and determine ways that authorization processes can continuously be improved, including the following:
  - Measures to increase agency reuse of FedRAMP authorizations.
  - Proposed actions that can be adopted to reduce the burden, confusion, and cost associated with FedRAMP authorizations for cloud service providers.
  - Measures to increase the number of FedRAMP authorizations for cloud computing products and services offered by small businesses concerns (as defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

○ Proposed actions that can be adopted to reduce the burden and cost of FedRAMP authorizations for agencies.

• Collect information and feedback on agency compliance with, and implementation of, FedRAMP requirements.

• Serve as a forum that facilitates communication and collaboration among the FedRAMP stakeholder community.

The FSCAC will meet no fewer than three (3) times a calendar year. Meetings shall occur as frequently as needed, called, and approved by the DFO. Meetings may be held virtually or in person. Members will serve without compensation and may be allowed travel expenses, including per diem, in accordance with 5 U.S.C. 5703.

The Committee shall be comprised of not more than 15 members who are qualified representatives from the public and private sectors, appointed by the Administrator, in consultation with the Director of OMB, as follows:

i. The GSA Administrator or the GSA Administrator's designee, who shall be the Chair of the Committee.

ii. At least one representative each from the Cybersecurity and Infrastructure Security Agency and the National Institute of Standards and Technology.

iii. At least two officials who serve as the Chief Information Security Officer within an agency, who shall be required to maintain such a position throughout the duration of their service on the Committee.

iv. At least one official serving as Chief Procurement Officer (or equivalent) in an agency, who shall be required to maintain such a position throughout the duration of their service on the Committee.

v. At least one individual representing an independent assessment organization

vi. At least five representatives from unique businesses that primarily provide cloud computing services or products, including at least two representatives from a small business (as defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a))).

vii. At least two other representatives from the Federal Government as the Administrator determines to be necessary to provide sufficient balance, insights, or expertise to the Committee.

Each member shall be appointed for a term of three (3) years, except the initial terms, which were staggered into one (1), two (2) or three (3) year terms to establish a rotation in which one third of the members are selected. No member shall be appointed for more than two (2) consecutive terms nor shall any member serve for more than six (6) consecutive years. GSA values opportunities to increase diversity, equity, inclusion and accessibility on its federal advisory committees.

Members will be designated as Regular Government Employees (RGEs) or Representative members as appropriate and consistent with Section 3616(d) of the FedRAMP Authorization Act of 2022. GSA's Office of General Counsel will assist the Designated Federal Officer (DFO) to determine the advisory committee member designations. Representatives are members selected to represent a specific point of view held by a particular group, organization, or association. Members who are full time or permanent part-time Federal civilian officers or employees shall be appointed to serve as Regular Government Employee (RGE) members. In accordance with OMB Final Guidance published in the **Federal Register** on October 5, 2011 and revised on August 13, 2014, federally registered lobbyists may not serve on the Committee in an individual capacity to provide their own individual best judgment and expertise, such as RGEs members. This ban does not apply to lobbyists appointed to provide the Committee with the views of a particular group, organization, or association, such as Representative members.

Applications

Applications are being accepted to fill the remaining terms of two vacant seats and to fill two seats with upcoming expiring terms. These four seats will be designated as Representative members:

Two (2) seats for representatives of a unique business that primarily provides cloud computing products or services. One seat will be appointed to serve for the remainder of the vacant term, scheduled to end in May 2025, and the other will be appointed for a three year term.

Two (2) seats for representatives of a unique business that primarily provides cloud computing products or services from a small business (as defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a))). One seat will be appointed to serve for the remainder of the vacant term, scheduled to end in July 2026, and the other will be appointed for a three year term.

Applications for membership on the Committee will be accepted until 5:00 p.m. Eastern Standard Time on Monday, January 22, 2024.

There are two parts to submitting an application. First, complete the information requested via this electronic form *https://forms.gle/kxscdjX6P7oB9vua7*. Next, email your CV or resume and a letter of endorsement from your organization or organization's leadership, endorsing you to represent your company, to *fscac@gsa.gov* with the subject line: FSCAC APPLICATION—[Applicant Name]. The letter of endorsement must come from your organization or organization's leadership. If you are the CEO, then it must come from another member of the executive team of your organization, as you cannot endorse yourself. The letter must be signed and specifically state that you are authorized to apply to FSCAC as a representative of your organization.

Please note: Letters of ''recommendation'' or other unsolicited deliverables will neither be accepted nor acknowledged. Do not include them.

Applications that do not include the completion of the above instructions will not be considered.

Elizabeth Blake,

Senior Advisor, Federal Acquisition Service, General Services Administration.

[FR Doc. 2023–28602 Filed 1–4–24; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

[Notice–MY–2023–03; Docket No. 2023–0002; Sequence No. 37]

Office of Shared Solutions and Performance Improvement (OSSPI); Chief Data Officers Council (CDO); Request for Information—Synthetic Data Generation

AGENCY: Federal Chief Data Officers (CDO) Council; General Services Administration, (GSA).

ACTION: Notice.

SUMMARY: The Federal CDO Council was established by the Foundations for Evidence-Based Policymaking Act. The Council's vision is to improve government mission achievement and increase benefits to the nation through improving the management, use, protection, dissemination, and generation of data in government decision-making and operations. The CDO Council is publishing this Request for Information (RFI) for the public to provide input on key questions concerning synthetic data generation. Responses to this RFI will inform the CDO Council's work to establish best practices for synthetic data generation.

DATES: We will consider comments received by February 5, 2024.

Targeted Audience

This RFI is intended for Chief Data Officers, data scientists, technologists, data stewards and data- and evidence-building related subject matter experts from the public, private, and academic sectors.

ADDRESSES: Respondents should submit comments identified by Notice–MY–2023–03 via the Federal eRulemaking Portal at *https://www.regulations.gov* and follow the instructions for submitting comments. All public comments received are subject to the Freedom of Information Act and will be posted in their entirety at *regulations.gov,* including any personal and/or business confidential information provided. Do not include any information you would not like to be made publicly available.

Written responses should not exceed six pages, inclusive of a one-page cover page as described below. Please respond concisely, in plain language, and specify which question(s) you are responding to. You may also include links to online materials or interactive presentations, but please ensure all links are publicly available. Each response should include:

- The name of the individual(s) and/or organization responding.
- A brief description of the responding individual(s) or organization's mission and/or areas of expertise.
- The section(s) that your submission and materials are related to.
- A contact for questions or other follow-up on your response.

By responding to the RFI, each participant (individual, team, or legal entity) warrants that they are the sole author or owner of, or has the right to use, any copyrightable works that the submission comprises, that the works are wholly original (or is an improved version of an existing work that the participant has sufficient rights to use and improve), and that the submission does not infringe any copyright or any other rights of any third party of which participant is aware.

By responding to the RFI, each participant (individual, team, or legal entity) consents to the contents of their submission being made available to all Federal agencies and their employees on an internal-to-government website accessible only to agency staff persons.

Participants will not be required to transfer their intellectual property rights to the CDO Council, but participants must grant to the Federal Government a nonexclusive license to apply, share, and use the materials that are included in the submission. To participate in the RFI, each participant must warrant that there are no legal obstacles to providing the above-referenced nonexclusive licenses of participant rights to the Federal Government. Interested parties who respond to this RFI may be contacted for follow-on questions or discussion.

FOR FURTHER INFORMATION CONTACT: Issues regarding submission or questions can be sent to Ken Ambrose and Ashley Jackson, Senior Advisors, Office of Shared Solutions and Performance Improvement, General Services Administration, at 202–215–7330 (Kenneth Ambrose) and 202–538–2897 (Ashley Jackson), or *cdocstaff@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the Foundations for Evidence-Based Policy Making Act of 2018,[1] the CDO Council is charged with establishing best practices for the use, protection, dissemination, and generation of data in the Federal Government. In reviewing existing activities and literature from across the Federal Government, the CDO Council has determined that:

- the Federal Government would benefit from developing consensus of a more formalized definition for synthetic data generation,
- synthetic data generation has wide-ranging applications, and
- there are challenges and limitations with synthetic data generation.

The CDO council is interested in consolidating feedback and inputs from qualified experts to gain additional insight and assist with establishing a best practice guide around synthetic data generation. The CDO Council has preliminarily drafted a working definition of synthetic data generation and several key questions to better inform its work.

Information and Key Questions

Section 1: Defining Synthetic Data Generation

Synthetic data generation is an important part of modern data science work. In the broadest sense, synthetic data generation involves the creation of a new synthetic or artificial dataset using computational methods. Synthetic data generation can be contrasted with real-world data collection. Real-world data collection involves gathering data from a first-hand source, such as through surveys, observations, interviews, forms, and other methods. Synthetic data generation is a broad field that employs varied techniques and can be applied to many different kinds of problems. Data may be fully or partially synthetic. A fully synthetic dataset wholly consists of points created using computational methods, whereas a partially synthetic dataset may involve a mix of first-hand and computationally generated synthetic data.

Throughout this RFI, we use the following definitions:

- data—recorded information, regardless of form or the media on which the data is recorded; [2]
- data asset—a collection of data elements or data sets that may be grouped together; [3]
- open government data asset—a public data asset that is (A) machine-readable; (B) available (or could be made available) in an open format; (C) not encumbered by restrictions, other than intellectual property rights, including under titles 17 and 35, that would impede the use or reuse of such asset; and (D) based on an underlying open standard that is maintained by a standards organization.[4]

The National Institute of Standards and Technology (NIST) defines synthetic data generation as ''a process in which seed data is used to create artificial data that has some of the statistical characteristics as the seed data''.[5]

The CDO Council believes that this definition of synthetic data generation includes techniques such as using statistics to create data from a known distribution, generative adversarial networks (GANs),[6] variational autoencoding (VAE),[7] building test data for use in software development,[8] privacy-preserving synthetic data generation [9] and others.

The CDO Council also believes that it is important to draw contrasts between synthetic data generation and other activities. For example, synthetic data generation does not include collection

[1] H.R. 4174—115th Congress (2017–2018): Foundations for Evidence-Based Policymaking Act of 2018 | *Congress.gov* | Library of Congress *https://www.congress.gov/bill/115th-congress/house-bill/4174/text.*

[2] 44 U.S.C. 3502(16).

[3] 44 U.S.C. 3502(17).

[4] 44 U.S.C. 3502(20).

[5] *https://csrc.nist.gov/glossary/term/synthetic_data_generation.*

[6] 15 U.S.C. 9204.

[7] A useful definition of this technique is available in the abstract of this paper: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8774760/.*

[8] This technique is described in the Department of Defense DevSecOps Fundamentals Guidebook *https://dodcio.defense.gov/Portals/0/Documents/Library/DevSecOpsTools-ActivitiesGuidebook.pdf,* page 23.

[9] NIST Special Publication 800–188, Section 4.4 *https://doi.org/10.6028/NIST.SP.800-188.*

of data without any inference. Synthetic data generation does not include signal processing, such as automated differential translations of global positioning satellite data. Synthetic data generation also does not include enriching data during data analysis—such intermediate steps that involve augmenting or enhancing existing data but do not involve the creation of artificial data.

Other analysis techniques, such as distribution fitting and parametric modeling, are closely related to synthetic data generation. The CDO Council believes the key difference; however, is the purpose of the computational methods. Synthetic data generation seeks to create wholly new data points based on the statistical properties of a dataset, whereas distribution fitting seeks to 'fill in' a dataset based on a known distribution. Notably, the fitted distribution can be used to generate points that are not part of the original dataset—which is an application of synthetic data generation.

Questions

- Are there any limitations to relying on the NIST definition to describe the field of synthetic data generation? How should it be improved?
- How well does the CDO Council's list of examples and contrasts improve understanding? How should these be improved?

Section 2: Applying Synthetic Data Generation

Synthetic data generation can enable the creation of larger and more diverse datasets, enhance model performance, and protect individual privacy. The CDO Council's review of potential applications of synthetic data generation found examples in:

- Data augmentation.[10] This application involves creating new data points or datasets from existing data. This application can be particularly useful in developing training datasets for machine learning and advanced analytics.
- Data synthesis.[11] This application involves using an existing dataset to create a new dataset, sharing similar statistical properties with the original dataset, to protect individual privacy. Generating such datasets has wide-ranging applications including, but not limited to, facilitating reproducible investigation of clinical data while preserving individual privacy.
- Modeling and simulation.[12] This application involves setting assumptions, parameters and rules to develop data for further analysis. The synthetic dataset can be used for developing insights, testing hypotheses, and/or understanding a model's behavior. This application supports the conduct of controlled experiments, predicting potential future outcomes from current conditions, generating scenarios for rare or extreme events, and validating or calibrating a model.
- Software development.[13] This application involves using existing database schemas to simulate real-world scenarios and ensure that a software application can handle different types of data and errors effectively. This application assists in the creation of representative data, makes it easier to generate edge cases, protects individual privacy, and improves testing efficiency.

Notably, the CDO Council believes that not all applications of modeling and simulation would meet the definition of synthetic data generation. For example, weather forecasting applies numerical models and applies a complex mix of data analysis, meteorological science, and computation methods but does not involve the creation of synthetic or artificial data points. Instead, the purpose of these models is to predict future conditions.

Questions

- How are these examples representative of synthetic data generation? How should they be revised?
- What other examples of synthetic data generation should the CDO Council know about?
- What are the key advantages for the use of synthetic data generation?

Section 3: Challenges and Limitations in Synthetic Data Generation

The CDO Council recognizes that synthetic data generation can be a valuable technique. However, it should be noted that there are some challenges and limitations with the technique. For example, there can be challenges generating data that realistically simulates the real world and the diversity of real data. Additionally, evaluating the quality of a synthetic dataset may also be extremely challenging.

Synthetic data generation is also subject to challenges commonly facing any statistical methods, such as overfitting and imbalances in the source data. These challenges reduce the utility of the generated synthetic data because they may not be properly representative, including failing to represent rare classes.

Questions

- What other challenges and limitations are important to consider in synthetic data generation?
- What tools or techniques are available for effectively communicating the limitations of generated synthetic data?
- What are best practices for CDOs to coordinate with statistical officials on synthetic data?
- What approaches can CDOs consider to help address these challenges?

Section 4: Ethics and Equity Considerations in Synthetic Data Generation

Synthetic data generation techniques hold great promise, but also introduce questions of ethics and equity. Consistent with Federal privacy practices,[14] any data generation technique involving individuals must respect their privacy rights and obtain informed consent before using real-world data to generate synthetic data. As noted in Section 3, synthetic data generation is also subject to challenges commonly facing any statistical methods and has the potential to introduce and encode errors or bias, potentially leading to discriminatory outcomes.

Uses of generated synthetic data must also be carefully considered. The context and quality of the generated synthetic data will impact its practical utility and impact. Assessing and understanding the fitness of a generated synthetic dataset is essential. For instance, a generated synthetic dataset may not sufficiently represent the diversity of the source dataset. In addition, a generated synthetic dataset may not contain sufficient variables to fully represent the system and the drivers of differences in the phenomenon it is meant to represent.

Questions

- What techniques are available to facilitate transparency around generated synthetic data?
- What are best practices for CDOs to coordinate with privacy officials on

[10] This application is briefly described at *https://frederick.cancer.gov/initiatives/scientific-standards-hub/ai-and-data-science,* Section 4.

[11] A definition of this technique is available in the abstract of this paper *https://par.nsf.gov/servlets/purl/10187206.*

[12] A definition a computer simulation is proposed at *https://builtin.com/hardware/computer-simulation.*

[13] DoD DevSecOps Fundamentals, ibid.

[14] OMB Circular A–130, Appendix II *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A130/a130revised.pdf.*

ethics and equity matters related to synthetic data generation?

- How can we apply the Federal Data Ethics Framework [15] to address these ethics and equity concerns?

Section 5: Synthetic Data Generation and Evidence-Building

Synthetic data generation can enable the production of evidence for use in policymaking. Applications such as simulation or modeling can help policymakers explore scenarios and their potential impacts. Likewise, policymakers can conduct controlled experiments of potential policy interventions to better understand their impacts. Data synthesis may help policymakers make more data publicly available to spur research and other foundational fact-finding activities that can inform policymaking.

Questions

- What other applications of synthetic data generation support evidence-based policymaking? [16]
- What is the relationship between synthetic data generation and open government data? [17]
- How can CDOs and Evaluation Officers best collaborate on synthetic data generation to support evidence-building? [18] What about other evidence officials? [19]

Kenneth Ambrose,

Senior Advisor CDO Council, Office of Shared Solutions and Performance Improvement, General Services Administration.

[FR Doc. 2024–00036 Filed 1–4–24; 8:45 am]

BILLING CODE 6820–69–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0064; Docket No. 2024–0053; Sequence No. 1]

Information Collection; Certain Federal Acquisition Regulation Part 36 Construction Contract Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on a revision concerning certain Federal Acquisition Regulation part 36 construction contract requirements. DoD, GSA, and NASA invite comments on: whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the 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 the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through April 30, 2024. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by March 5, 2024.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection 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. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite OMB Control No. 9000–0064, Certain Federal Acquisition Regulation Part 36 Construction Contract Requirements. 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.

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)

9000–0064, Certain Federal Acquisition Regulation Part 36 Construction Contract Requirements.

B. Need and Uses

DoD, GSA, and NASA are combining OMB Control Nos. by FAR part. This consolidation is expected to improve industry's ability to easily and efficiently identify burdens associated with a given FAR part. This review of the information collections by FAR part allows improved oversight to ensure there is no redundant or unaccounted for burden placed on industry. Lastly, combining information collections in a given FAR part is also expected to reduce the administrative burden associated with processing multiple information collections.

This justification supports the extension of OMB Control No. 9000–0064 and combines it with the previously approved information collection under OMB Control No. 9000–0062, with the new title ''Certain Federal Acquisition Regulation Part 36 Construction Contract Requirements''. Upon approval of this consolidated information collection, OMB Control No. 9000–0062 will be discontinued. The burden requirements previously approved under the discontinued number will be covered under OMB Control No. 9000–0064.

This clearance covers the information that contractors must submit to comply with the following FAR requirements:

- FAR 52.236–5, Material and Workmanship. This clause requires contractors to obtain contracting officer approval of the machinery, equipment, material, or articles to be incorporated into the work. The contractor's request must include: the manufacturer's name, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment; and full information concerning the material or articles. When directed by the contracting officer, the contractor must submit samples of the items requiring approval for incorporating into the work. The contracting officer uses this information to determine whether the machinery, equipment, material, or articles meet the standards of quality specified in the contract. A contracting officer may reject work, if the contractor installs machinery, equipment, material, or articles in the work without obtaining the contracting officer's approval.
- FAR 52.236–13, Accident Prevention, Alternate I. This alternate to

[15] *https://resources.data.gov/assets/documents/fds-data-ethics-framework.pdf.*

[16] OMB Memorandum M–19–23.

[17] 44 U.S.C. 3520(20).

[18] OMB Memorandum M–19–23, Appendix A.

[19] OMB Memorandum M–19–23, Section II (Key Senior Officials).

the basic clause requires contractors to submit a written proposed plan to provide and maintain work environments and procedures that will safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to contractor operations and activities; avoid interruptions of Government operations and delays in project completion dates; and control costs in the performance of this contract. The plan must include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards. The contracting officer and technical representatives analyze the Accident Prevention Plan to determine if the proposed plan will satisfy the safety requirements identified in the contract, to include certain provisions of the Occupational Safety and Health Act (per FAR 36.513(c)) and applicable standards issued by the Secretary of Labor at 29 CFR part 1926 and 29 CFR part 1910.

- FAR 52.236–15, Schedules for Construction Contracts. This clause requires contractors to prepare and submit to the contracting officer for approval three copies of a practicable schedule showing the order in which the contractor proposes to perform the work, and the dates on which the contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The contracting officer uses this information to monitor progress under a Federal construction contract when other management approaches for ensuring adequate progress are not used.
- FAR 52.236–19, Organization and Direction of the Work. This clause requires contractors, under cost-reimbursement construction contracts, to submit to the contracting officer a chart showing the general executive and administrative organization, the personnel to be employed in connection with the work under the contract, and their respective duties. The contractor must keep the data furnished current by supplementing it as additional information becomes available. The contracting officer uses this information to ensure the work is performed by qualified personnel at a reasonable cost to the Government.

C. Annual Burden

Respondents: 3,771.
Total Annual Responses: 13,267.
Total Burden Hours: 21,338.
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. 9000–0064, Certain Federal Acquisition Regulation Part 36 Construction Contract Requirements.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2024–00056 Filed 1–4–24; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; Home-Based Child Care Toolkit for Nurturing School-Age Children Study (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, United States Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) Office of Planning, Research, and Evaluation (OPRE) at the U.S. Department of Health and Human Services (HHS) is proposing to collect information to examine a toolkit of new measures designed to assess and strengthen the quality of child care, the Home-Based Child Care Toolkit for Nurturing School-Age Children (HBCC–NSAC Toolkit). This study aims to build evidence about the English version of the HBCC–NSAC Toolkit for use by/with providers caring for children in a residential setting (*i.e.,* home-based child care [HBCC]).

DATES: *Comments due within 30 days of publication.* Office of Management and Budget (OMB) must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The HBCC–NSAC Toolkit is designed for home-based providers who regularly care for at least 1 school-age child who is not their own. The purpose of the HBCC–NSAC Toolkit is to help home-based providers identify their caregiving strengths and areas for growth. The HBCC–NSAC Toolkit consists of a self-administered provider questionnaire (composed of multiple newly developed measures) and a family communication questionnaire (composed of 1 communication tool). For validation purposes, the study will include the provider questionnaire from the HBCC–NSAC Toolkit with additional items from existing measures and a separate family survey with child and family background information items and items from an existing measure. A subset of providers will be observed with an existing observation measure. Study participants will include home-based providers who can complete the provider questionnaire in English. They must currently care for at least 1 school-age child (age 5 and in kindergarten, or ages 6 through 12) in a home for at least 10 hours per week and for at least 8 weeks in the past year. These providers may also care for younger children (ages birth through 5 and not yet in kindergarten). Families (a parent or guardian of school-age children receiving care in the HBCC setting) who can complete the family survey in English will also be included in the study. The study will be based on a purposive sample of home-based providers in at least 10 geographic locations to maximize variation in the sample. OPRE proposes to collect survey and observational data from home-based providers who are licensed or regulated by states to provide child care and early education (CCEE) and providers who are unlicensed or legally exempt from state regulations for CCEE. Study participants may or may not participate in the child care subsidy program. The data collection activities are designed to provide critical information that is needed to analyze the reliability and validity of the HBCC–NSAC Toolkit's provider questionnaire. The resulting data will help ACF understand if the HBCC–NSAC Toolkit's provider questionnaire can be used to support home-based providers in identifying and reflecting on their

caregiving strengths and areas for growth.

Respondents: Home-based providers; families of the children cared for by the providers.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total/ annual burden (in hours)
1. Community organization onboarding call	30	1	1	30
2. Provider telephone script and recruitment information collection	204	1	0.33	67
3. Provider telephone script and recruitment information collection including observations	150	1	.42	63
4. Observation scheduling call	60	1	.17	10
5. HBCC–NSAC Toolkit provider questionnaire	150	1	.83	125
6. HBCC–NSAC Toolkit family questionnaire	166	1	0.25	42

Estimated Total Annual Burden Hours: 337.

Authority: 42 U.S.C. 9858.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024–00006 Filed 1–4–24; 8:45 am]

BILLING CODE 4184–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Voluntary Partner Surveys To Implement Executive Order 14058 in the Health Resources and Services Administration, OMB No. 0915–0212—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than February 5, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments,'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Joella Roland, the HRSA Information Collection Clearance Officer, at *paperwork@hrsa.gov* or call (301) 443–3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Voluntary Partner Surveys to Implement Executive Order 14058 in the Health Resources and Services Administration, OMB No. 0915–0212—Revision.

Abstract: The purpose of information collections under this generic umbrella ICR package is to conduct a limited number of partner surveys. If this generic ICR is approved, information on each individual partner survey conducted under this generic ICR will not be published separately in the **Federal Register**. Approval of this specific umbrella ICR would allow HRSA to continue to conduct voluntary customer surveys of its partners to assess strengths and weaknesses in program services and processes. A previous version of this ICR was done in response to Executive Order 12862, which called on the Federal Government to gather feedback from customers, set customer service standards, and measure performance against those standards. In December 2021, the White House issued Executive Order 14058, calling on the Federal Government to improve its service delivery to its customers and put people at the center of Federal Government activity. In accordance with this directive, HRSA is requesting approval of this generic umbrella ICR from OMB to conduct the partner surveys with a slight increase in the allotted burden hours so that HRSA can assess its performance from a larger swath of its partner population to help ensure that HRSA's customer service delivery continues to improve, in accordance with the directive in Executive Order 14058.

HRSA customer service feedback will continue to be gathered in the form of focus groups, in-class evaluation forms, mail surveys, and telephone surveys. Although HRSA cannot anticipate all of the collections that will fall under this generic umbrella ICR, HRSA anticipates receiving OMB approval to include the following collections:

- Surveys of HRSA grantees to determine satisfaction with grant processes or technical assistance provided by a HRSA contractor. Surveys may also be done to determine partner satisfaction with HRSA products or services. Surveys may be conducted by mail, telephone, or online. These surveys include the Division of Practitioner Data Bank Usability Survey generic fast track ICR, which helps identify strengths and weaknesses of the National Practitioner Data Bank customer service call center agents, and the HRSA Electronic Handbooks Customer Service Survey generic fast track ICR, which gathers public feedback about HRSA's electronic handbooks.
- Evaluation forms completed by providers who receive training from HRSA funding recipients, to measure satisfaction with the training experience. Evaluation forms may also be done after a conference or other training session with HRSA partners. Evaluation forms may be done hard-copy or online. One evaluation form generic fast track ICR that is expected to be included in this generic umbrella ICR is the National Ryan White Conference survey forms evaluating the National

Ryan White Conference on HIV Care and Treatment and the Federal Cervical Cancer Collaborative Post-Roundtable Evaluation helping HRSA to gain better understanding of participants' experiences.

• Focus groups of HRSA grantees to learn more about their needs and concerns (*e.g.,* professional development, technical assistance, and current or expected issues with program operations). Focus groups may also be conducted to learn more about how the people served by HRSA programs react to messaging related to HRSA program activities. Focus groups may be conducted online or in person. The HRSA focus group generic fast track ICR that is expected to be included in this generic umbrella ICR includes the HRSA Division of Transplantation Formative Evaluation Minority Organ Donation Outreach consisting of a group of online focus groups designed to gather feedback on several campaign concepts.

A 60-day notice published in the **Federal Register** on October 20, 2023, 88 FR 72494–95.

Need and Proposed Use of the Information: Results of these surveys will be used to plan and redirect resources and efforts as needed to improve services and processes. Focus groups may also be used to gain partner input into the design of mail and telephone surveys.

Likely Respondents: HRSA partners are typically state or local governments, tribes and tribal organizations, health care facilities, health care consortia, health care providers, and researchers. HRSA partners may also include individuals served by HRSA programs and/or funding recipients. Participation in any collections under this clearance will be entirely voluntary, and the privacy of respondents will be preserved to the extent requested by participants and as permitted by law.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Instrument	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Evaluation forms	41,000	1	41,000	0.05	84,050,000
Surveys (telephone, online)	55,000	1	55,000	0.10	5,500
Focus groups	2,000	1	2,000	1.50	3,000
Total	98,000		98,000		84,058,500

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2024–00003 Filed 1–4–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Update to the Bright Futures Periodicity Schedule as Part of the HRSA-Supported Preventive Services Guidelines for Infants, Children, and Adolescents

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: A **Federal Register** notice published on October 24, 2023, detailed and sought public comment on recommendations under development by the Infant, Child, and Adolescent Preventive Services (ICAPS) Program, regarding updates to the HRSA-supported preventive services guidelines for infants, children, and adolescents in the Bright Futures Periodicity Schedule footnotes. The proposed updates are related to six existing footnotes. The ICAPS Program convenes health professionals to develop draft recommendations for HRSA's consideration. Twenty-five respondents provided comments which were received and considered as detailed below. On December 29, 2023, HRSA accepted as final the ICAPS Program's recommended update to the six footnotes. None of the footnote updates change the HRSA-supported clinical recommendations and therefore none of these updates make any changes to coverage without cost-sharing, as each of the footnotes merely update references to the supporting evidence base for existing recommendations or adds additional descriptive text.

Please see *https://mchb.hrsa.gov/programs-impact/bright-futures* for additional information.

FOR FURTHER INFORMATION CONTACT: Savannah Kidd, Sr. Public Health Advisor, HRSA, Maternal and Child Health Bureau, telephone: (301) 287–2601, email: *SKidd@hrsa.gov.*

SUPPLEMENTARY INFORMATION: Under the Patient Protection and Affordable Care Act, Public Law 111–148, the preventive care and screenings set forth in HRSA-supported guidelines are required to be covered without cost-sharing by certain group health plans and health insurance issuers. The Department adopted the Bright Futures Periodicity Schedule as a HRSA-supported guideline for infants, children, and adolescents under section 2713 of the Public Health Service Act. See 75 FR 41726, 41740 (July 19, 2010). The Bright Futures Periodicity Schedule is a schedule of clinical recommendations for preventive screenings and assessments at each well-child visit from infancy through adolescence.

To develop recommendations for HRSA's consideration, the ICAPS Program, carried out by the American Academy of Pediatrics (AAP) under a cooperative agreement with HRSA, convenes a panel of pediatric primary care experts to conduct rigorous reviews of current scientific evidence, solicit and consider public input, and make recommendations to HRSA regarding screenings and assessments recommended at each well-child visit from infancy through adolescence. HRSA then determines whether to

support, in whole or in part, the recommended updates. The schedule of preventive care and screenings for infants, children, and adolescents is detailed in the Bright Futures Periodicity Schedule. The ICAPS Program also disseminates final HRSA-supported recommendations through the annual publication of the updated Bright Futures Periodicity Schedule, with associated resources for practitioners and families.

The ICAPS Program bases its recommended updates to the Guidelines on review and synthesis of existing clinical guidelines and new scientific evidence. Additionally, HRSA requires that the ICAPS Program incorporate processes to assure opportunity for public comment in the development of the updated Bright Futures Periodicity Schedule.

The ICAPS Program proposed and HRSA has accepted recommended updates to footnotes to the Bright Futures Periodicity Schedule. None of these footnote updates change the HRSA-supported clinical recommendations and associated requirement for coverage without cost-sharing, as each of the footnotes merely update references to the supporting evidence base for these recommendations. The footnote updates are as follows:

1. Footnote 4, relating to the 3–5 Day Visit, is being updated by replacing the previous reference with a new reference that aligns with the Bright Futures recommendation regarding providers helping families that choose to breastfeed.

2. Footnote 5, relating to Body Mass Index, is being updated by replacing the previous reference with an updated reference to the *Clinical Practice Guideline for the Evaluation and Treatment of Children and Adolescents with Obesity* (*https://doi.org/10.1542/peds.2022-060640*), published in the January 2023 issue of Pediatrics. This updated footnote reference aligns with the Bright Futures recommendation regarding measuring body mass index starting at the 24-month visit through the 21-year visit and provides non-stigmatizing recommendations for evaluating and treating children who are experiencing weight gains.

The updated footnote now reads:

Screen per ''Clinical Practice Guideline for the Evaluation and Treatment of Children and Adolescents with Obesity'' (*https://doi.org/10.1542/peds.2022-060640*).

3. Footnote 14, relating to Behavioral/Social/Emotional Screening, is being updated by adding a reference to the U.S. Preventive Services Task Force Recommendation Statement, *Screening for Anxiety in Children and Adolescents* (*https://www.uspreventiveservices taskforce.org/uspstf/recommendation/screening-anxiety-children-adolescents*), published in the October 2022 issue of the Journal of the American Medical Association. This additional reference aligns with the Bright Futures recommendation to use screening instruments to better identify children experiencing anxiety, followed by a confirmatory diagnostic assessment and follow-up.

The updated footnote now reads:

Screen for behavioral and social-emotional problems per ''Promoting Optimal Development: Screening for Behavioral and Emotional Problems'' (*https://doi.org/10.1542/peds.2014-3716*), ''Mental Health Competencies for Pediatric Practice'' (*https://doi.org/10.1542/peds.2019-2757*), ''Clinical Practice Guideline for the Assessment and Treatment of Children and Adolescents With Anxiety Disorders'' (*https://pubmed.ncbi.nlm.nih.gov/32439401*), ''Screening for Anxiety in Adolescent and Adult Women: A Recommendation From the Women's Preventive Services Initiative'' (*https://pubmed.ncbi.nlm.nih.gov/32510990*), and ''Anxiety in Children and Adolescents: Screening'' (*https://www.uspreventiveservicestaskforce.org/uspstf/recommendation/screening-anxiety-children-adolescents*). The screening should be family centered and may include asking about caregiver emotional and mental health concerns and social determinants of health, racism, poverty, and relational health. See ''Poverty and Child Health in the United States'' (*https://doi.org/10.1542/peds.2016-0339*), ''The Impact of Racism on Child and Adolescent Health'' (*https://doi.org/10.1542/peds.2019-1765*), and ''Preventing Childhood Toxic Stress: Partnering With Families and Communities to Promote Relational Health'' (*https://doi.org/10.1542/peds.2021-052582*).

4. Footnote 15, relating to Tobacco, Alcohol, or Drug Use Assessment, is being updated by adding clarifying information about providers' use of validated screening tools and recommending or prescribing naloxone and by adding new references to the Centers for Disease Control and Prevention's *Evidence-Based Strategies for Preventing Opioid Overdose: What's Working in the United States* (*https://www.cdc.gov/drugoverdose/pdf/pubs/2018-evidence-based-strategies.pdf*) and the National Institute on Drug Abuse's policy brief, *Naloxone for Opioid Overdose: Life-Saving Science* (*https://nida.nih.gov/publications/naloxone-opioid-overdose-life-saving-science*). This updated footnote aligns with the Bright Futures recommendation to assess patients for substance use with a validated screening tool and describes the utility of providers recommending or prescribing naloxone if there is concern for substance or opioid use.

The updated footnote now reads:

A recommended tool to assess use of alcohol, tobacco and nicotine, and marijuana is available at *http://crafft.org.* In addition, CDC and the National Institute of Drug Abuse (NIDA) recommend assessing patients for opioid use using a validated screening tool and if positive, providers should consider recommending or prescribing naloxone (see *https://www.cdc.gov/drugoverdose/pdf/pubs/2018-evidence-based-strategies.pdf* and *https://nida.nih.gov/publications/naloxone-opioid-overdose-life-saving-science*).

5. Footnote 21, relating to Newborn Bilirubin Screening, is being updated by replacing the previous reference with a new reference to *Management of Hyperbilirubinemia in the Newborn Infant 35 or More Weeks of Gestation* (*https://doi.org/10.1542/peds.2022-058859*), published in the August 2022 issue of Pediatrics. This updated reference aligns with the Bright Futures recommendation for universal bilirubin screening for all newborn infants between 24 and 28 hours after birth.

The updated footnote now reads:

Confirm initial screening was accomplished, verify results, and follow up, as appropriate.

See Clinical Practice Guideline Revision: ''Management of Hyperbilirubinemia in the Newborn Infant 35 or More Weeks of Gestation'' (*https://doi.org/10.1542/peds.2022-058859).*

6. Footnotes 35 and 36, relating to Oral Health, are being updated by replacing the previous reference with a new reference to *Maintaining and Improving the Oral Health of Young Children* (*https://doi.org/10.1542/peds.2022-060417*), published in the December 2022 issue of Pediatrics. This reference aligns with the Bright Futures recommendation that every child has a dental home by 1 year of age (footnote 35). Additionally, the new reference encourages providers to screen for social determinants of health, as well as access to medical and dental care, as they influence oral health status and oral health inequities (footnote 36). These footnotes refer to the same updated reference.

The updated footnotes now read:

Assess whether the child has a dental home. If no dental home is identified, perform a risk assessment (*https://*

www.aap.org/en/patient-care/oral-health/oral-health-practice-tools/ and refer to a dental home. Recommend brushing with fluoride toothpaste in the proper dosage for age. See ''Maintaining and Improving the Oral Health of Young Children'' (*https://doi.org/10.1542/peds.2022-060417*).

and

Perform a risk assessment (*https://www.aap.org/en/patient-care/oral-health/oral-health-practice-tools/*). See ''Maintaining and Improving the Oral Health of Young Children'' (*https://doi.org/10.1542/peds.2022-060417*).

Discussion of Recommended Updated Guidelines

A **Federal Register** notice on October 24, 2023, sought public comment on these proposed footnote updates (88 FR 73034).[1] The ICAPS Program considered all public comments as part of its deliberative process and provided the comments to HRSA for its consideration. A total of 25 respondents commented on one or more of the six proposed footnote updates. From the 25 respondents, 119 responses were provided. Of these, 107 responses (89 percent) expressed agreement and 13 responses (11 percent) provided other comments or concerns. HRSA appreciates the comments in support of the updates. The additional comments and responses are summarized below.

1. Footnote 4, relating to the first week well-child visit, also called the 3–5 Day Visit.

20 respondents responded to this proposed footnote update, and 19 indicated agreement. One respondent expressed concern that formal breastfeeding evaluation is not possible in every situation and suggested the proposed footnote include a qualified statement such as, ''if services are available.'' As this suggestion pertains to implementation and not the updated reference, the proposed footnote update will not be modified.

2. Footnote 5, relating to Body Mass Index.

18 respondents responded to this proposed footnote update, and 17 indicated agreement. One respondent expressed concern regarding the use of BMI at the individual level to determine intervention for children. This suggestion does not align with the recommendation in the clinical practice guidelines, which is the updated reference within the proposed footnote change. The proposed footnote update will not be modified.

3. Footnote 14, relating to Behavioral/Social/Emotional Screening.

20 respondents responded to this proposed footnote update, and 15 indicated agreement. One respondent comment did not specifically address the proposed footnotes or the Bright Futures Periodicity Schedule and is therefore beyond the scope of the proposed updates. Three respondents expressed concerns related to implementation resources. As these suggestions pertain to implementation and not the additional reference that was added, the proposed footnote update will not be modified. One respondent suggested including the screening for anxiety in children under 8 years of age. This suggestion does not align with the AAP clinical guidance or the updated USPSTF reference. The footnote update will be finalized as proposed.

4. Footnote 15, relating to Tobacco, Alcohol, or Drug Use Assessment.

20 respondents responded to this proposed footnote update and 17 indicated agreement. Of the three respondents expressing concern, one respondent noted the need to ensure insurance companies do not violate the adolescent's privacy to safely perform recommended preventive services. This suggestion is beyond the scope of the proposed footnote update and the proposed footnote update will not be modified. One respondent expressed concern with overprescribing naloxone and the potential to create drug shortage as well as suggesting the need for oversight with how to administer. The AAP has not found evidence supporting the concern of overprescribing in the pediatric primary care setting. The footnote will be finalized as proposed. Another respondent suggested removing ''prescribing'' from the proposed footnote since naloxone is also available over the counter. This comment is reflected in the updated footnote language stating that providers should consider recommending or prescribing naloxone. The footnote will be finalized as proposed.

5. Footnote 21, relating to Newborn Bilirubin Screening.

20 respondents responded to this proposed footnote update and 18 indicated agreement. Two respondents expressed concern about the implementation of this screening due to the cost and time for the primary care provider to obtain patient hospital records. As these suggestions pertain to implementation and not the updated reference. The proposed footnote update will not be modified.

6. Footnote 35 and 36, relating to Oral Health.

22 respondents responded to this proposed footnote update and 21 indicated agreement. One respondent suggested adding the American Academy of Pediatric Dentistry (AAPD) recommendation that the first oral exam occur by age 12 months and that the interval of exams be based on the child's individual needs or risk status and susceptibility to disease. The proposed footnote simply adds an updated reference to the latest AAP clinical report, which recommends a dental visit for children by 1 year of age. The proposed footnote update will not be modified in response to this comment.

After consideration of public comment, the ICAPS Program submitted recommended footnote updates to HRSA for consideration, as detailed above. On December 29, 2023, the HRSA Administrator accepted the ICAPS Program recommendations and, as such, updated the HRSA-supported guidelines as set forth in the Bright Futures Periodicity Schedule. While non-grandfathered group health plans and health insurance issuers offering group or individual health insurance coverage must cover without cost-sharing the services and screenings listed as the HRSA-supported preventive services guidelines for infants, children, and adolescents as indicated above, these updates to the Bright Futures Periodicity Schedule footnotes do not change the clinical recommendations or the requirements for coverage without cost-sharing under section 2713 of the Public Health Service Act. Additional information regarding the ICAPS Program can be accessed at the following link: *https://mchb.hrsa.gov/maternal-child-health-topics/child-health/bright-futures.html.*

Authority: Section 2713(a)(4) of the Public Health Service Act, 42 U.S.C. 300gg–13(a)(4).

Carole Johnson,

Administrator.

[FR Doc. 2024–00024 Filed 1–4–24; 8:45 am]

BILLING CODE 4165–15–P

[1] *See https://www.federalregister.gov/documents/2023/10/24/2023-23396/notice-of-request-for-public-comment-on-proposed-update-to-the-bright-futures-periodicity-schedule.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Council on Alzheimer's Research, Care, and Services; Meeting

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the public meeting of the Advisory Council on Alzheimer's Research, Care, and Services (Advisory Council). The Advisory Council provides advice on

how to prevent or reduce the burden of Alzheimer's disease and related dementias (ADRD) on people with the disease and their caregivers. During the meeting on January 22, 2024, the Advisory Council will hear updates from the field on implementation of disease-modifying therapies for Alzheimer's disease and outstanding research questions. A panel will present on the latest research on diagnosis and development of treatments for other populations and causes of dementia.

DATES: The meeting will be January 22, 2024 from 9:30 p.m. to 4:30 p.m. EST.

ADDRESSES: The meeting will be a hybrid of in-person and virtual. The meeting will be held in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201. It will also stream live at *www.hhs.gov/live.*

Comments: Time is allocated on the agenda to hear public comments from 4:00 p.m. to 4:30 p.m. The time for oral comments will be limited to two (2) minutes per individual. In order to provide a public comment, please register by emailing your name to *napa@hhs.gov* by Wednesday, January 17. Registered commenters will receive both a dial-in number and a link to join the meeting virtually; individuals will have the choice to either join virtually via the link, or to call in only by using the dial-in number. *Note:* There may be a 30–45 second delay in the livestream video presentation of the conference. For this reason, if you have pre-registered to submit a public comment, it is important to connect to the meeting by 3:45 p.m. to ensure that you do not miss your name and allotted time when called. If you miss your name and allotted time to speak, you may not be able to make your public comment. Public commenters will not be admitted to the virtual meeting before 3:30 p.m. but are encouraged to watch the meeting at *www.hhs.gov/live.* Should you have questions during the session, please email *napa@hhs.gov* and someone will respond to your message as quickly as possible.

In order to ensure accuracy, please submit a written copy of oral comments for the record by emailing *napa@hhs.gov* by Tuesday, January 23, 2024. These comments will be shared on the website and reflected in the meeting minutes.

In lieu of oral comments, formal written comments may be submitted for the record by Tuesday, January 23, 2024 to Helen Lamont, Ph.D., OASPE, 200 Independence Avenue SW, Room 424E, Washington, DC 20201. Comments may also be sent to *napa@hhs.gov.* Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Helen Lamont, 202–260–6075, *helen.lamont@hhs.gov. Note:* The meeting will be available to the public live at *www.hhs.gov/live.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). Topics of the Meeting: subcommittee recommendations, NIA bypass budget, FDA drug coverage decisions, and CDC Health Brain Initiative.

Procedure and Agenda: The meeting will be webcast at *www.hhs.gov/live* and video recordings will be added to the National Alzheimer's Project Act website when available after the meeting. This meeting is open to the public. Please allow 30 minutes to go through security and walk to the meeting room. Participants joining in person should note that seating may be limited. Those wishing to attend the meeting in person must send an email to *napa@hhs.gov* and put ''January 22 Meeting Attendance'' in the subject line by Wednesday, January 17 so that their names may be put on a list of expected attendees and forwarded to the security officers at the Department of Health and Human Services. Any interested member of the public who is a non-U.S. citizen should include this information at the time of registration to ensure that the appropriate security procedure to gain entry to the building is carried out. Although the meeting is open to the public, procedures governing security and the entrance to Federal buildings may change without notice. If you wish to make a public comment, you must note that within your email.

Authority: 42 U.S.C. 11225; Section 2(e)(3) of the National Alzheimer's Project Act. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: December 22, 2023.

Miranda Lynch-Smith,

Deputy Assistant Secretary for Human Services Policy, Performing the Delegable Duties of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2023–29020 Filed 1–4–24; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[OMB Control Number 1651–0074]

Agency Information Collection Activities; Extension; Prior Disclosure

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than March 5, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0074 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following

four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Prior Disclosure.
OMB Number: 1651–0076.
Form Number: N/A.
Current Actions: CBP proposes to extend the expiration date of this information collection with a decrease in annual burden hours.
Type of Review: Extension (w/ change).
Affected Public: Businesses.
Abstract: The Prior Disclosure program establishes a method for a potential violator to disclose to CBP that they have committed an error or a violation with respect to the legal requirements of entering merchandise into the United States, such as underpaid tariffs or duties, or misclassified merchandise, or regarding the payment or credit of any drawback claim. The procedure for making a prior disclosure is set forth in 19 CFR 162.74. This provision requires that respondents submit information about the merchandise involved, a specification of the false statements or omissions, and what the true and accurate information should be. A valid prior disclosure will entitle the disclosing party to the reduced penalties pursuant to 19 U.S.C. 1592(c)(4) or 19 U.S.C. 1593a(c)(3).

The respondents to this information collection are members of the trade community who are familiar with CBP regulations.

The information is to be used by CBP officers to verify and validate the commission of a violation of 19 U.S.C. 1592 or 19 U.S.C. 1593a by the disclosing party. A valid prior disclosure will entitle the disclosing party to reduced penalties pursuant to 19 U.S.C. 1592(c)(4) or 19 U.S.C. 1593a(c)(3). A prior disclosure may be submitted orally or in writing to CBP. In the case of an oral disclosure, the disclosing party shall confirm the disclosure in writing within 10 days of the date of the oral disclosure. A written prior disclosure must be addressed to the Commissioner of Customs, have conspicuously printed on the face of the envelope the words ''prior disclosure,'' and be presented to a Customs officer at the Customs port of entry or a Center of the disclosed violation.

Type of Information Collection:
Estimated Number of Respondents: 762.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 762.
Estimated Time per Response: 3 hours.
Estimated Total Annual Burden Hours: 2,286.

Dated: January 2, 2024.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2024–00025 Filed 1–4–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65. The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the

final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Colorado:					
Adams (FEMA Docket No.: B–2376).	City of Aurora (22–08–0618P).	The Honorable Mike Coffman, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	Public Works Department, 15151 East Alameda Parkway, Suite 3200, Aurora, CO 80012.	Nov. 24, 2023	080002
Adams (FEMA Docket No.: B–2376).	Unincorporated areas of Adams County (22–08–0618P).	Steve O'Dorisio, Chair, Adams County Board of Commissioners, 4430 South Adams County Parkway, Brighton, CO 80601.	Adams County Community and Economic Development Department, 4430 South Adams County Parkway, Brighton, CO 80601.	Nov. 24, 2023	080001
Jefferson (FEMA Docket No.: B–2376).	City of Golden (22–08–0756P).	The Honorable Laura Weinberg, Mayor, City of Golden, 911 10th Street, Golden, CO 80401.	Public Works Department, 1445 10th Street, Golden, CO 80401.	Nov. 24, 2023	080090
Jefferson (FEMA Docket No.: B–2376).	Unincorporated areas of Jefferson County (22–08–0610P).	Andy Kerr, Chair, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, CO 80419.	Jefferson County Planning and Zoning Division, 100 Jefferson County Parkway, Suite 3550, Golden, CO 80419.	Dec. 1, 2023	080087
Jefferson (FEMA Docket No.: B–2376).	Unincorporated areas of Jefferson County (22–08–0756P).	Andy Kerr, Chair, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, CO 80419.	Jefferson County Planning and Zoning Division, 100 Jefferson County Parkway, Suite 3550, Golden, CO 80419.	Nov. 24, 2023	080087
Connecticut:					
Hartford (FEMA Docket No.: B–2376).	City of New Britain (22–01–1075P).	The Honorable Erin E. Stewart, Mayor, City of New Britain, 27 West Main Street, New Britain, CT 06051.	Public Works Department, 27 West Main Street, Room 501, New Britain, CT 06051.	Dec. 4, 2023	090032
Middlesex (FEMA Docket No.: B–2372).	Town of Old Saybrook, (22–01–0701P).	Carl P. Fortuna, Jr., First Selectman, Town of Old Saybrook Board of Selectmen, 302 Main Street, Old Saybrook, CT 06475.	Town Hall, 302 Main Street, Old Saybrook, CT 06475.	Nov 17, 2023	090069
Florida:					
Brevard (FEMA Docket No.: B–2368).	Town of Grant–Valkaria (23–04–1676P).	Honorable Del Yonts, Mayor, Town of Grant–Valkaria, 1449 Valkaria Road, Grant–Valkaria, FL 32950.	Town Hall, 1449 Valkaria Road, Grant–Valkaria, FL 32950.	Nov. 15, 2023	120224
Broward (FEMA Docket No.: B–2376).	City of Deerfield Beach (23–04–4228P).	The Honorable Bill Ganz, Mayor, City of Deerfield Beach, 150 Northeast 2nd Avenue, Deerfield Beach, FL 33441.	Environmental Services Department, 200 Goolsby Boulevard, Deerfield Beach, FL 33442.	Nov. 30, 2023	125101
Lee (FEMA Docket No.: B–2376).	City of Bonita Springs (23–04–1949P).	The Honorable Rick Steinmeyer, Mayor, City of Bonita Springs, 9101 Bonita Beach Road, Bonita Springs, FL 34135.	Community Development Department, 9220 Bonita Beach Road, Suite 111, Bonita Springs, FL 34135.	Nov. 24, 2023	120680
Marion (FEMA Docket No.: B–2368).	Unincorporated areas of Marion County (22–04–5182P).	Craig Curry, Chair, Marion County Board of Commissioners, 601 Southeast 25th Avenue, Ocala, FL 34471.	Marion County Administration, 601 Southeast 25th Avenue, Ocala, FL 34471.	Nov. 17, 2023	120160
Monroe (FEMA Docket No.: B–2376).	Village of Islamorada (23–04–4107P).	The Honorable Joseph Buddy Pinder III, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Building Department, 86800 Overseas Highway, Islamorada, FL 33036.	Dec. 1, 2023	120424
Monroe (FEMA Docket No.: B–2376).	Village of Islamorada (23–04–4211P).	The Honorable Joseph Buddy Pinder III, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Building Department, 86800 Overseas Highway, Islamorada, FL 33036.	Dec. 11, 2023	120424
Palm Beach (FEMA Docket No.: B–2376).	City of West Palm Beach (22–04–5604P).	The Honorable Keith James, Mayor, City of West Palm Beach, P.O. Box 3366, West Palm Beach, FL 33402.	Building Department, 401 Clematis Street, West Palm Beach, FL 33401.	Nov. 24, 2023	120229
Palm Beach (FEMA Docket No.: B–2382).	Unincorporated areas of Palm Beach County (22–04–4645P).	Verdenia Baker, Palm Beach County Administrator, 301 North Olive Avenue, 11th Floor, West Palm Beach, FL 33401.	Palm Beach County Building Division, Planning, Zoning and Building Department, Vista Center, 1st Floor, Room 1E–17, 2300 North Jog Road, West Palm Beach, FL 33411.	Dec. 11, 2023	120192

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Georgia:					
Bulloch (FEMA Docket No.: B–2368).	City of Statesboro (23–04–2242P).	The Honorable Jonathan M. McCollar, Mayor, City of Statesboro, 50 East Main Street, Statesboro, GA 30458.	City Hall, 50 East Main Street, Statesboro, GA 30458.	Nov. 17, 2023	130021
Cobb (FEMA Docket No.: B–2382).	City of Kennesaw (23–04–1243P).	The Honorable Derek Easterling, Mayor, City of Kennesaw, 2529 J.O. Stephenson Avenue, Kennesaw, GA 30144.	City Hall, 2529 J.O. Stephenson Avenue, Kennesaw, GA 30144.	Dec. 11, 2023	130055
Louisiana: Tangipahoa (FEMA Docket No.: B–2376).	Unincorporated areas of Tangipahoa Parish (23–06–0213P).	Robby Miller, Tangipahoa Parish President, P.O. Box 215, Amite City, LA 70422.	Tangipahoa Parish Government Building, 206 East Mulberry Street, Amite City, LA 70422.	Nov. 24, 2023	220206
Maryland: Baltimore (FEMA Docket No.: B–2368).	Unincorporated areas of Baltimore County (23–03–0139P).	John A. Olszewski, Jr., Baltimore County Executive, 400 Washington Avenue, Towson, MD 21204.	Baltimore County Department of Public Works and Transportation, 111 West Chesapeake Avenue, Room 205, Towson, MD 21204.	Nov. 16, 2023	240010
Nevada: Clark (FEMA Docket No.: B–2372).	City of Henderson (23–09–0205P).	Richard Derrick, Manager, City of Henderson, 240 South Water Street, Henderson, NV 89015.	City Hall, 240 South Water Street, Henderson, NV 89015.	Nov. 22, 2023	320005
North Carolina: Cabarrus (FEMA Docket No.: B–2368).	Town of Harrisburg (23–04–1302P).	The Honorable Jennifer Teague, Mayor, Town of Harrisburg, P.O. Box 100, Harrisburg, NC 28075.	Planning and Economic Development Department, 4100 Main Street, Suite 102, Harrisburg, NC 28075.	Dec. 11, 2023	370038
Oklahoma: Oklahoma (FEMA Docket No.: B–2382).	City of Oklahoma City (23–06–0313P).	The Honorable David Holt, Mayor, City of Oklahoma City, 200 North Walker Avenue, 3rd Floor, Oklahoma City, OK 73102.	Public Works Department, 420 West Main Street, Suite 700, Oklahoma City, OK 73102.	Dec. 8, 2023	405378
Tennessee: Sumner (FEMA Docket No.: B–2372).	Unincorporated areas of Sumner County (23–04–0309P).	The Honorable John C. Isbell, Mayor, Sumner County, 355 North Belvedere Drive, Room 102, Gallatin, TN 37066.	Sumner County Administration Building, 355 North Belvedere Drive, Gallatin, TN 37066.	Nov. 24, 2023	470349
Texas:					
Atascosa (FEMA Docket No.: B–2382).	City of Pleasanton (23–06–0894P).	The Honorable Clinton J. Powell, Mayor, City of Pleasanton, P.O. Box 209, Pleasanton, TX 78064.	Engineering Department, 108 2nd Street, Pleasanton, TX 78064.	Dec. 7, 2023	480015
Brazos (FEMA Docket No.: B–2382).	City of Bryan (22–06–2814P).	The Honorable Bobby Gutierrez, Mayor, City of Bryan, P.O. Box 1000, Bryan, TX 77805.	City Hall, 300 South Texas Avenue, Bryan, TX 77803.	Dec. 6, 2023	480082
Dallas (FEMA Docket No.: B–2376).	City of Garland (22–06–0934P).	The Honorable Scott LeMay, Mayor, City of Garland, 200 North 5th Street, Garland, TX 75040.	Engineering Department, 800 Main Street, 3rd Floor, Garland, TX 75040.	Dec. 4, 2023	485471
Denton (FEMA Docket No.: B–2376).	Unincorporated areas of Denton County (23–06–0647P).	The Honorable Andy Eads, Denton County Judge, 1 Courthouse Drive, Suite 3100, Denton, TX 76208.	Denton County Hall, 1 Courthouse Drive, Denton, TX 76208.	Nov. 17, 2023	480774
Grayson (FEMA Docket No.: B–2376).	City of Tioga (23–06–0305P).	The Honorable Craig Jezek, Mayor, City of Tioga, P.O. Box 206, Tioga, TX 76271.	City Hall, 600 Main Street, Tioga, TX 76271.	Jan. 16, 2024	481624
Guadalupe (FEMA Docket No.: B–2368).	Unincorporated areas of Guadalupe County (23–06–0348P).	The Honorable Kyle Kutscher, Guadalupe County Judge, 101 East Court Street, Seguin, TX 78155.	Guadalupe County Main Office, 211 West Court Street, Seguin, TX 78155.	Nov. 24, 2023	480266
Harris (FEMA Docket No.: B–2376).	Unincorporated areas of Harris County (22–06–2777P).	The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Engineering Department, 1001 Preston Street, 7th Floor, Houston, TX 77002.	Nov. 20, 2023	480287
Rockwall (FEMA Docket No.: B–2372).	City of Rockwall (23–06–0308P).	The Honorable Trace Johannesen, Mayor, City of Rockwall, 385 South Goliad Street, Rockwall, TX 75087.	City Hall, 385 South Goliad Street, Rockwall, TX 75087.	Dec. 4, 2023	480547
Tarrant (FEMA Docket No.: B–2372).	City of Arlington (23–06–0467P).	The Honorable Jim Ross, Mayor, City of Arlington, P.O. Box 90231, Arlington, TX 76004.	City Hall, 101 West Abram Street, Arlington, TX 76010.	Nov. 16, 2023	485454
Tarrant (FEMA Docket No.: B–2376).	City of Fort Worth (23–06–0280P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, Engineering Vault and Map Repository, 200 Texas Street, Fort Worth, TX 76102.	Dec. 1, 2023	480596
Tarrant (FEMA Docket No.: B–2382).	City of Fort Worth (23–06–0331P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, Engineering Vault and Map Repository, 200 Texas Street, Fort Worth, TX 76102.	Dec. 11, 2023	480596

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Tarrant (FEMA Docket No.: B–2372).	City of Fort Worth (23–06–0655P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, Engineering Vault and Map Repository, 200 Texas Street, Fort Worth, TX 76102.	Nov. 17, 2023	480596
Tarrant (FEMA Docket No.: B–2382).	Unincorporated areas of Tarrant County (23–06–0331P).	The Honorable Tim O'Hare, Tarrant County Judge, 100 East Weatherford Street, Suite 501, Fort Worth, TX 76196.	Tarrant County Administration Building, 100 East Weatherford Street, Suite 501, Fort Worth, TX 76196.	Dec. 11, 2023	480582
Travis (FEMA Docket No.: B–2372).	Unincorporated areas of Travis County (23–06–0466P).	The Honorable Andy Brown, Travis County Judge, P.O. Box 1748, Austin, TX 78767.	Travis County Transportation and Natural Resources Department, 700 Lavaca Street, 5th Floor, Austin, TX 78701.	Dec. 11, 2023	481026
Waller (FEMA Docket No.: B–2376).	Unincorporated areas of Waller County (22–06–2777P).	The Honorable Carbett ''Trey'' J. Duhon, III, Waller County Judge, 836 Austin Street, Suite 203, Hempstead, TX 77445.	Waller County Engineering Department, 775 Business Highway 290 East, Hempstead, TX 77445.	Nov. 20, 2023	480640
Wilson (FEMA Docket No.: B–2372).	Unincorporated areas of Wilson County (22–06–3006P).	The Honorable Henry L. Whitman, Jr., Wilson County Judge, 1420 3rd Street, Suite 101, Floresville, TX 78114.	Wilson County Courthouse, 1420 3rd Street, Suite 101, Floresville, TX 78114.	Nov. 30, 2023	480230
Wise (FEMA Docket No.: B–2368).	City of New Fairview (23–06–0394P).	The Honorable John R. Taylor, Mayor, City of New Fairview, 999 Illinois Lane, New Fairview, TX 76078.	Public Works Department, 999 Illinois Lane, New Fairview, TX 76078.	Nov. 24, 2023	481629
Wise (FEMA Docket No.: B–2368).	Unincorporated areas of Wise County (23–06–0394P).	The Honorable J.D. Clark, Wise County Judge, 101 North Trinity Street, Decatur, TX 76234.	Wise County Public Works Department, 2901 South F.M. 51, Building 100, Decatur, TX 76234.	Nov. 24, 2023	481051
Utah:					
Davis (FEMA Docket No.: B–2376).	City of Farmington (23–08–0529P).	The Honorable Brett Anderson, Mayor, City of Farmington, 160 South Main Street, Farmington, UT 84025.	City Hall, 160 South Main Street, Farmington, UT 84025.	Nov. 20, 2023	490044
Salt Lake (FEMA Docket No.: B–2376).	City of Herriman City (22–08–0795P).	Nathan Cherpeski, Manager, City of Herriman City, 5355 West Herriman Main Street, Herriman, UT 84096.	City Maps (GIS) Department, 5355 West Herriman Main Street, Herriman, UT 84096.	Nov. 24, 2023	490252
Washington (FEMA Docket No.: B–2376).	Town of Virgin (23–08–0208P).	The Honorable Jean Krause, Mayor, Town of Virgin, P.O. Box 790008, Virgin, UT 84779.	Planning and Zoning Department, 114 South Mill Street, Virgin, UT 84779.	Nov. 30, 2023	490181
Vermont: Chittenden (FEMA Docket No.: B–2376).	Town of Essex (23–01–0198P).	Greg Duggan, Town of Essex Manager, 81 Main Street, Essex Junction, VT 05452.	Town Clerk's Office (Land Records), 81 Main Street, Essex Junction, VT 05452.	Nov. 24, 2023	500034
Virginia: Independent City (FEMA Docket No.: B–2368).	City of Newport News (22–03–1173P).	Cynthia D. Rohlf, Manager, City of Newport News, 2400 Washington Avenue, Newport News, VA 23607.	Department of Information Technology, 2400 Washington Avenue, Newport News, VA 23607.	Nov. 14, 2023	510103
West Virginia: Hardy (FEMA Docket No.: B–2368).	Unincorporated areas of Hardy County (23–03–0533P).	David J. Workman, President, Hardy County Commission, 204 Washington Street, Room 111, Moorefield, WV 26836.	Hardy County Courthouse, 204 Washington Street, Moorefield, WV 26836.	Nov. 16, 2023	540051

[FR Doc. 2024–00065 Filed 1–4–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency

(FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65. The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Arizona:					
Coconino (FEMA Docket No.: B–2349).	Unincorporated Areas of Coconino County (22–09–1015P).	The Honorable Patrice Horstman, Chair, Board of Supervisors, Coconino County, 219 East Cherry Avenue, Flagstaff, AZ 86001.	Coconino County Flood Control District, 5600 East Commerce Avenue, Flagstaff, AZ 86004.	Aug. 31, 2023	040019
Maricopa (FEMA Docket No.: B–2349).	City of Glendale (23–09–0136P).	The Honorable Jerry P. Weiers, Mayor, City of Glendale, 5850 West Glendale Avenue, Suite 451, Glendale, AZ 85301.	City Hall, 5850 West Glendale Avenue, Glendale, AZ 85301.	Aug. 25, 2023	040045
Maricopa (FEMA Docket No.: B–2349).	City of Goodyear (22–09–1721P).	The Honorable Joe Pizzillo, Mayor, City of Goodyear 1900 North Civic Square Goodyear, AZ 85395.	Engineering and Development Services, 14455 West Van Buren Street, Suite D101, Goodyear, AZ 85338.	Aug. 18, 2023	040046
Maricopa (FEMA Docket No.: B–2349).	City of Peoria (23–09–0064P).	The Honorable Jason Beck, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	City Hall, 8401 West Monroe Street, Peoria, AZ 85345.	Sep. 8, 2023	040050
Maricopa (FEMA Docket No.: B–2338).	City of Phoenix (22–09–0280P).	The Honorable Kate Gallego, Mayor, City of Phoenix, City Hall, 200 West Washington Street, Phoenix, AZ 85003.	Street Transportation Department, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003.	Jul. 28, 2023	040051
Maricopa (FEMA Docket No.: B–2349).	City of Phoenix (22–09–0990P).	The Honorable Kate Gallego, Mayor, City of Phoenix, City Hall, 200 West Washington Street, 11th Floor, Phoenix, AZ 85003.	Street Transportation Department, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003.	Sep. 1, 2023	040051
Maricopa (FEMA Docket No.: B–2338).	City of Phoenix (22–09–1725P).	The Honorable Kate Gallego, Mayor, City of Phoenix, City Hall, 200 West Washington Street, Phoenix, AZ 85003.	Street Transportation Department, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003.	Jul. 28, 2023	040051
Maricopa (FEMA Docket No.: B–2338).	City of Surprise (22–09–0693P).	The Honorable Skip Hall, Mayor, City of Surprise, 16000 North Civic Center Plaza, Surprise, AZ 85374.	Public Works Department, Engineering Development Services, 16000 North Civic Center Plaza, Surprise, AZ 85374.	Aug. 4, 2023	040053
Maricopa (FEMA Docket No.: B–2349).	City of Surprise (23–09–0148P).	The Honorable Skip Hall, Mayor, City of Surprise, 16000 North Civic Center Plaza, Surprise, AZ 85374.	Public Works Department, Engineering Development Services, 16000 North Civic Center Plaza, Surprise, AZ 85374.	Sep. 22, 2023	040053
Maricopa (FEMA Docket No.: B–2349).	Town of Fountain Hills (22–09–1367P).	The Honorable Ginny Dickey, Mayor, Town of Fountain Hills, 16705 East Avenue of the Fountains, Fountain Hills, AZ 85268.	Town Hall, 16705 East Avenue of the Fountains, Fountain Hills, AZ 85268.	Sep. 21, 2023	040135
Maricopa (FEMA Docket No.: B–2349).	Unincorporated Areas of Maricopa County (22–09–0990P).	The Honorable Clint L. Hickman, Chair, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	Sep. 1, 2023	040037

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Maricopa (FEMA Docket No.: B–2349).	Unincorporated Areas of Maricopa County (23–09–0136P).	The Honorable Clint L. Hickman, Chair, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	Aug. 25, 2023	040037
Maricopa (FEMA Docket No.: B–2349).	Unincorporated Areas of Maricopa County (23–09–0148P).	The Honorable Clint L. Hickman, Chair, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	Sep. 22, 2023	040037
Mohave (FEMA Docket No.: B–2349).	City of Lake Havasu City (23–09–0066P).	The Honorable Cal Sheehy, Mayor, City of Lake Havasu City, 2330 McCulloch Boulevard North, Lake Havasu City, AZ 86403.	City Hall, 2330 McCulloch Boulevard North, Lake Havasu City, AZ 86403.	Sep. 14, 2023	040116
Pima (FEMA Docket No.: B–2349).	Town of Marana (21–09–1382P).	The Honorable Ed Honea, Mayor, Town of Marana, 11555 West Civic Center Drive, Marana, AZ 85653.	Engineering Department, Marana Municipal Complex, 11555 West Civic Center Drive, Marana, AZ 85653.	Aug. 18, 2023	040118
Pima (FEMA Docket No.: B–2338).	Town of Marana (22–09–0176P).	The Honorable Ed Honea, Mayor, Town of Marana, 11555 West Civic Center Drive, Marana, AZ 85653.	Engineering Department, Marana Municipal Complex, 11555 West Civic Center Drive, Marana, AZ 85653.	Jul. 14, 2023	040118
Pima (FEMA Docket No.: B–2358).	Town of Marana (23–09–0611P).	The Honorable Ed Honea, Mayor, Town of Marana, 11555 West Civic Center Drive, Marana, AZ 85653.	Engineering Department, Marana Municipal Complex, 11555 West Civic Center Drive, Marana, AZ 85653.	Oct. 23, 2023	040118
Pima (FEMA Docket No.: B–2349).	Unincorporated Areas of Pima County (21–09–1382P).	The Honorable Adelita Grijalva, Chair, Board of Supervisors, Pima County, 33 North Stone Avenue 11th Floor, Tucson, AZ 85701.	Pima County Flood Control District, 201 North Stone Avenue, 9th Floor, Tucson, AZ 85701.	Aug. 18, 2023	040073
Yavapai (FEMA Docket No.: B–2358).	Unincorporated Areas of Yavapai County (22–09–1395P).	The Honorable James Gregory, Chair, Board of Supervisors, Yavapai County, 1015 Fair Street, 3rd Floor, Prescott, AZ 86305.	Yavapai County Flood Control District, 1120 Commerce Drive, Prescott, AZ 86305.	Sep. 14, 2023	040093
California:					
Contra Costa (FEMA Docket No.: B–2349).	Unincorporated Areas of Contra Costa County (22–09–1286P).	The Honorable John M. Gioia, Chair, Board of Supervisors, Contra Costa County, 11780 San Pablo Avenue, Suite D, El Cerrito, CA 94530.	Contra Costa County, Public Works Department, 255 Glacier Drive, Martinez, CA 94553.	Aug. 25, 2023	060025
Los Angeles (FEMA Docket No.: B–2358).	City of Malibu (23–09–0599P).	The Honorable Paul Grisanti, Mayor, City of Malibu, 23825 Stuart Ranch Road, Malibu, CA 90265.	City Hall, 23825 Stuart Ranch Road, Malibu, CA 90265.	Oct. 20, 2023	060745
Los Angeles (FEMA Docket No.: B–2358).	Unincorporated Areas of Los Angeles County (23–09–0599P).	The Honorable Janice Hahn, Chair, Board of Supervisors, Los Angeles County, 500 West Temple Street, Room 822, Los Angeles, CA 90012.	Los Angeles County Public Works Headquarters, Watershed Management Division, 900 South Fremont Avenue, Alhambra, CA 91803.	Oct. 20, 2023	065043
Marin (FEMA Docket No.: B–2338).	City of Novato (22–09–0167P).	The Honorable Susan Wernick, Mayor, City of Novato, 922 Machin Avenue, Novato, CA 94945.	Public Works Department, 922 Machin Avenue, Novato, CA 94945.	Aug. 4, 2023	060178
Placer (FEMA Docket No.: B–2338).	City of Rocklin (21–09–1531P).	The Honorable Ken Broadway, Mayor, City of Rocklin, 3970 Rocklin Road, Rocklin, CA 95677.	Engineering Department, 3970 Rocklin Road, Rocklin, CA 95677.	Aug. 14, 2023	060242
Placer (FEMA Docket No.: B–2349).	City of Lincoln (22–09–0399P).	The Honorable Paul Joiner, Mayor, City of Lincoln, 600 6th Street, Lincoln, CA 95648.	Community Development Department, 600 6th Street, Lincoln, CA 95648.	Sep. 22, 2023	060241
Placer (FEMA Docket No.: B–2349).	Unincorporated Areas of Placer County (22–09–0399P).	The Honorable Jim Holmes, Chair, Board of Supervisors, Placer County, 175 Fulweiler Avenue, Auburn, CA 95603.	Placer County Public Works, 3091 County Center Drive, Suite 220, Auburn, CA 95603.	Sep. 22, 2023	060239
Riverside (FEMA Docket No.: B–2338).	City of Lake Elsinore (22–09–1014P).	The Honorable Natasha Johnson, Mayor, City of Lake Elsinore, 130 South Main Street, Lake Elsinore, CA 92530.	Engineering Division, 130 South Main Street, Lake Elsinore, CA 92530.	Aug. 18, 2023	060636
Riverside (FEMA Docket No.: B–2358).	City of Menifee (22–09–1724P).	The Honorable Bill Zimmerman, Mayor, City of Menifee, 29844 Haun Road, Menifee, CA 92586.	Public Works and Engineering Department, 29714 Haun Road, Menifee, CA 92586.	Oct. 20, 2023	060176
Riverside (FEMA Docket No.: B–2349).	City of Moreno Valley (23–09–0026P).	The Honorable Ulises Cabrera, Mayor, City of Moreno Valley, 14177 Frederick Street, Moreno Valley, CA 92553.	Public Works Department, 14177 Frederick Street, Moreno Valley, CA 92552.	Sep. 12, 2023	065074

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Riverside (FEMA Docket No.: B–2358).	City of Norco (22–09–1188P).	The Honorable Robin Grundmeyer, Mayor, City of Norco, 2870 Clark Avenue, Norco, CA 92860.	City Hall, 2870 Clark Avenue, Norco, CA 92860.	Oct. 13, 2023	060256
Riverside (FEMA Docket No.: B–2358).	City of Perris (22–09–1745P).	The Honorable Michael Vargas, Mayor, City of Perris, 101 North D Street, Perris, CA 92570.	Engineering Department, 24 South D Street, Suite 100, Perris, CA 92570.	Oct. 16, 2023	060258
San Bernardino (FEMA Docket No.: B–2349).	City of Colton (22–09–0164P).	The Honorable Frank J. Navarro, Mayor, City of Colton, 650 North La Cadena Drive, Colton, CA 92324.	Public Works Department, 160 South 10th Street, Colton, CA 92324.	Aug. 25, 2023	060273
San Bernardino (FEMA Docket No.: B–2349).	City of Grand Terrace (22–09–0164P).	The Honorable Bill Hussey, Mayor, City of Grand Terrace, 22795 Barton Road, Grand Terrace, CA 92313.	City Hall, 22795 Barton Road, Grand Terrace, CA 92313.	Aug. 25, 2023	060737
San Bernardino (FEMA Docket No.: B–2358).	City of Rancho Cucamonga (22–09–0746P).	The Honorable L. Dennis Michael, Mayor, City of Rancho Cucamonga, 10500 Civic Center Drive, Rancho Cucamonga, CA 91730.	City Hall, Engineering Department Plaza Level, 10500 Civic Center Drive, Rancho Cucamonga, CA 91730.	Oct. 2, 2023	060671
San Bernardino (FEMA Docket No.: B–2349).	City of Yucaipa (23–09–0131P).	The Honorable Justin Beaver, Mayor, City of Yucaipa, 34272 Yucaipa Boulevard, Yucaipa, CA 92399.	City Hall, 34272 Yucaipa Boulevard, Yucaipa, CA 92399.	Sep. 11, 2023	060739
San Bernardino (FEMA Docket No.: B–2358).	Unincorporated Areas of San Bernardino County (21–09–1996P).	The Honorable Dawn Rowe, Chair, Board of Supervisors, San Bernardino County, 385 North Arrowhead Avenue, 5th Floor, San Bernardino, CA 92415.	San Bernardino County Public Works, Water Resources Department, 825 East 3rd Street, San Bernardino, CA 92415.	Oct. 11, 2023	060270
San Bernardino (FEMA Docket No.: B–2349).	Unincorporated Areas of San Bernardino County (23–09–0659X).	The Honorable Dawn Rowe, Chair, Board of Supervisors, San Bernardino County, 385 North Arrowhead Avenue, 5th Floor, San Bernardino, CA 92415.	San Bernardino County Public Works, Water Resources Department, 825 East 3rd Street, San Bernardino, CA 92415.	Aug. 17, 2023	060270
San Diego (FEMA Docket No.: B–2349).	City of Oceanside (22–09–0347P).	The Honorable Esther C. Sanchez, Mayor, City of Oceanside, 300 North Coast Highway, Oceanside, CA 92054.	City Hall, 300 North Coast Highway, Oceanside, CA 92054.	Oct. 4, 2023	060294
San Diego (FEMA Docket No.: B–2349).	City of San Diego (23–09–0195P).	The Honorable Todd Gloria, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, CA 92101.	Development Services Department, 1222 1st Avenue, MS 301, San Diego, CA 92101.	Aug. 22, 2023	060295
San Diego (FEMA Docket No.: B–2358).	Unincorporated Areas of San Diego County (23–09–0045P).	The Honorable Nora Vargas, Chair, Board of Supervisors, San Diego County, 1600 Pacific Highway, Room 335, San Diego, CA 92101.	San Diego County Flood Control District, Department of Public Works, 5510 Overland Avenue, Suite 410, San Diego, CA 92123.	Oct. 2, 2023	060284
San Joaquin (FEMA Docket No.: B–2349).	Unincorporated Areas of San Joaquin County (22–09–0749P).	The Honorable Robert Rickman, Chair, Board of Supervisors, San Joaquin County, 44 North San Joaquin Street, Stockton, CA 95202.	San Joaquin County, Public Works Department, 1810 East Hazelton Avenue, Stockton, CA 95205.	Sep. 11, 2023	060299
Santa Barbara (FEMA Docket No.: B–2338).	City of Santa Barbara (21–09–1771P).	The Honorable Randy Rowse, Mayor, City of Santa Barbara, City Hall, 735 Anacapa Street, Santa Barbara, CA 93101.	Community Development Department, Building and Safety Division, 630 Garden Street, Santa Barbara, CA 93101.	Aug. 1, 2023	060335
Sonoma (FEMA Docket No.: B–2349).	City of Petaluma (22–09–1356P).	The Honorable Kevin McDonnell, Mayor, City of Petaluma, 11 English Street, Petaluma, CA 94952.	Community Development Department, 11 English Street, Petaluma, CA 94952.	Sep. 25, 2023	060379
Ventura (FEMA Docket No.: B–2338).	City of Simi Valley (22–09–0986P).	The Honorable Fred D. Thomas, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	City Hall, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	Jul. 12, 2023	060421
Florida:					
Bay (FEMA Docket No.: B–2358).	City of Panama City Beach (22–04–3762P).	The Honorable Mark Sheldon, Mayor, City of Panama City Beach, City Hall, 17007 Panama City Beach Parkway, Panama City Beach, FL 32413.	City Hall, 110 South Arnold Road, Panama City Beach, FL 32413.	Oct. 25, 2023	120013
Bay (FEMA Docket No.: B–2358).	Unincorporated Areas of Bay County (22–04–3762P).	Philip Griffitts, Chair, Board of Bay County Commissioners, 840 West 11th Street, Panama City, FL 32401.	Bay County Planning and Zoning, 707 Jenks Avenue, Suite B, Panama City, FL 32401.	Oct. 25, 2023	120004

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Clay (FEMA Docket No.: B–2358).	Unincorporated Areas of Clay County (23–04–0201P).	Howard Wanamaker, County Manager, Clay County, P.O. Box 1366, Green Cove Springs, FL 32043.	Clay County, Public Works Department, 5 Esplanade Avenue, Green Cove Springs, FL 32043.	Oct. 20, 2023	120064
St. Johns (FEMA Docket No.: B–2349).	Unincorporated Areas of St. Johns County (22–04–2936P).	Christian Whitehurst, Chair, Board of St. Johns County Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Permit Center, 4040 Lewis Speedway, St. Augustine, FL 32084.	Sep. 22, 2023	125147
Idaho:					
Bingham (FEMA Docket No.: B–2349).	Unincorporated Areas of Bingham County (22–10–0778P).	Whitney Manwaring, Chair, Bingham County Commissioners, 501 North Maple Street #204, Blackfoot, ID 83221.	Bingham County Department of Planning and Zoning, 501 North Maple Street #203, Blackfoot, ID 83221.	Aug. 24, 2023	160018
Bonneville (FEMA Docket No.: B–2349).	Unincorporated Areas of Bonneville County (22–10–0778P).	Roger Christensen, Chair, Bonneville County Board of Commissioners, 605 North Capital Avenue, Idaho Falls, ID 83402.	Bonneville County Courthouse, 605 North Capital Avenue, Idaho Falls, ID 83402.	Aug. 24, 2023	160027
Madison (FEMA Docket No.: B–2338).	City of Rexburg (22–10–0382P).	The Honorable Jerry Merrill, Mayor, City of Rexburg, 35 North 1st East, Rexburg, ID 83440.	City Hall, 12 North Center Street, Rexburg, ID 83440.	Aug. 14, 2023	160098
Madison (FEMA Docket No.: B–2338).	Unincorporated Areas of Madison County (22–10–0382P).	Todd Smith, Chair, Madison County Commissioners, 134 East Main Street, Rexburg, ID 83440.	Madison County Courthouse, 159 East Main Street, Rexburg, ID 83440.	Aug. 14, 2023	160217
Illinois:					
Cook (FEMA Docket No.: B–2358).	City of Oak Forest (22–05–2765P).	The Honorable Henry Kuspa, Mayor, City of Oak Forest, 15440 South Central Avenue, Oak Forest, IL 60452.	City Hall, 15440 South Central Avenue, Oak Forest, IL 60452.	Oct. 23, 2023	170136
Cook (FEMA Docket No.: B–2358).	Unincorporated Areas of Cook County (22–05–2765P).	Toni Preckwinkle, President, Cook County Board of Commissioners, 118 North Clark Street, Room 537, Chicago, IL 60602.	Cook County Building and Zoning Department, 69 West Washington Street, 28th Floor, Chicago, IL 60602.	Oct. 23, 2023	170054
Kane (FEMA Docket No.: B–2365).	Village of Huntley (23–05–0909P).	Timothy J. Hoeft, Village President, Village of Huntley, 10987 Main Street, Huntley, IL 60142.	Village Hall, Engineering Department, 10987 Main Street, Huntley, IL 60142.	Nov. 13, 2023	170480
Indiana:					
Allen (FEMA Docket No.: B–2358).	City of Fort Wayne (22–05–1754P).	The Honorable Tom Henry, Mayor, City of Fort Wayne, City Hall, 200 East Berry Street, Suite 470, Fort Wayne, IN 46802.	Department of Planning Services, 200 East Berry Street, Suite 150, Fort Wayne, IN 46802.	Oct. 5, 2023	180003
Allen (FEMA Docket No.: B–2358).	Unincorporated Areas of Allen County (22–05–1754P).	F. Nelson Peters, Commissioner, Allen County Board of Commissioners, Citizens Square, 200 East Berry Street, Suite 410, Fort Wayne, IN 46802.	Allen County Department of Planning Services, 200 East Berry Street, Suite 150, Fort Wayne, IN 46802.	Oct. 5, 2023	180302
Iowa:					
Dallas (FEMA Docket No.: B–2338).	City of Granger (22–07–0836P).	The Honorable Tony James, Mayor, City of Granger, City Hall, 1906 Main Street, Granger, IA 50109.	City Hall, 1906 Main Street, Granger, IA 50109.	Jun. 23, 2023	190104
Polk (FEMA Docket No.: B–2338).	Unincorporated Areas of Polk County (22–07–0774P).	Angela Connolly, County Chair, Polk County, Polk County Administration Building, 111 Court Avenue, Room 300, Des Moines, IA 50309.	Polk County Public Works, 5885 Northeast 14th Street, Des Moines, IA 50313.	Aug. 8, 2023	190901
Kansas: Johnson (FEMA Docket No.: B–2358).	City of Shawnee (22–07–1041P).	The Honorable Michelle Distler, Mayor, City of Shawnee, City Hall, 11110 Johnson Drive, Shawnee, KS 66203.	City Hall, 11110 Johnson Drive, Shawnee, KS 66203.	Aug. 30, 2023	200177
Michigan:					
Kent (FEMA Docket No.: B–2338).	Charter Township of Gaines (22–05–2589P).	Robert DeWard, Supervisor, Charter Township of Gaines, 8555 Kalamazoo Avenue Southeast, Caledonia, MI 49316.	Township Office, 8555 Kalamazoo Avenue Southeast, Caledonia, MI 49316.	Jul. 7, 2023	260990
Kent (FEMA Docket No.: B–2338).	Charter Township of Plainfield (22–05–2589P).	Tom Coleman, Supervisor, Charter Township of Plainfield, 6161 Belmont Avenue Northeast, Belmont, MI 49306.	Township Center, 6161 Belmont Avenue Northeast, Belmont, MI 49306.	Jul. 7, 2023	260109

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Kent (FEMA Docket No.: B–2338).	City of Grand Rapids (22–05–2589P).	The Honorable Rosalynn Bliss, Mayor, City of Grand Rapids, 300 Monroe Avenue Northwest, Grand Rapids, MI 49503.	City Hall, 300 Monroe Avenue Northwest, Grand Rapids, MI 49503.	Jul. 7, 2023	260106
Kent (FEMA Docket No.: B–2338).	City of Grandville (22–05–2589P).	The Honorable Steve Maas, Mayor, City of Grandville, 3195 Wilson Avenue Southwest, Grandville, MI 49418.	City Hall, 3195 Wilson Avenue Southwest, City of Grandville, MI 49418.	Jul. 7, 2023	260271
Kent (FEMA Docket No.: B–2338).	City of Kentwood (22–05–2589P).	The Honorable Stephen Kepley, Mayor, City of Kentwood, P.O. Box 8848, Kentwood, MI 49508.	City Hall, 4900 Breton Avenue Southeast, Kentwood, MI 49508.	Jul. 7, 2023	260107
Kent (FEMA Docket No.: B–2338).	City of Walker (22–05–2589P).	The Honorable Gary Carey, Mayor, City of Walker, 4243 Remembrance Road Northwest, Walker, MI 49534.	City Hall, 4243 Remembrance Road Northwest, Walker, MI 49534.	Jul. 7, 2023	260110
Kent (FEMA Docket No.: B–2338).	City of Wyoming (22–05–2589P).	The Honorable Jack Poll, Mayor, City of Wyoming, P.O. Box 905, Wyoming, MI 49509.	City Hall, 1155 28th Street Southwest, Wyoming, MI 49509.	Jul. 7, 2023	260111
Kent (FEMA Docket No.: B–2338).	Township of Alpine (22–05–2589P).	Greg Madura, Supervisor, Township of Alpine, 5255 Alpine Avenue Northwest, Comstock Park, MI 49321.	Township Municipal Building, 5255 Alpine Avenue Northwest, Comstock Park, MI 49321.	Jul. 7, 2023	260961
Kent (FEMA Docket No.: B–2338).	Township of Cannon (22–05–2589P).	Steve Grimm, Supervisor, Township of Cannon, 6878 Belding Road, Rockford, MI 49341.	Township Center, 6878 Belding Road, Rockford, MI 49341.	Jul. 7, 2023	260734
Oakland (FEMA Docket No.: B–2358).	City of Troy (23–05–0001P).	The Honorable Ethan Baker, Mayor, City of Troy, 500 West Big Beaver Road, Troy, MI 48084.	City Hall, 500 West Big Beaver Road, Troy, MI 48084.	Sep. 22, 2023	260180
Minnesota:					
Dakota (FEMA Docket No.: B–2349).	City of Lakeville (22–05–2756P).	The Honorable Luke Hellier, Mayor, City of Lakeville, 20195 Holyoke Avenue, Lakeville, MN 55044.	City Hall, 20195 Holyoke Avenue, Lakeville, MN 55044.	Sep. 5, 2023	270107
Dakota (FEMA Docket No.: B–2358).	Unincorporated Areas of Dakota County (22–05–3188P).	Matt Smith, Manager, Dakota County, 1590 Highway 55, Hastings, MN 55033.	Dakota County Administration Center, 1590 Highway 55, Hastings, MN 55033.	Oct. 30, 2023	270101
Mower (FEMA Docket No.: B–2349).	City of Austin (21–05–3696P).	The Honorable Steve King, Mayor, City of Austin, 500 4th Avenue Northeast, Austin, MN 55912.	City Hall, 500 4th Avenue Northeast, Austin, MN 55912.	Sep. 15, 2023	275228
Mower (FEMA Docket No.: B–2349).	Unincorporated Areas of Mower County (21–05–3696P).	Jeff Baldus, Chair, Mower County Board of Commissioners, 201 1st Street Northeast, Austin, MN 55912.	Mower County Government Center, 201 1st Street Northeast, Austin, MN 55912.	Sep. 15, 2023	270307
Nevada:					
Clark (FEMA Docket No.: B–2358).	City of North Las Vegas (23–09–0579P).	The Honorable Pamela Goynes-Brown, Mayor, City of North Las Vegas, 2250 Las Vegas Boulevard North, Suite 910, North Las Vegas, NV 89030.	Public Works Department, 2250 Las Vegas Boulevard North, Suite 200, North Las Vegas, NV 89030.	Oct. 18, 2023	320007
Clark (FEMA Docket No.: B–2349).	Unincorporated Areas of Clark County (23–09–0077P).	The Honorable James B. Gibson, Chair, Board of Commissioners, Clark County, 500 South Grand Central Parkway, 6th Floor, Las Vegas, NV 89155.	Clark County, Office of the Director of Public Works, 500 South Grand Central Parkway, 2nd Floor, Las Vegas, NV 89155.	Aug. 22, 2023	320003
Washoe (FEMA Docket No.: B–2338).	Unincorporated Areas of Washoe County (22–09–0783P).	The Honorable Vaughn Hartung, Chair, Board of Commissioners, Washoe County, 1001 East 9th Street, Reno, NV 89512.	Washoe County Administration Building, Department of Public Works, 1001 East 9th Street, Reno, NV 89512.	Jul. 20, 2023	320019
New Jersey:					
Monmouth (FEMA Docket No.: B–2358).	Township of Neptune (22–02–0510P).	The Honorable Keith Cafferty, Mayor, Township of Neptune, P.O. Box 1125, Neptune, NJ 07754.	Township Hall, Construction Department, 25 Neptune Boulevard, Neptune, NJ 07753.	Oct. 19, 2023	340317
Monmouth (FEMA Docket No.: B–2358).	Township of Wall (22–02–0510P).	The Honorable Timothy J. Farrell, Mayor, Township of Wall, 2700 Allaire Road, Wall, NJ 07719.	Township Hall, Municipal Building, 2700 Allaire Road, Wall, NJ 07719.	Oct. 19, 2023	340333
New York:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Clinton (FEMA Docket No.: B–2338).	Town of Black Brook (23–02–0220P).	Jon Douglass, Supervisor, Town of Black Brook, P.O. Box 715, AuSable Forks, NY 12912.	Town Hall, 18 North Main Street, AuSable Forks, NY 12912.	Sep. 21, 2023	361309
Orange (FEMA Docket No.: B–2338).	Town of Goshen (23–02–0099P).	Joseph Betro, Town Supervisor, Town of Goshen, 41 Webster Avenue, Goshen, NY 10924.	Town Hall, 41 Webster Avenue, Goshen, NY 10924.	Sep. 21, 2023	360614
Orange (FEMA Docket No.: B–2338).	Village of Goshen (23–02–0099P).	The Honorable Scott Wohl, Mayor, Village of Goshen, Board of Trustees, 276 Main Street, Goshen, NY 10924.	Village Hall, 276 Main Street, Goshen, NY 10924.	Sep. 21, 2023	361571
Ohio:					
Licking (FEMA Docket No.: B–2338).	Unincorporated Areas of Licking County (22–05–2046P).	Timothy E. Bubb, President, Board of Licking County Commissioners, County Administration Building, 20 South Second Street, Newark, OH 43055.	Licking County Administration Building, 20 South Second Street, Newark, OH 43055.	Jul. 18, 2023	390328
Warren (FEMA Docket No.: B–2349).	City of South Lebanon (22–05–2951P).	The Honorable James Smith, Mayor, City of South Lebanon, 10 North High Street, South Lebanon, OH 45065.	Administration Building, 10 North High Street, South Lebanon, OH 45065.	Sep. 5, 2023	390563
Warren (FEMA Docket No.: B–2349).	Unincorporated Area of Warren County (22–05–2951P).	Tom Grossmann, Commissioner, Warren County Board of County Commissioners, 406 Justice Drive, Lebanon, OH 45036.	Warren County Regional Planning Commission, 406 Justice Drive, Lebanon, OH 45036.	Sep. 5, 2023	390757
Oregon:					
Josephine (FEMA Docket No.: B–2349).	Unincorporated Areas of Josephine County (22–10–0743P).	Herman Baertschiger, Jr., Chair, Josephine County Board of Commissioners, Josephine County Courthouse, 500 Northwest 6th Street, Grant Pass, OR 97526.	Josephine County Planning Department, 700 Northwest Dimmick Street, Suite C, Grant Pass, OR 97526.	Aug. 10, 2023	415590
Washington (FEMA Docket No.: B–2358).	City of Beaverton (22–10–0942P).	The Honorable Lacey Beaty, Mayor, City of Beaverton, 12725 Southwest Millikan Way, 5th Floor, Beaverton, OR 97076.	Community Development Department, 12725 Southwest Millikan Way, Beaverton, OR 97076.	Sep. 29, 2023	410240
Tennessee: Shelby (FEMA Docket No.: B–2338).	City of Memphis (22–04–5686P).	The Honorable Jim Strickland, Mayor, City of Memphis, City Hall, 125 North Main Street, Room 700, Memphis, TN 38103.	Department of Engineering, 125 North Main Street, Room 476, Memphis, TN 38103.	Aug. 3, 2023	470177
Texas:					
Dallas (FEMA Docket No.: B–2349).	City of Wilmer (22–06–0840P).	The Honorable Sheila Petta, Mayor, City of Wilmer, 128 North Dallas Avenue, Wilmer, TX 75172.	Dallas County Public Works Department, 411 Elm Street, 4th Floor, Dallas, TX 75202.	Sep. 8, 2023	480190
Montgomery (FEMA Docket No.: B–2349)	Unincorporated Areas of Montgomery County (22–06–1749P).	The Honorable Mark B. Keough, County Judge, Montgomery County, 501 North Thompson, Suite 401, Conroe, TX 77301.	Montgomery County Administration Building, 501 North Thompson, Suite 401, Conroe, TX 77301.	Sep. 11, 2023	480483
Tarrant (FEMA Docket No.: B–2349)	City of Arlington (22–06–2387P).	The Honorable Jim Ross, Mayor, City of Arlington, P.O. Box 90231, Arlington, TX 76010.	City Hall, 101 West Abram Street, Arlington, TX 76010.	Aug. 31, 2023	485454
Tarrant (FEMA Docket No.: B–2338).	City of North Richland Hills (21–06–1861P).	The Honorable Oscar Trevino, Jr., Mayor, City of North Richland Hills, 4301 City Point Drive, North Richland Hills, TX 76180.	City Hall, 4301 City Point Drive, North Richland Hills, TX 76180.	Jul. 17, 2023	480607
Virginia: Independent City (FEMA Docket No.: B–2358).	City of Virginia Beach (22–03–0299P).	The Honorable Robert Dyer, Mayor, City of Virginia Beach, City Hall, 2401 Courthouse Drive Building #1, Virginia Beach, VA 23456.	Department of Public Works, 2405 Courthouse Drive Building 1, Municipal Center Building #2, Virginia Beach, VA 23456.	Sep. 27, 2023	515531
Wisconsin:					
Brown (FEMA Docket No.: B–2349).	City of De Pere (23–05–0990P).	The Honorable James Boyd, Mayor, City of De Pere, City Hall, 335 South Broadway, De Pere, WI 54115.	City Hall, 335 South Broadway, De Pere, WI 54115.	Sep. 25, 2023	550021
Brown (FEMA Docket No.: B–2349).	City of Green Bay (23–05–0990P).	The Honorable Eric Genrich, Mayor, City of Green Bay, City Hall, 100 North Jefferson Street, Green Bay, WI 54301.	City Hall, 100 North Jefferson Street, Green Bay, WI 54301.	Sep. 25, 2023	550022

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Brown (FEMA Docket No.: B–2358).	Unincorporated Areas of Brown County (20–05–4610P).	Patrick Buckley, Chair, Brown County Board of Supervisors, 305 East Walnut Street, Green Bay, WI 54305.	Brown County Office Northern Building, 305 East Walnut Street, Room 320, Green Bay, WI 54301.	Oct. 31, 2023	550020
Brown (FEMA Docket No.: B–2349).	Village of Ashwaubenon (23–05–0990P).	The Honorable Mary Kardoskee, President, Village of Ashwaubenon, 2155 Holmgren Way, Ashwaubenon, WI 54304.	Village Hall, 2155 Holmgren Way, Ashwaubenon, WI 54304.	Sep. 25, 2023	550600
Kenosha (FEMA Docket No.: B–2349).	Village of Somers (22–05–3273P).	The Honorable George Stoner, President, Board of Trustees, Village of Somers, 135 22nd Avenue, Kenosha, WI 53140.	Village Hall, 7511 12th Street, Kenosha, WI 53144.	Aug. 16, 2023	550406
Washington: King (FEMA Docket No.: B–2338).	City of Shoreline (22–10–0967P).	The Honorable Keith Scully, Mayor, City of Shoreline, 17500 Midvale Avenue North, Shoreline, WA 98133.	City Hall, Planning and Community Development Department, 17500 Midvale Avenue North, Shoreline, WA 98133.	Jul. 17, 2023	530327

[FR Doc. 2024–00063 Filed 1–4–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2396]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before April 4, 2024.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2396, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online

through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Davison County, South Dakota and Incorporated Areas Project: 18–08–0011S Preliminary Date: March 25, 2022 and July 14, 2023	
City of Mitchell	City Hall, 612 North Main Street, Mitchell, SD 57301.
City of Mount Vernon	Davison County Emergency Management, 200 East 4th Avenue, Mitchell, SD 57301.
Town of Ethan	Town Office, 201 West Main Street, Ethan, SD 57334.
Unincorporated Areas of Davison County	Davison County Emergency Management, 200 East 4th Avenue, Mitchell, SD 57301.

[FR Doc. 2024–00066 Filed 1–4–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7075–N–16]

60-Day Notice of Proposed Information Collection: Data Collection for the HUD Secretary's Awards Including the Secretary's Award for Public-Philanthropic Partnerships, the Secretary's Awards for Healthy Homes, the Secretary's Award in Historic Preservation, the Secretary's Award for Planning, the Secretary's Housing Design Awards, the Secretary's Award for Tribal Housing Impact, and the HUD Innovation in Affordable Housing Student Design and Planning Competition; OMB Control No.: 2528–0324

Correction

In notice document 2023–27701 appearing on pages 87448–87450 in the issue of December 18, 2023, make the following correction:

On page 87448, in the second column, after the **DATES** heading, in the first and second lines, ''January 17, 2024'' should read ''February 16, 2024''.

[FR Doc. C1–2023–27701 Filed 1–4–24; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2023–N089; FX3ES11130300000–245–FF03E00000]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews of 16 Listed Animal and Plant Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews under the Endangered Species Act, for 3 plant and 13 animal species. A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information that has become available since the last review for the species. We invite comments from the public and Federal, Tribal, State, and local governments.

DATES: To ensure consideration, please send your written information by March 5, 2024. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For instructions on how to submit information for each species, see the table in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: To request information on specific species, contact the appropriate person in the table in the **SUPPLEMENTARY INFORMATION** section or, for general information, contact Laura Ragan, via email at *laura_ragan@fws.gov* or by phone at 612–713–5157. 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 are initiating 5-year status reviews under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), for 3 plant and 13 animal species. A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information that has become available since the last review for the species.

Why do we conduct 5-year reviews?

Under the ESA, we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires us to review each listed species' status at least once every 5 years. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species under active review. For additional information about 5-year reviews, go to *https://www.fws.gov/project/five-year-status-reviews.*

What information do we consider in our review?

A 5-year review considers the best scientific and commercial data that have become available since the current listing determination or most recent status review of each species, such as:

(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

(B) Habitat conditions, including but not limited to amount, distribution, and suitability;

(C) Conservation measures that have been implemented that benefit the species;

(D) Threat status and trends in relation to the five listing factors (as defined in section 4(a)(1) of the ESA); and

(E) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

New information will be considered in the 5-year review and ongoing recovery programs for the species.

Which species are under review?

This notice announces our active 5-year status reviews of the species in the following table.

Common name	Scientific name	Taxonomic group	Listing status	Where listed	Final listing rule (**Federal Register** citation and publication date)	Contact person, email, phone	Contact person's U.S. mail address
				Animals			
Hine's emerald dragonfly.	*Somatochlora hineana.*	Insect	E	IL, MI, MO, WI	60 FR 5267; January 26, 1995.	Kris Lah, *kristopher_lah@fws.gov,* 847–366–2347.	USFWS, 230 South Dearborn, Suite 2398, Chicago, IL 60604.
Dakota skipper	*Hesperia dacotae*	Butterfly	T	IA, IL, MN, ND, SD.	79 FR 63672; October 24, 2014.	Araceli Morales Santos, *araceli_moralessantos@fws.gov,* 612–352–7969.	USFWS, 3815 American Boulevard East, Bloomington, MN 55425.
Karner blue butterfly	*Lycaeides melissa samuelis.*	Butterfly	E	IL, IN, MI, MN, NH, NY, OH, WI.	57 FR 59236; December 14, 1992.	Dawn Marsh, *dawn_marsh@fws.gov,* 612–283–8054.	USFWS, 3815 American Boulevard East, Bloomington, MN 55425.
Poweshiek skipperling ..	*Oarisma poweshiek.*	Butterfly	E	IA, IL, IN, MI, MN, ND, SD, WI.	79 FR 63672; October 24, 2014.	Tamara Smith, *tamara_smith@fws.gov,* 612–600–1599.	USFWS, 3815 American Boulevard East, Bloomington, MN 55425.
Illinois cave amphipod ..	*Gammarus acherondytes.*	Crustacean	E	IL	63 FR 46900; September 3, 1998.	Kristen Lundh, *kristen_lundh@fws.gov,* 309–757–5800, ext. 215.	USFWS, 1511 47th Avenue, Moline, IL 61265.
Iowa Pleistocene snail	*Discus macclintocki.*	Snail	E	IA, IL	43 FR 28932; July 3, 1978.	Kraig McPeek, *kraig_mcpeek@fws.gov,* 309–757–5800, ext. 202.	USFWS, 1511 47th Avenue, Moline, IL 61265.
Pink mucket	*Lampsilis abrupta*	Mussel	E	AL, AR, GA, IL, IN, KY, LA, MS, MO, OH, TN, VA, WV.	41 FR 24062; June 14, 1976.	Joshua Hundley, *joshua_hundley@fws.gov,* 573–234–432, ext. 176.	USFWS, 101 Park DeVille Drive, Suite A, Columbia, MO 65203.
Purple cat's paw	*Epioblasma obliquata.*	Mussel	E	KY, OH, TN, WV	55 FR 28209; July 10, 1990.	Angela Boyer, *angela_boyer@fws.gov,* 614–416–8993, ext. 122.	USFWS, 4625 Morse Road, Suite 104, Columbus, OH 43230.
Spectaclecase mussel	*Cumberlandia monodonta.*	Mussel	E	AL, AR, IL, IN, IA, KS, KY, MN, MO, OH, TN, VA, WV, WI.	77 FR 14914; March 13, 2012.	Nick Utrup, *nick_utrup@fws.gov,* 612–600–6122.	USFWS, 3815 American Boulevard East, Bloomington, MN 55425.
Niangua darter	*Etheostoma nianguae.*	Fish	T	MO	50 FR 24649; June 12, 1985.	Bryan Simmons, *bryan_simmons@fws.gov,* 417–836–5302.	USFWS, 101 Park DeVille Drive, Suite A, Columbia, MO 65203.
Ozark hellbender	*Cryptobranchus alleganiensis bishopi.*	Amphibian ..	E	AR, MO	76 FR 61956; October 6, 2011.	Trisha Crabill, *trisha_crabill@fws.gov,* 573–234–5016.	USFWS, 101 Park DeVille Drive, Suite A, Columbia, MO 65203.
Piping plover (Great Lakes breeding population).	*Charadrius melodus.*	Bird	E	Great Lakes watershed in IL, IN, MI, MN, NY, OH, PA, WI.	50 FR 50726; December 11, 1985.	Jillian Farkas, *jillian_farkas@fws.gov,* 517–351–5467.	USFWS, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823.
Piping plover (Atlantic Coast and Northern Great Plains populations).	*Charadrius melodus.*	Bird	T	Entire, except those areas where listed as E, above.	50 FR 50726; December 11, 1985.	*Montana, North Dakota, South Dakota, Iowa, Nebraska, Colorado, Kansas, Alberta, Saskatchewan, Manitoba:* Jordan Smith, *jordan_smith@fws.gov,* 605–957–5375.	USFWS, 55245 Highway 121, Crofton, NE 68730.
						North Carolina, South Carolina, Georgia, Bahamas, Cuba, Puerto Rico, other Caribbean Islands: Melissa Chaplin, *melissa_chaplin@fws.gov,* 843–727–4707.	USFWS, 176 Croghan Spur Road, Suite 200, Charleston, SC 29407.

Common name	Scientific name	Taxonomic group	Listing status	Where listed	Final listing rule (**Federal Register** citation and publication date)	Contact person, email, phone	Contact person's U.S. mail address
						Florida, Alabama, Mississippi, Louisiana: Patricia Kelly, *patricia_kelly@fws.gov,* 850–273–4611.	USFWS, 1601 Balboa Avenue, Panama City, FL 32405.
						Texas and Mexico: Moni Belton, *moni_belton@fws.gov,* 281–212–1512.	USFWS, 17629 El Camino Real #211, Houston, TX 77058.
						Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, Newfoundland, Quebec, Nova Scotia, Prince Edward Island, New Brunswick, and St. Pierre and Miquelon (France), any area not listed above, and information pertinent to multiple regions: Anne Hecht, *anne_hecht@fws.gov,* 413–575–4031.	USFWS, 73 Weir Hill Road, Sudbury, MA 01776.
Indiana bat	*Myotis sodalis*	Mammal	E	AL, AR, CT, GA, IL, IN, IA, KY, MD, MI, MS, MO, NJ, NY, NC, OH, OK, PA, TN, VT, VA, WV.	32 FR 4001; March 11, 1967.	Andy King, *andrew_king@fws.gov,* 812–902–1809.	USFWS, 620 South Walker Street, Bloomington, IN 47403.
				Plants			
Decurrent false aster	*Boltonia decurrens.*	Plant	T	IL, MO	53 FR 45858; November 14, 1988.	Kristen Lundh, *kristen_lundh@fws.gov,* 309–757–5800, ext. 215.	USFWS, 1511 47th Avenue, Moline, IL 61265.
Dwarf lake iris	*Iris lacustris*	Plant	T	MI, WI	53 FR 37972; September 28, 1988.	Kaitlyn Kelly, *kaitlyn_kelly@fws.gov,* 517–351–8315.	USFWS, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823.
Missouri bladderpod	*Physaria filiformis*	Plant	T	MO	68 FR 59337; October 15, 2003.	Gabriela Wolf-Gonzalez, *gabriela_wolf-gonzalez@fws.gov,* 573–234–2132, ext. 116.	USFWS, 101 Park DeVille Drive, Suite A, Columbia, MO 65203.

Request for Information

To ensure that a 5-year review is complete and based on the best available scientific and commercial information, we request new information from all sources. See ''What Information Do We Consider in Our Review?'' for specific criteria. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

How do I ask questions or provide information?

If you wish to provide information for any species listed above, please submit your comments and materials to the appropriate contact in the table above. You may also direct questions to those contacts.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We publish this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Lori Nordstrom,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2024–00029 Filed 1–4–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_CO_FRN_MO4500175963]

Notice of Intent To Amend the Resource Management Plan for the Uncompahgre Field Office and Prepare an Associated Environmental Impact Statement, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Colorado State Director intends to prepare a Resource Management Plan (RMP) amendment with an associated Environmental Impact Statement (EIS) for the Uncompahgre Field Office and by this notice is announcing the beginning of the scoping period to solicit public comments and identify issues and is providing the planning criteria for public review.

DATES: The BLM requests the public submit comments concerning the scope of the analysis, potential alternatives, and identification of relevant information and studies by February 20, 2024. To afford the BLM the opportunity to consider issues raised by commenters in the draft RMP amendment/EIS, please ensure your comments are received prior to the close of the 45-day scoping period or 15 days after the last public meeting, whichever is later.

ADDRESSES: You may submit comments on issues and planning criteria related to the Uncompahgre Field Office RMP Amendment by any of the following methods:

- *Website: https://eplanning.blm.gov/eplanning-ui/project/2026528/510.*
- *Mail:* Uncompahgre Field Office RMP amendment/EIS, BLM Uncompahgre Field Office, 2465 South Townsend Avenue, Montrose, CO 81401.

Documents pertinent to this proposal may be examined online at: *https://eplanning.blm.gov/eplanning-ui/project/2026528/510* and at the Uncompahgre Field Office.

FOR FURTHER INFORMATION CONTACT: Angela LoSasso, Project Manager; telephone: 970–210–5579; address: BLM Uncomphagre Field Office, 2465 South Townsend Avenue, Montrose, CO 81401; email: *alosasso@blm.gov.* Contact Ms. LoSasso to have your name added to our mailing list. 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 for contacting Ms. LoSasso. 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: This document provides notice that the BLM Colorado State Director intends to prepare an RMP amendment with an associated EIS, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The RMP amendment would change the existing 2020 Uncompahgre Field Office RMP. The RMP amendment is being considered to allow the BLM to evaluate oil and gas leasing decisions, previously proposed Areas of Critical Environmental Concern (ACECs), and management of lands with wilderness characteristics, which would require amending the existing Uncompahgre Field Office RMP.

The planning area is located in Delta, Gunnison, Mesa, Montrose, Ouray, and San Miguel counties, Colorado, and encompasses approximately 678,400 acres of public land. The BLM will re-evaluate ACECs previously nominated during scoping for the 2019 Uncompahgre Field Office RMP revision in the RMP amendment and EIS.

Purpose and Need

The Uncompahgre Field Office approved RMP and Record of Decision was signed in April 2020. The BLM received and settled three lawsuits on the approved RMP. Under one settlement agreement, the BLM initiated two planning efforts in 2022: one statewide amendment for big game priority habitat and one range wide amendment for Gunnison Sage-Grouse habitat. Those planning efforts are currently underway. In the remaining two settlement agreements, the BLM agreed to complete an RMP amendment process with a specific scope and within a specific timeline for the Uncompahgre Field Office decision area.

The BLM needs to undertake this planning process to fulfill its responsibilities under the settlement agreements that resolved litigation challenging the 2020 Uncompahgre Field Office approved RMP. The purpose of this effort is to consider different management of oil and gas resources, lands with wilderness characteristics, and previously proposed and analyzed ACECs within the specific scope described in settlement agreements.

Consistent with settlement agreements, the scope of this land use planning process includes considering ACECs previously analyzed under Alternative B of the 2019 Uncompahgre Field Office proposed RMP/final EIS.

Preliminary Alternatives

Consistent with the settlement agreements, the BLM will consider: closing to new oil and gas leasing all areas within the Federal mineral estate that were analyzed under Alternative B/B.1 of the 2019 proposed RMP/final EIS as either closed to leasing or open to leasing subject to no surface occupancy; a minimum of 350,000 acres previously analyzed as controlled surface use under Alternative B/B.1 of the 2019 proposed RMP/final EIS as subject to no surface occupancy; and protections for lands with wilderness characteristics and ACEC designations that are the same as those analyzed under Alternative B of the 2019 proposed RMP/final EIS. The BLM may also consider alternatives specifically for oil and gas leasing decisions only (areas open and closed to leasing, open subject to no surface occupancy, and open subject to controlled surface use) that are consistent with the BLM Colorado planning efforts for range-wide Gunnison Sage-Grouse conservation and statewide big game habitat conservation. The BLM welcomes comments on all preliminary alternatives as well as suggestions for additional alternatives.

Planning Criteria

The planning criteria guide the planning effort and lay the groundwork for effects analysis by identifying the preliminary issues and their analytical frameworks. Preliminary issues for the planning area have been identified by BLM personnel and from early engagement conducted for this planning effort with Federal, State, and local agencies; Tribes; and stakeholders. The BLM has identified 18 preliminary issues for this planning effort's analysis. The planning criteria are available for public review and comment at the ePlanning website (see **ADDRESSES**).

Summary of Expected Impacts

The BLM expects impacts from alternatives to include beneficial or adverse changes to air quality; climate; oil and gas development opportunity; paleontological resources; soils including highly erodible salt and selenium soils; water including surface, ground, and municipal drinking water; wildlife including big game, threatened,

and endangered species, BLM special status terrestrial and aquatic species, and migratory birds; vegetation including native plant communities, riparian vegetation, noxious and invasive species, and BLM special status, threatened, and endangered plant species; cultural resources; Native American religious concerns; socioeconomics; environmental justice; recreational opportunity; visual resources; travel and transportation; lands and reality authorizations; livestock grazing authorizations; ACECs; and lands managed for wilderness characteristics.

Schedule for the Decision-Making Process

The BLM will provide additional opportunities for public participation consistent with the NEPA and land use planning processes, including a 90-day public comment period on the draft RMP amendment/EIS and concurrent 30-day public protest period and 60-day Governor's consistency review on the proposed RMP amendment. The draft RMP amendment/EIS is anticipated to be available for public review in winter 2024/2025 and the proposed RMP amendment/final EIS is anticipated to be available for public protest of the proposed RMP Amendment in fall 2025 with an approved RMP amendment and Record of Decision in winter 2025/2026.

Public Scoping Process

This notice of intent initiates the scoping period and public review of the planning criteria, which guide the development and analysis of the draft RMP amendment/EIS. The BLM will be holding three scoping meetings in the following locations: two scoping meetings will be held virtually, and one scoping meeting will be held in Montrose, Colorado, at the BLM Public Lands Center. The specific date(s) and location(s) of these scoping meetings will be announced at least 15 days in advance through local media and newspapers, and the BLM ePlanning website (see **ADDRESSES**).

ACECs

The following ACECs are currently designated in the planning area: Adobe Badlands ACEC/Outstanding Natural Area (ONA)/Instant Study Area (ISA) (6,370 acres), Biological Soil Crust ACEC (390 acres), Fairview South BLM Expansion ACEC (610 acres), Needle Rock ACEC/ONA (80 acres), Paradox Rock Art ACEC (1,080 acres), and San Miguel River ACEC (21,660) acres. Information about each existing ACEC, including the size, relevant and important values, and other helpful information is available in the Uncompahgre Field Office ACEC Fact Sheet online on the project's website in **ADDRESSES**. The BLM will reevaluate these designated ACECs for consideration in the draft RMP amendment/EIS.

During the Uncompahgre Field Office RMP Revision planning process in 2010 the BLM solicited nominations for new ACECs. A total of 21 nominated ACECs covering a third of the field office met relevance and importance criteria, and all were analyzed in the 2019 proposed RMP/final EIS. Consistent with settlement agreements, the following 15 areas which were nominated and previously analyzed under Alternative B of the 2019 proposed RMP/final EIS will be reconsidered for ACEC designation in this planning effort:

- Coyote Wash ACEC—2,100 acres
- Dolores Slickrock ACEC—10,670 acres
- East Paradox ACEC—7,630 acres
- Fairview South CNHP Expansion ACEC—4,250 acres
- La Sal Creek ACEC—10,490 acres
- Lower Uncompahgre Plateau ACEC—31,810 acres
- Needle Rock ACEC—80 acres
- Paradox Rock Art ACEC—1,080 acres
- Roubideau-Potter-Monitor ACEC—20,430 acres
- Salt Desert Shrub Ecosystem ACEC—34,510 acres (includes the existing Adobe Badlands ACEC)
- San Miguel Gunnison Sage-Grouse ACEC—470 acres)
- San Miguel River Expansion ACEC—35,480 acres
- Sims-Cerro Gunnison Sage-Grouse ACEC—25,620 acres
- Tabeguache Pueblo and Tabeguache Caves ACEC—26,400 acres
- West Paradox ACEC—5,190 acres

Additional information on these proposed ACECs can be found in the 2013 final ACEC report on the project website (see **ADDRESSES**). The BLM has identified the anticipated issues related to the consideration of ACECs in the planning criteria.

Cooperating Agencies

The BLM is the lead agency. The BLM has invited Federal, State, and local agencies that are eligible to participate in the development of the environmental analysis as a cooperating agency. These include the Bureau of Reclamation; National Park Service; U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service; U.S. Geological Survey; USDA Forest Service Grand Mesa, Uncompahgre, and Gunnison National Forests; Natural Resource Conservation Service; Department of Energy Office of Legacy Management; Western Area Power Administration; Colorado Department of Natural Resources; Colorado Division of Reclamation, Mining, and Safety; Colorado Energy and Carbon Management Commission; Colorado State Forest Service; Colorado Department of Agriculture; Colorado Parks and Wildlife; Colorado River Water Conservation District; Denver Water Board; Delta, Gunnison, Mesa, Montrose, Ouray, and San Miguel Counties; and the Town of Paonia.

Responsible Official

The Colorado State Director is the deciding official for this planning effort. Other responsible officials include the BLM Colorado Southwest District Manager and the BLM Colorado Uncompahgre Field Manager.

Nature of Decision To Be Made

The nature of the decision to be made will be the State Director's selection of land use planning decisions pursuant to this RMP amendment for managing BLM-administered lands under the principles of multiple use and sustained yield in a manner that best addresses the purpose and need.

Interdisciplinary Team

The BLM will use an interdisciplinary approach to develop the plan amendment in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in this planning effort: air quality, climate, wildlife, threatened and endangered species, vegetation, hydrology, soils, energy and minerals, lands and reality, outdoor recreation management, geologic resources, archaeology, environmental justice, and socioeconomics.

Additional Information

The BLM will identify, analyze, and consider mitigation to address the reasonably foreseeable impacts to resources from the proposed plan amendment and all analyzed reasonable alternatives and, in accordance with 40 CFR 1502.14(e), include appropriate mitigation measures not already included in the proposed plan amendment or alternatives. Mitigation may include avoidance, minimization, rectification, reduction or elimination over time, and compensation; and may be considered at multiple scales, including the landscape scale.

The BLM will utilize and coordinate the NEPA and land use planning processes for this planning effort to help support compliance with applicable

procedural requirements under the Endangered Species Act (16 U.S.C. 1536) and Section 106 of the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3), including public involvement requirements of Section 106. The information about historic and cultural resources and threatened and endangered species within the area potentially affected by the proposed plan amendment will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Indian Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM MS 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with Indian Tribal Nations and other stakeholders that may be interested in or affected by the proposed Uncompahgre Field Office RMP Amendment that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1501.7 and 43 CFR 1610.2)

Douglas J. Vilsack,

BLM Colorado State Director.

[FR Doc. 2023–28889 Filed 1–4–24; 8:45 am]

BILLING CODE 4331–16–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–703 and 731–TA–1661–1663 (Preliminary)]

Glass Wine Bottles From Chile, China, and Mexico; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–703 and 731–TA–1661–1663 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of glass wine bottles from Chile, China, and Mexico, provided for in subheading 7010.90.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by February 12, 2024. The Commission's views must be transmitted to Commerce within five business days thereafter, or by February 20, 2024.

DATES: December 29, 2023.

FOR FURTHER INFORMATION CONTACT: Stamen Borisson ((202) 205–3125), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to petitions filed on December 29, 2023, by the U.S. Glass Producers Coalition, which is comprised of Ardagh Glass Inc., Indianapolis, Indiana and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Pittsburgh, Pennsylvania.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Office of Investigations will hold a staff conference in connection with the preliminary phase of these investigations beginning at 9:30 a.m. on January 19, 2024. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before January 17, 2024. Please provide an email address for each conference participant in the email. Information on conference procedures, format, and participation, including guidance for requests to appear as a witness via videoconference, will be available on the Commission's Public Calendar. A nonparty who has testimony that may aid the Commission's deliberations may

request permission to participate by submitting a short statement.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before 5:15 p.m. on January 24, 2024, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than noon on January 18, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: December 29, 2023.

Susan Orndoff,

Acting Attorney Advisor.

[FR Doc. 2024–00034 Filed 1–4–24; 8:45 am]

BILLING CODE 7020–02–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 23–CRB–0013–NSR (2026–2030)]

Determination of Rates and Terms for Digital Performance of Sound Recordings by New Subscription Services and Making of Ephemeral Copies To Facilitate Those Performances (NSS V)

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Notice announcing commencement of proceeding with request for petitions to participate.

SUMMARY: The Copyright Royalty Judges (Judges) announce commencement of a proceeding to determine reasonable rates and terms for digital performance of sound recordings by new subscription services and the making of ephemeral recordings to facilitate those performances for the period beginning January 1, 2026, and ending December 31, 2030. The Judges also announce the date by which a party wishing to participate in the rate determination proceeding must file its Petition to Participate and the accompanying $150 filing fee.

DATES: Petitions to Participate and the filing fee are due no later than February 5, 2024.

ADDRESSES: The petition to participate form is available online in eCRB, the Copyright Royalty Board's online electronic filing application, at *https://app.crb.gov/.*

Instructions: The petition to participate process has been simplified. Interested parties file a petition to participate by completing and filing the petition to participate form in eCRB and paying the fee in eCRB. Do not upload a petition to participate document.

Docket: For access to the docket, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/* and search for docket number 23–CRB–00013–NSR (2026–2030).

FOR FURTHER INFORMATION CONTACT: Anita Brown, CRB Program Specialist, (202) 707–7658, *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the Copyright Act, the Copyright Royalty Judges (Judges) must commence a proceeding every five years to determine reasonable rates and terms to license the digital transmission of sound recordings by new subscription services and the making of ephemeral recordings to facilitate those transmissions. *See* 17 U.S.C. 112(e), 114(d)(2), 803(b)(1)(A)(i)(III), 804(b)(3)(A), 37 CFR 383. This notice commences the rate determination proceeding for the license period 2026–2030.

Scope of Proceeding

In addition to all other submissions and arguments required by the Act and the applicable regulations, and in addition to any other submissions or arguments that the Participants choose to make, there is an interest among certain Judges in receiving evidence, testimony, and argument relating to the allocation of the royalty payments required by the Judges' determination in this proceeding between the section 112 ephemeral recordings royalties and the section 114 sound recording royalties.[1]

Accordingly, the Judges invite Participants, within their written direct statements, written rebuttal statements, proposed findings of fact, conclusions of law and briefing, through their witnesses and attorneys, as appropriate, to consider addressing the following questions.

Question #1

Does the ephemeral license created by section 112 have economic value independent of any economic value in

[1] Nothing set forth in this section of the Notice of Commencement should be construed as a statement by the Judges as to how they will ultimately rule as to any evidence or testimony proffered with regard to, *inter alia,* admissibility, competency, relevancy, probative value or weight or dispositive effect, as to any issue, or whether they will or will not ultimately consider, accept, or adopt any argument made in response to this section. Additionally, nothing in this section should be construed as an indication that the Judges will or will not ultimately consider any of the issues set forth herein or addressed by the Participants in response to this invitation in any determination rendered by them. Further, by soliciting information regarding these issues, the Judges are not indicating that they have reached any preliminary decisions as to any of these issues.

Further, to avoid doubt, the interest among the Judges as expressed herein does not necessarily relate to any other statutory licenses.

the digital public performance of sound recording license (''sound recording license'') created by section 114 and, reciprocally, does the sound recording license created by section 114 have economic value independent of any economic value in the ephemeral license created by section 112?

Regarding this Question #1, the Judges note the following language in the Web V Determination:

> SoundExchange and the Services are generally on the same page regarding ephemeral recordings, *except as to the question whether the right to make ephemeral recordings has independent economic value. Compare* SX PFFCL ¶ 1570 (and sources cited therein) (''ephemeral copies have economic value to services that publicly perform sound recordings because these services cannot, as a practical matter, properly function without those copies'') *with* Services RPFFCL ¶ 1570 (and sources cited therein) (''While the Services do not dispute that ephemeral recording right is frequently needed, it does not have independent economic value.'').

Web V Final Determination, 86 FR 59542, 59584 n. 351 (Oct. 27, 2021), *aff'd. National Religious Broadcasters Noncommercial License Committee* v. *Copyright Royalty Bd.,* 77 F.4th 949 (D.C. Cir. 2023) (emphasis added).

Among the Judges, there is an interest in obtaining the Participants' positions on this Question #1 in the context of the *economic* characterization of the relationship between the section 112 ephemeral license and the section 114 sound recording license. In particular, the Judges inquire whether the parties identify these two licenses as perfect complements.[2]

The Web V Determination indicates that participants in that proceeding were cognizant of the irrelevancy of the ''relative price'' (*i.e.,* the royalty) for these two licenses, and thus their perfect complementarity:

> As to the specific allocation of royalties between the performance and ephemeral recording rights, *SoundExchange notes that this allocation has no effect on the Services. See* SX PFFCL ¶ 1574. . . . ''[T]he willing buyer'' (*i.e.,* the music service) ''is disinterested with respect to that allocation . . . .''

Web V Determination, 86 FR 59584 (emphasis added).

Accordingly, the Judges invite the Participants to address this Question #1 in their proffered evidence, testimony, and/or arguments.

Question #2

Are agreements in the interactive marketplace or other unregulated markets informative (and, if so, to what extent) as to the allocation of royalties between the section 112 ephemeral license and the section 114 sound recording license?

Regarding this Question #2, the Judges are mindful of the absence of any statutory requirement in unregulated markets that specifies percentages of the sound recording royalties to be distributed to sound recording artists, non-featured vocalists and musicians, and (if Letters of Direction are issued) to producers, mixers and sound engineers.

In prior proceedings, evidence was proffered regarding such agreements. The Judges take note of the following portion of the Web V Determination:

> ''Most of these agreements do not set a distinct rate for those ephemeral copies, incorporating them instead into the overall rate that the [music services] pay[ ] for the combined ephemeral copy rights and performance rights.'' *Id.* at 11–12. Dr. Ford also testified that to the extent marketplace agreements do set a royalty rate for ephemeral recordings they generally express that rate as a percentage of an overall bundled rate for both performances and ephemerals. *See* Ford Des. WDT at 12–14.
>
> SoundExchange also offers several direct licenses in the record of this proceeding as evidence that marketplace agreements do not set distinct rates (as distinguished from bundled rates) for ephemeral recordings. *See, e.g.,* Trial Ex. 4035 at 11–12, 16–19 (2015 Agreement . . .); Trial Ex. 5037 at 3–4, 5–9 (2017 Agreement . . .)

Web V Determination, 86 FR 59584.

Accordingly, the Judges invite the Participants to address this Question #2 in their proffered evidence, testimony, and/or arguments.

Question #3

Can and should the Judges rely on agreements containing provisions regarding splits of royalties between the section 112 ephemeral license and the section 114 sound recording license if the agreements described by witnesses or referenced in other documents are not proffered as evidence in this proceeding?

This question is of interest because, in Web V, the Judges received evidence and testimony that such an agreement existed as between the sound recording companies and the performing artists' representatives, but that agreement was not proffered and thus not record evidence. Specifically on this issue, the Web V Determination describes the testimony of a SoundExchange witness:

> [T]he SoundExchange board of directors, which is comprised of record company and performing artist representatives ''adopted a resolution reflecting agreement that 5% of the royalties for the bundle of rights should be attributable to the Section 112(e) ephemeral royalties, with the rest being allocated to the Section 114 performance royalties.'' Bender WDT ¶ 56. SoundExchange avers that ''[a]s a result, a 95%–5% split 'credibly represents the result that would in fact obtain in a hypothetical marketplace negotiation between a willing buyer and the interested willing sellers under the relevant constraints.' ''

Web V Determination, 86 FR 59584.

However, the Judges noted in the Web V Determination that ''[t]he SoundExchange Board resolution reflecting the agreement between artists and copyright owners *is not in the record* [and] testimony concerning the agreement, therefore, is hearsay, but the Judges exercise their discretion under 37 CFR 351.10(a) to admit and consider this hearsay testimony.'' Web V Determination, 86 FR 59584 n.352.

This Question #3 raises the following subsidiary questions:

Is an internal resolution by SoundExchange an ''agreement''?

If the resolution references an agreement, should both the resolution and the agreement, if memorialized in writing, be proffered as evidence?

Is an agreement made by members of the SoundExchange Board of Directors a marketplace agreement between willing parties?

Is such an agreement reflective of a process in which the parties to the agreement have bargaining power sufficient to generate an agreement reflective of effective competition?

Do the Board members voting on the agreement and resolution on behalf of the sound recording companies have a sufficient number of votes to approve or defeat the agreement and resolution if they all voted identically?

Do the Board members voting on the agreement and resolution on behalf of the artists and others entitled to a share of the section 114 royalties have a sufficient number of votes to approve or defeat the resolution if they all voted identically?

Should the Judges exercise their discretion to admit hearsay testimony regarding such agreements and resolutions, or should the Judges require production of the agreements and resolutions?

Does the Best Evidence Rule require production of the actual agreements and resolutions described above?

Accordingly, the Judges invite the Participants to address this Question #3

[2] ''Perfect complements'' are goods that are always consumed together in fixed proportions. H. Varian, Intermediate Microeconomics at 40 (8th ed. 2010). Thus, a purchaser of perfectly complementary goods ''wants to consume the goods in the same ratio *regardless of their relative price.*'' P. Krugman & R. Wells, Microeconomics at 306 (3d ed. 2013) (emphasis added). (Each noninteractive service or New Subscription Service (''NSS'') requires both the section 112 ephemeral license and the section 112 sound recording license in order to transmit any sound recording, thus making the fixed proportion (ratio) equal to 1:1 for these licenses.) The irrelevancy of ''relative price'' between these perfect complements referenced by Krugman & Wells underscores the indeterminacy of the royalties attributable to each license which underlies the Judges' present inquiries.

in their proffered evidence, testimony, and/or arguments.

Question #4

Does the marketplace evidence indicate how the Judges should consider allocation of royalties as between the section 112 ephemeral license and the section 114 sound recording license, including allocations to sound recording artists, non-featured vocalists and musicians, or to producers, mixers and sound engineers, pursuant to section 114? Among the Judges, there is a concern whether—with section 114, unlike section 112, providing for an allocation of 50% of the section 114 royalties to artists (and others, in certain circumstances), as described above—evidence and the law may lead the Judges to apportion royalties as between the section 112 and 114 licenses in a manner that effectuates the section 114-mandated split of royalties in a manner that is legally and economically appropriate.

Accordingly, the Judges invite the Participants to address this Question #4 in their proffered evidence, testimony, and/or arguments.

Petitions To Participate

Parties with a significant interest in the outcome of the rate proceeding and wish to participate in the proceeding must provide the information required by § 351.1(b) of the Judges' regulations by completing and filing the Petition to Participate form in eCRB. Parties must pay the $150 filing fee when filing each Petition to Participate form. Parties must use the form in eCRB instead of uploading a document and must comply with the requirements of § 351.1(b)(1) of the Copyright Royalty Board's regulations. 37 CFR 351.1(b)(1).

Only attorneys admitted to the bar in one or more states or the District of Columbia and members in good standing will be allowed to represent parties before the Judges. Only individuals may represent themselves and appear without legal counsel. 37 CFR 303.2.

The Judges will address scheduling and further procedural matters after receiving petitions to participate.

Dated: December 20, 2023.

David P. Shaw,

Chief Copyright Royalty Judge.

[FR Doc. 2023–28515 Filed 1–4–24; 8:45 am]

BILLING CODE 1410–72–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No 23–CRB–0012–WR (2026–2030)]

Determination of Rates and Terms for Digital Performance of Sound Recordings and Making of Ephemeral Copies To Facilitate Those Performances (Web VI)

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Notice announcing commencement of proceeding with request for petitions to participate.

SUMMARY: The Copyright Royalty Judges (Judges) announce commencement of a proceeding to determine reasonable rates and terms for two statutory licenses permitting the digital performance of sound recordings over the internet and the making of ephemeral recordings to facilitate those performances for the period beginning January 1, 2026, and ending December 31, 2030. The Judges also announce the date by which a party wishing to participate in the rate determination proceeding must file its Petition to Participate and pay the accompanying $150 filing fee.

DATES: Petitions to Participate and the filing fee are due no later than February 6, 2023.

ADDRESSES: The petition to participate form is available online in eCRB, the Copyright Royalty Board's online electronic filing application, at *https://app.crb.gov/*.

Instructions: The petition to participate process has been simplified. Interested parties file a petition to participate by completing and filing the petition to participate form in eCRB and paying the fee in eCRB. Do not upload a petition to participate document.

Docket: For access to the docket, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/* and search for docket number 23–CRB–0012–WR (2026–2030).

FOR FURTHER INFORMATION CONTACT: Anita Brown, CRB Program Specialist, at (202) 707–7658 or *crb@loc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Under the Copyright Act, the Copyright Royalty Judges (Judges) must commence a proceeding every five years to determine reasonable rates and terms to license the digital transmission over the internet of sound recordings and the making of ephemeral recordings to facilitate those transmissions. *See* 17 U.S.C. 112 (e), 114(d)(2), 803(b)(1)(A)(i)(III), 804(b)(3)(A), 37 CFR 380. This notice commences the rate determination proceeding for the license period 2026–2030.

Scope of Proceeding

In addition to all other submissions and arguments required by the Act and the applicable regulations, and in addition to any other submissions or arguments that the Participants choose to make, there is an interest among certain Judges in receiving evidence, testimony, and argument relating to the allocation of the royalty payments required by the Judges' determination in this proceeding between the section 112 ephemeral recordings royalties and the section 114 sound recording royalties.[1]

Accordingly, the Judges invite Participants, within their written direct statements, written rebuttal statements, proposed findings of fact, conclusions of law and briefing, through their witnesses and attorneys, as appropriate, to consider addressing the following questions.

Question #1

Does the ephemeral license created by section 112 have economic value independent of any economic value in the digital public performance of sound recording license (''sound recording license'') created by section 114 and, reciprocally, does the sound recording license created by section 114 have economic value independent of any economic value in the ephemeral license created by section 112?

Regarding this Question #1, the Judges note the following language in the Web V Determination:

SoundExchange and the Services are generally on the same page regarding ephemeral recordings, *except as to the question whether the right to make ephemeral recordings has independent economic value. Compare* SX PFFCL ¶ 1570 (and sources cited therein) (''ephemeral

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Further, to avoid doubt, the interest among the Judges as expressed herein does not necessarily relate to any other statutory licenses.

copies have economic value to services that publicly perform sound recordings because these services cannot, as a practical matter, properly function without those copies'') *with* Services RPFFCL ¶ 1570 (and sources cited therein) (''While the Services do not dispute that ephemeral recording right is frequently needed, it does not have independent economic value.'').

Web V Final Determination, 86 FR 59542, 59584 n. 351 (Oct. 27, 2021), *aff'd. National Religious Broadcasters Noncommercial License Committee* v. *Copyright Royalty Bd.,* 77 F.4th 949 (D.C. Cir. 2023) (emphasis added).

Among the Judges, there is an interest in obtaining the Participants' positions on this Question #1 in the context of the *economic* characterization of the relationship between the section 112 ephemeral license and the section 114 sound recording license. In particular, the Judges inquire whether the parties identify these two licenses as perfect complements.[2]

The Web V Determination indicates that participants in that proceeding were cognizant of the irrelevancy of the ''relative price'' (*i.e.,* the royalty) for these two licenses, and thus their perfect complementarity:

> As to the specific allocation of royalties between the performance and ephemeral recording rights, *SoundExchange notes that this allocation has no effect on the Services. See* SX PFFCL ¶ 1574. . . . ''[T]he willing buyer'' (*i.e.,* the music service) ''is disinterested with respect to that allocation . . . .''

Web V Determination, 86 FR 59584 (emphasis added).

Accordingly, the Judges invite the Participants to address this Question #1 in their proffered evidence, testimony, and/or arguments.

Question #2

Are agreements in the interactive marketplace or other unregulated markets informative (and, if so, to what extent) as to the allocation of royalties between the section 112 ephemeral license and the section 114 sound recording license?

Regarding this Question #2, the Judges are mindful of the absence of any statutory requirement in unregulated markets that specifies percentages of the sound recording royalties to be distributed to sound recording artists, non-featured vocalists and musicians, and (if Letters of Direction are issued) to producers, mixers and sound engineers.

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> SoundExchange also offers several direct licenses in the record of this proceeding as evidence that marketplace agreements do not set distinct rates (as distinguished from bundled rates) for ephemeral recordings. *See, e.g.,* Trial Ex. 4035 at 11–12, 16–19 (2015 Agreement . . .); Trial Ex. 5037 at 3–4, 5–9 (2017 Agreement . . .)

Web V Determination, 86 FR 59584.

Accordingly, the Judges invite the Participants to address this Question #2 in their proffered evidence, testimony, and/or arguments.

Question #3

Can and should the Judges rely on agreements containing provisions regarding splits of royalties between the section 112 ephemeral license and the section 114 sound recording license if the agreements described by witnesses or referenced in other documents are not proffered as evidence in this proceeding?

This question is of interest because, in Web V, the Judges received evidence and testimony that such an agreement existed as between the sound recording companies and the performing artists' representatives, but that agreement was not proffered and thus not record evidence. Specifically on this issue, the Web V Determination describes the testimony of a SoundExchange witness:

> [T]he SoundExchange board of directors, which is comprised of record company and performing artist representatives ''adopted a resolution reflecting agreement that 5% of the royalties for the bundle of rights should be attributable to the Section 112(e) ephemeral royalties, with the rest being allocated to the Section 114 performance royalties.'' Bender WDT ¶ 56. SoundExchange avers that ''[a]s a result, a 95%–5% split 'credibly represents the result that would in fact obtain in a hypothetical marketplace negotiation between a willing buyer and the interested willing sellers under the relevant constraints.' ''

Web V Determination, 86 FR 59584.

However, the Judges noted in the Web V Determination that ''[t]he SoundExchange Board resolution reflecting the agreement between artists and copyright owners *is not in the record* [and] testimony concerning the agreement, therefore, is hearsay, but the Judges exercise their discretion under 37 CFR 351.10(a) to admit and consider this hearsay testimony.'' Web V Determination, 86 FR 59584 n.352.

This Question #3 raises the following subsidiary questions:

Is an internal resolution by SoundExchange an ''agreement''?

If the resolution references an agreement, should both the resolution and the agreement, if memorialized in writing, be proffered as evidence?

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Is such an agreement reflective of a process in which the parties to the agreement have bargaining power sufficient to generate an agreement reflective of effective competition?

Do the Board members voting on the agreement and resolution on behalf of the sound recording companies have a sufficient number of votes to approve or defeat the agreement and resolution if they all voted identically?

Do the Board members voting on the agreement and resolution on behalf of the artists and others entitled to a share of the section 114 royalties have a sufficient number of votes to approve or defeat the resolution if they all voted identically?

Should the Judges exercise their discretion to admit hearsay testimony regarding such agreements and resolutions, or should the Judges require production of the agreements and resolutions?

Does the Best Evidence Rule require production of the actual agreements and resolutions described above?

Accordingly, the Judges invite the Participants to address this Question #3 in their proffered evidence, testimony, and/or arguments.

Question #4

Does the marketplace evidence indicate how the Judges should consider allocation of royalties as between the section 112 ephemeral license and the section 114 sound recording license, including allocations to sound recording artists, non-featured vocalists and musicians, or to producers, mixers and sound engineers, pursuant to section 114? Among the Judges, there is a concern whether—with section 114, unlike section 112, providing for an allocation of 50% of the section 114 royalties to artists (and others, in certain

[2] ''Perfect complements'' are goods that are always consumed together in fixed proportions. H. Varian, Intermediate Microeconomics at 40 (8th ed. 2010). Thus, a purchaser of perfectly complementary goods ''wants to consume the goods in the same ratio *regardless of their relative price.*'' P. Krugman & R. Wells, Microeconomics at 306 (3d ed. 2013) (emphasis added). (Each noninteractive service or New Subscription Service (''NSS'') requires both the section 112 ephemeral license and the section 112 sound recording license in order to transmit any sound recording, thus making the fixed proportion (ratio) equal to 1:1 for these licenses.) The irrelevancy of ''relative price'' between these perfect complements referenced by Krugman & Wells underscores the indeterminacy of the royalties attributable to each license which underlies the Judges' present inquiries.

circumstances), as described above—evidence and the law may lead the Judges to apportion royalties as between the section 112 and 114 licenses in a manner that effectuates the section 114-mandated split of royalties in a manner that is legally and economically appropriate.

Accordingly, the Judges invite the Participants to address this Question #4 in their proffered evidence, testimony, and/or arguments.

Petitions To Participate

Parties with a significant interest in the outcome of the rate proceeding must provide the information required by § 351.1(b) of the Judges' regulations by completing and filing the Petition to Participate form in eCRB. Parties must pay the $150 filing fee when filing each Petition to Participate form. Parties must use the form in eCRB instead of uploading a document and must comply with the requirements of § 351.1(b)(1) of the Copyright Royalty Board's regulations. 37 CFR 351.1(b)(1).

Only attorneys admitted to the bar in one or more states or the District of Columbia who are members in good standing will be allowed to represent parties before the Judges. Only individuals may represent themselves and appear without legal counsel. 37 CFR 303.2.

The Judges will address scheduling and further procedural matters after receiving petitions to participate.

Dated December 20, 2023.

David P. Shaw,

Chief Copyright Royalty Judge.

[FR Doc. 2023–28516 Filed 1–4–24; 8:45 am]

BILLING CODE 1410–72–P

NUCLEAR REGULATORY COMMISSION

[NRC–2024–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of January 8, 15, 22, 29, and February 5, 12, 2024. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Betty.Thweatt@nrc.gov* or *Samantha.Miklaszewski@nrc.gov*.

MATTERS TO BE CONSIDERED:

Week of January 8, 2024

There are no meetings scheduled for the week of January 8, 2024.

Week of January 15, 2024—Tentative

Thursday, January 18, 2024

9:00 a.m. Strategic Programmatic Overview of the Decommissioning and Low-Level Waste and Nuclear Materials Users Business Lines (Public Meeting) (Contact: Candace Spore: 301–415–8537)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/*.

Week of January 22, 2024—Tentative

Tuesday, January 23, 2024

10:00 a.m. Briefing on International Activities (Public Meeting) (Contacts: Jennifer Holzman: 301–287–9090, Doris Lewis 301–287–3794)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/*.

Week of January 29, 2024—Tentative

There are no meetings scheduled for the week of January 29, 2024.

Week of February 5, 2024—Tentative

There are no meetings scheduled for the week of February 5, 2024.

Week of February 12, 2024—Tentative

There are no meetings scheduled for the week of February 12, 2024.

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: January 3, 2024.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2024–00154 Filed 1–3–24; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* January 5, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 27, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 162 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–150, CP2024–156.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–29011 Filed 1–4–24; 8:45 am]

BILLING CODE 7710–12–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:* January 5, 2024.

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 December 26, 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 32 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–132 and CP2024–138.

Christopher Doyle,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2023–29008 Filed 1–4–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* January 5, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 29, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 166 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–154, CP2024–160.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–29015 Filed 1–4–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* January 5, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 29, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 168 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–157, CP2024–163.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–29017 Filed 1–4–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* January 5, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 29, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 41 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–155, CP2024–161.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–29019 Filed 1–4–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* January 5, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 27, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 160 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–147, CP2024–153.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–29009 Filed 1–4–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* January 5, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C.

3642 and 3632(b)(3), on December 28, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 163 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–151, CP2024–157.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–29012 Filed 1–4–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* January 5, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 29, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 165 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–153, CP2024–159.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–29014 Filed 1–4–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* January 5, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 29, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 167 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–156, CP2024–162.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–29016 Filed 1–4–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* January 5, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 29, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 164 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–152, CP2024–158.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–29013 Filed 1–4–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* January 5, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 27, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 40 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–148, CP2024–154.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–29018 Filed 1–4–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* January 5, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 27, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 161 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–149, CP2024–155.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–29010 Filed 1–4–24; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99256; File No. SR–NYSEAMER–2023–64]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Adopt New Section 145a of the NYSE American Company Guide

December 29, 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 December 21, 2023, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Section 145a of the NYSE American Company Guide (the ''Company Guide'') to implement a flat original listing and annual fee for Acquisition Companies (as defined below). 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new Section 145a of the Company Guide to implement a flat original listing and annual fee for companies that are listed on the Exchange pursuant to Sec. 119 (Listing of Companies Whole Business Plan is to Complete One or More Acquisitions) of the Company Guide (''Acquisition Companies''). The proposed changes will take effect from the beginning of the calendar year commencing on January 1, 2024.

The Exchange currently charges Acquisition Companies original and annual listing fees based on a tiered fee schedule that is applicable to companies listing equity securities on the Exchange. The original and annual listing fees are calculated based on shares outstanding.[3] Commencing January 1, 2024, the Exchange proposes to charge Acquisition Companies a flat original and annual listing fee of $85,000.

The Exchange proposes to make this change to better reflect the value of such listing to Acquisition Companies. In particular, the Exchange believes it is reasonable to apply a flat original and annual listing fee for Acquisition Companies because the value of the listing for an Acquisition Company, given the limited scope of operation (unlike operating companies) and the requirement to engage in a merger or acquisition with one or more unidentified companies within 36 months of the effectiveness of the Acquisition Company's IPO registration statement, is substantially similar regardless of the number of shares the Acquisition Company has outstanding.

As revised, all Acquisition Companies listed on the Exchange would pay the same original and annual listing fee and will pay a higher fee under the proposed flat fee than under the current rate. The Exchange believes that the adoption of a flat initial and annual fee for Acquisition Companies of $85,000 is not unfairly discriminatory because the value of the listing to an Acquisition Company is substantially similar regardless of the number of shares that an Acquisition Company has outstanding. In addition, the Exchange believes that it is not unfairly discriminatory for Acquisition Companies to pay a higher original and annual listing fee than is paid by other companies listing on the Exchange. Due to the substantial increase in new listings of Acquisition Companies on the Exchange over the last several years, the Exchange has devoted additional resources to review Acquisition Company IPOs, post-listing shareholder meeting requests, and subsequent business combination transactions. In particular, the Exchange notes that business combination transactions have become increasingly complex and require greater levels of analysis. Historically, many Acquisition Companies seeking to list on the Exchange have shares outstanding that placed them in the upper tiers of the current original listing fee structure. Therefore, the Exchange believes that adopting a flat original listing fee will represent an increase that is directly proportional to the resources devoted to Acquisition Companies.

In adopting a flat original and annual listing fee for Acquisition Companies, the Exchange notes that it is mirroring the fee structure in place on the New York Stock Exchange and the Nasdaq Stock Market (which charges Acquisition Companies the same flat entry and annual listing fee regardless of whether such Acquisition Company is listed on the Nasdaq Global Select, Nasdaq Global or Nasdaq Capital Market). The Exchange believes it is appropriate to align its fee structure for Acquisition Companies with the fee structure in place on other national securities exchanges, even if the proposed fee structure results in Acquisition Companies paying higher entry or annual listing fees than they do currently. To that end, the Exchange notes that its proposed fee and fee structure for Acquisition Companies is comparable to that of other exchanges in that (i) the value of a listing to an Acquisition Company is the same regardless of the exchange on which it is listed, and (ii) no exchange provides Acquisition Companies with complimentary services (unlike certain categories of operating companies). Therefore, the Exchange believes it is appropriate for its fee structure to be

[3] *See* Sec. 140 (Original Listing Fees) and Sec. 141 (Annual Fees) of the Company Guide. The Exchange currently charges original and annual listing fees on a tiered basis, based on the number of shares outstanding. With respect to original listing fees, issuers currently pay $50,000 if they have less than 5,000,000 shares outstanding, $55,000 if they have 5,000,000 to 10,000,000 shares outstanding, $60,000 if they have 10,000,001 to 15,000,000 shares outstanding and $75,000 if they have in excess of 15,000,000 shares outstanding. With respect to annual listing fees, issuers currently pay $55,000 if they have 50,000,000 shares or less outstanding and $75,000 if they have in excess of 50,000,000 shares outstanding.

aligned with the fee structures in place on other listing venues.[4]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4)[6] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to adopt new Sec. 145a of the Company Guide to enact a flat original and annual listing fee for Acquisition Companies.

The Exchange believes that the proposed changes to its original and annual fees for Acquisition Companies are reasonable. The Exchange operates in a highly competitive marketplace for the listing of Acquisition Companies. 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,[8] 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.'' [9]

The Exchange believes that the ever-shifting market share among the exchanges with respect to new listings and the transfer of existing listings between competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange listing fees. Stated otherwise, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings.

The Exchange believes the proposed change to apply a flat original and annual listing fee for all Acquisition Companies is reasonable, and not unfairly discriminatory, because the value of the listing to an Acquisition Company, and the Exchange's costs in regulating and supporting the listing of an Acquisition Company, is substantially similar regardless of the number of shares that an Acquisition Company has outstanding. As revised, all Acquisition Companies listed on the Exchange would pay the same original and annual listing fee and will pay a higher fee under the proposed flat fee than under the current rate. The Exchange believes that the adoption of a flat initial and annual fee for Acquisition Companies is not unfairly discriminatory because the value of the listing to an Acquisition Company is substantially similar regardless of the number of shares that an Acquisition Company has outstanding. In addition, the Exchange believes that it is not unfairly discriminatory for Acquisition Companies to pay a higher original and annual listing fee of $85,000 than is paid by other companies listing on the Exchange. Due to the substantial increase in new listings of Acquisition Companies on the Exchange over the last several years, the Exchange has devoted additional resources to review Acquisition Company IPOs, post-listing shareholder meeting requests, and subsequent business combination transactions. In particular, the Exchange notes that business combination transactions have become increasingly complex and require greater levels of analysis. Historically, many Acquisition Companies seeking to list on the Exchange have shares outstanding that placed them in the upper tiers of the current original listing fee structure. Therefore, the Exchange believes that adopting a flat original listing fee of $85,000 will represent an increase that is proportional to the resources devoted to Acquisition Companies.

Pricing for the listing of similar securities on other national securities exchanges was also considered, and, for the reasons discussed above in the Purpose section, the Exchange believes that the proposed flat original and annual listing fee is reasonable given the competitive landscape.

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

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 market for listing services is extremely competitive and listed companies may freely choose alternative venues. For this reason, the Exchange does not believe the proposed rule change will result in any burden on competition for listings. The Exchange also does not believe that the proposed rule change will have any meaningful impact on competition among listed companies because all similarly situated companies will be charged the same fee.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)[10] of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2023–64 on the subject line.

[4] *See,* for example, Section 902.11 of the NYSE Listed Company Manual and Nasdaq Rules 5910(a)(1)(B), 5910(b)(2)(F), 5920(a)(1)(B) and 5920(b)(2)(G). The Exchange notes that Acquisition Companies listed on the New York Stock Exchange pay a flat initial and annual fee of $85,000.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] Release No. 34–51808 (June 9, 2005); 70 FR 37496 (June 29, 2005).

[9] *See* Regulation NMS, 70 FR at 37499.

[10] 15 U.S.C. 78s(b)(3)(A).

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEAMER–2023–64. 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 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–NYSEAMER–2023–64 and should be submitted on or before January 26, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Christina Z. Milnor,

Assistant Secretary.

[FR Doc. 2023–29006 Filed 1–4–24; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99251; File No. SR–PEARL–2023–72]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 404, Series of Option Contracts Open for Trading

December 29, 2023.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 22, 2023, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 404, Series of Option Contracts Open for Trading.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/pearl-options/rule-filings,* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 404 to accommodate the listing of options series that would expire at the close of business on the last business day of a calendar month (''Monthly Options Series'').

Pursuant to new proposed Interpretation and Policy .13 to Exchange Rule 404, the Exchange may list Monthly Options Series for up to five currently listed option classes that are either index options or options on exchange-traded funds (''ETFs'').[3] In addition, the Exchange may also list Monthly Options Series on any options classes that are selected by other securities exchanges that employ a similar program under their respective rules.[4] The Exchange may list 12 expirations for Monthly Options Series. Monthly Options Series need not be for consecutive months; however, the expiration date of a nonconsecutive expiration may not be beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively.[5] Other expirations in the same class are not counted as part of the maximum numbers of Monthly Options Series

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange proposes to amend Exchange Rule 404(a) to provide that proposed Interpretation and Policy .13 to Exchange Rule 404 will describe how the Exchange will fix a specific expiration date and exercise price for Monthly Options Series and that proposed Interpretation and Policy .13 to Exchange Rule 404 will govern the procedures for opening Monthly Options Series, respectively. This is consistent with language in current Exchange Rules 404(a) for other Short Term Options Series and Quarterly Options Series.

[4] Currently, Cboe Exchange, Inc. has a similar program. *See* Securities Exchange Act Release No. 98915 (Nov. 13, 2023) (SR–CBOE–2023–049) (Order Approving a Proposed Rule Change To Adopt Monthly Options Series).

[5] The Exchange notes this provision considers consecutive monthly listings. In other words, as other expirations (such as Quarterly Options Series) are not counted as part of the maximum, those expirations would not be considered when considering when the last expiration date would be if the maximum number were listed consecutively. For example, if it is January 2024 and the Exchange lists Quarterly Options Series in class ABC with expirations in March, June, September, December, and the following March, the Exchange could also list Monthly Options Series in class ABC with expirations in January, February, April, May, July, August, October, and November 2024 and January and February of 2025. This is because, if Quarterly Options Series, for example, were counted, the Exchange would otherwise never be able to list the maximum number of Monthly Options Series. This is consistent with the listing provisions for Quarterly Options Series, which permit calendar quarter expirations. The need to list series with the same expiration in the current calendar year and the following calendar year (whether Monthly or Quarterly expiration) is to allow market participants to execute one-year strategies pursuant to which they may not roll their exposures in the longer-dated options (*e.g.,* January 2025) prior to the expiration of the nearer-dated option (*e.g.,* January 2024).

expirations for a class.[6] Monthly Options Series will be PM-settled.[7]

The strike price of each Monthly Options Series will be fixed at a price per share, with at least two, but no more than five, strike prices above and at least two, but no more than five, strike prices below the value of the underlying index or price of the underlying security at about the time that a Monthly Options Series is opened for trading on the Exchange. The Exchange will list strike prices for Monthly Options Series that are reasonably related to the current price of the underlying security or current index value of the underlying index to which such series relates at about the time such series of options is first opened for trading on the Exchange. The term ''reasonably related to the current price of the underlying security or index value of the underlying index'' means that the exercise price is within 30% of the current underlying security price or index value.[8] Additional Monthly Options Series of the same class may be open for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet Member[9] demand, or when the market price of the underlying security moves substantially from the initial exercise price or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices will be within 30% above or below the closing price of the underlying index or security on the preceding day. The Exchange may also open additional strike prices of Monthly Options Series that are more than 30% above or below the current price of the underlying security, provided that demonstrated Member interest exists for such series, as expressed by institutional, corporate, Members or their brokers. Market Makers trading for their own account will not be considered when determining Member interest under this provision. The opening of the new Monthly Options Series will not affect the series of options of the same class previously opened.[10] The interval between strike prices on Monthly Options Series will be the same as the interval for strike prices for series in that same options class that expire in accordance with the normal monthly expiration cycle.[11]

By definition, Monthly Options Series can never expire in the same week that a standard options series that expires on the third Friday of a month in the same class expires. The same, however, is not the case with respect to Short Term Options Series or Quarterly Options Series. Therefore, to avoid any confusion in the marketplace, the Exchange proposes to amend Interpretation and Policy .02 to Exchange Rule 404 to provide that the Exchange will not list a Short Term Options Series in a class on a date on which a Monthly Options Series or Quarterly Options Series expires.[12] Similarly, proposed Interpretation and Policy .13(b) to Exchange Rule 404 provides that no Monthly Options Series may expire on a date that coincides with an expiration date of a Quarterly Options Series in the same index or ETF class. In other words, the Exchange will not list a Short Terms Options Series on an index or ETF if a Monthly Options Series on that index or ETF were to expire on the same date, nor will the Exchange list a Monthly Options Series on an index or ETF if a Quarterly Options Series on that ETF were to expire on the same date to prevent the listing of series with concurrent expirations.[13]

With respect to Monthly Options Series added pursuant to proposed Interpretation and Policy .13(a)–(f) to Exchange Rule 404, the Exchange will, on a monthly basis, review series that are outside a range of five strikes above and five strikes below the current price of the underlying index or security, and delist series with no open interest in both the put and the call series having a strike: (i) higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) lower than the lowest strike price with open interest in the put and/or call series for a given expiration month. Notwithstanding this delisting policy, Member requests to add strikes and/or maintain strikes in Monthly Options Series in series eligible for delisting will be granted. In connection with this delisting policy, if the Exchange identifies series for delisting, the Exchange will notify other options exchanges with similar delisting policies regarding eligible series for delisting and will work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiply listed Monthly Options Series.[14]

The Exchange believes that Monthly Options Series will provide investors with another flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie options contracts. The Exchange believes limiting Monthly Options Series to five classes will ensure the addition of these new series will have a negligible impact on the Options Price Reporting Authority (''OPRA'') and the Exchange's quoting capacity. The Exchange represents it has the necessary systems capacity to support new options series that will result from the introduction of Monthly Options Series.

The Exchange also represents its current surveillance programs will apply to Monthly Options Series and will properly monitor trading in the proposed Monthly Options Series. The Exchange currently lists Quarterly Options Series in certain ETF classes,[15] which expire at the close of business at the end of four calendar months (*i.e.,* the end of each calendar quarter), and has not experienced any market disruptions nor issues with capacity. The Exchange's surveillance programs

[6] *See* proposed Interpretation and Policy .13(b) to Exchange Rule 404.

[7] *See* proposed Interpretation and Policy .13(c) to Exchange Rule 404.

[8] *See* proposed Interpretation and Policy .13(d). The Exchange notes these proposed provisions are consistent with the initial series provision for the Quarterly Options Series program in Interpretation and Policy .03 to Exchange Rule 404. While different than the initial strike listing provision for the Quarterly Options Series program in current Interpretation and Policy .03 to Exchange Rule 404, the Exchange believes the proposed provision is appropriate, as it contemplates classes that may have strike intervals of $5 or greater.

[9] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[10] *See* proposed Interpretation and Policy .13(e) to Exchange Rule 404.

[11] *See* proposed Interpretation and Policy .13(f) to Exchange Rule 404; *see also* Interpretations and Policies .01 and .04, .06, .08, .09, .10 to Exchange Rule 404 (permissible strike prices for ETF classes) and Interpretations and Policies .05, .07, .11 to Exchange Rule 404 (permissible strike prices for index options).

[12] The Exchange also proposes to make a non-substantive change to Interpretation and Policy .02 to Exchange Rule 404 to change current references to ''monthly options series'' to ''standard expiration options series'' (*i.e.,* series that expire on the third Friday of a month), to eliminate potential confusion. The current references to ''monthly options series'' are intended to refer to those series that expire on the third Friday of a month, which are generally referred to in the industry as standard expirations.

[13] The Exchange notes this would not prevent the Exchange from listing a P.M.-settled Monthly Options Series on an index with the same expiration date as an A.M.-settled Short Term Options Series on the same index, both of which may expire on a Friday. The Exchange believes this concurrent listing would provide investors with yet another hedging mechanism and is reasonable given these series would not be identical (unlike if they were both P.M.-settled). This could not occur with respect to ETFs, as all Short Term Options Series on ETFs are P.M.-settled.

[14] *See* proposed Interpretation and Policy .13(g) to Exchange Rule. Pursuant to Exchange Rule 1807, exercise limits for impacted index and ETF classes would be equal to the applicable position limits.

[15] The Exchange notes it currently lists quarterly expirations on certain ETF options pursuant to Interpretation and Policy .03 to Exchange Rule 404.

currently in place to support and properly monitor trading in these Quarterly Options Series, as well as Short Term Options Series and standard expiration series, will apply to the proposed Monthly Options Series. The Exchange believes its surveillances continue to be designed to deter and detect violations of its Rules, including position and exercise limits and possible manipulative behavior, and these surveillances will apply to Monthly Options Series that the Exchange determines to list for trading. Ultimately, the Exchange does not believe the proposed rule change raises any unique regulatory concerns because existing safeguards—such as position and exercise limits (and the aggregation of options overlying the same index or ETF) and reporting requirements—would continue to apply.

The Exchange notes that the proposed rule change is substantively identical to proposed rule changes recently filed by the Cboe Exchange, Inc. (''Cboe''),[16] and the Exchange's affiliate, MIAX Options.[17]

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.[18] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [19] 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) [20] requirement that the rules of an exchange not be designed to permit unfair discrimination between Members, issuers, brokers, or dealers.

In particular, the Exchange believes the introduction of Monthly Options Series will remove impediments to and perfect the mechanism of a free and open market and a national market system by expanding hedging tools available to market participants. The Exchange believes the proposed monthly expirations will allow market participants to transact in the index and ETF options listed pursuant to the proposed rule change based on their timings as needed and allow them to tailor their investment and hedging needs more effectively. Further, the Exchange believes the availability of Monthly Options Series would protect investors and the public interest by providing investors with more flexibility to closely tailor their investment and hedging decisions in these options, thus allowing them to better manage their risk exposure.

The Exchange believes the Quarterly Options Series Program has been successful to date and the proposed Monthly Options Series program simply expands the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur at month's end in the same way the Quarterly Options Series Program has expanded the landscape of hedging for quarter-end news. Monthly Options Series will also complement Short Term Options Series, which will allow investors to hedge risk against events that occur throughout a month. The Exchange believes the availability of additional expirations should create greater trading and hedging opportunities for investors, as well as provide investors with the ability to tailor their investment objectives more effectively.

The Exchange notes the proposed terms of Monthly Options Series, including the limitation to five index and ETF option classes, are substantively the same as the current terms of Quarterly Options Series.[21] Quarterly Options Series expire on the last business day of a calendar quarter, which is the last business day of every third month. The proposed Monthly Options Series would fills the gaps between Quarterly Options Series expirations by permitting series to expire on the last business day of every month, rather than every third month. The proposed Monthly Options Series may be listed in accordance with the same terms as Quarterly Options Series, including permissible strikes. As is the case with Quarterly Options Series, no Short Term Options Series may expire on the same day as a Monthly Options Series. Similarly, as proposed, no Monthly Options Series may expire on the same day as a Quarterly Options Series. The Exchange believes preventing listing series with concurrent expirations in a class will eliminate potential investor confusion and thus protect investors and the public interest. Given that Quarterly Options Series the Exchange currently lists are essentially Monthly Options Series that can expire at the end of only certain calendar months, the Exchange believes it is reasonable to list Monthly Options Series in accordance with the same terms, as it will promote just and equitable principles of trade. The Exchange believes limiting Monthly Options Series to five classes will ensure the addition of these new series will have a negligible impact on the Exchange and OPRA's quoting capacity. The Exchange represents it has the necessary systems capacity to support new options series that will result from the introduction of Monthly Options Series.

The Exchange also represents its current surveillance programs will apply to Monthly Options Series and will properly monitor trading in the proposed Monthly Options Series. As mentioned above, the Exchange currently trades Quarterly Options Series in certain ETF classes, which expire at the close of business at the end of three calendar months (*i.e.,* the end of each calendar quarter), and has not experienced any market disruptions nor issues with capacity. The Exchange's surveillance programs currently in place to support and properly monitor trading in these Quarterly Options Series, as well as Short Term Options Series, and standard expiration series, will apply to the proposed Monthly Options Series. The Exchange believes its surveillances continue to be designed to deter and detect violations of its Rules, including position and exercise limits and possible manipulative behavior, and these surveillances will apply to Monthly Options Series that the Exchange determines to list for trading. Ultimately, the Exchange does not believe the proposed rule change raises any unique regulatory concerns because existing safeguards—such as position and exercise limits (and the aggregation of options overlying the same ETF or index) and reporting requirements—would continue to apply.

[16] *See* supra note 4.

[17] *See* Securities Exchange Act Release No. 98973 (November 16, 2023), 88 FR 81495 (November 22, 2023) (SR–MIAX–2023–44). The Exchange notes that MIAX Chapter XVIII is incorporated by reference in its entirety into the rulebook of MIAX Pearl. As such, the amendments to MIAX Chapter XVIII in the aforementioned proposal will also apply to MIAX Pearl Chapter XVIII.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] *Id.*

[21] *Compare* proposed Interpretation and Policy .13 of Exchange Rule 404 *to* Interpretation and Policy .03 of Exchange Rule 404.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change to list Monthly Options Series will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as any Monthly Options Series the Exchange lists for trading will be available in the same manner for all market participants who wish to trade such options. The Exchange notes the proposed terms of the Monthly Options Series, including the limitation to five index and ETF option classes, are substantively the same as the current terms of Quarterly Options Series.[22] Quarterly Options Series expire on the last business day of a calendar quarter, which is the last business day of every third month, making the concept of Monthly Options Series in a limited number of index and ETF options not novel. The proposed Monthly Options Series will fill the gaps between Quarterly Options Series expirations by permitting series to expire on the last business day of every month, rather than every third month. The proposed Monthly Options Series may be listed in accordance with the same terms as Quarterly Options Series, including permissible strikes. Monthly Options Series will trade on the Exchange in the same manner as other options in the same class.

The Exchange does not believe the proposed rule change to list Monthly Options Series will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as nothing prevents other options exchanges from proposing similar rules. As discussed above, the proposed rule change would permit listing of Monthly Options Series in five index or ETF options, as well as any other classes that other exchanges may list under similar programs. To the extent that the availability of Monthly Options Series makes the Exchange a more attractive marketplace to market participants at other exchanges, market participants are free to elect to become market participants on the Exchange.

The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition. Similar to Short Term Options Series and Quarterly Options Series, the Exchange believes the introduction of Monthly Options Series will not impose an undue burden on competition. The Exchange believes that it will, among other things, expand hedging tools available to market participants. The Exchange believes Monthly Options Series will allow market participants to purchase options based on their timing as needed and allow them to tailor their investment and hedging needs more effectively.

Consequently, the Exchange does not believe that the proposed change implicates competition at all. Additionally, and as stated above, a Cboe proposal to accommodate the listing of options series that would expire at the close of business on the last business day of a calendar month in the same manner has been recently approved.[23]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[24] and Rule 19b–4(f)(6) thereunder.[25] Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[26] and subparagraph (f)(6) of Rule 19b–4 thereunder.[27]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[28] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[29] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange may list Monthly Options Series immediately, which the Exchange believes will benefit investors by promoting competition in Monthly Options Series. The Exchange notes that its proposal is substantively identical to the proposal submitted by Cboe Exchange, Inc. for its Monthly Options Series program.[30] The Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[31]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–PEARL–2023–72 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–PEARL–2023–72. This file number should be included on the subject line if email is used. To help the Commission process and review your

[22] *See* Interpretation and Policy .03 to Exchange Rule 404.

[23] *See supra* note 4.

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6).

[26] 15 U.S.C. 78s(b)(3)(A)(iii).

[27] 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.

[28] 17 CFR 240.19b–4(f)(6).

[29] 17 CFR 240.19b–4(f)(6)(iii).

[30] *See* supra note 4.

[31] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–PEARL–2023–72 and should be submitted on or before January 26, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Christina Z. Milnor,

Assistant Secretary.

[FR Doc. 2023–29005 Filed 1–4–24; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[License No. 01/01–0423]

Crystal Financial SBIC, LP; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under section 309 of the Small Business Investment Act of 1958, as amended, and 13 CFR 107.1900 of the Code of Federal Regulations to function as a small business investment company under the Small Business Investment Company License No. 01/01–0423 issued to Crystal Financial SBIC, LP, said license is hereby declared null and void.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2024–00020 Filed 1–4–24; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 02/32–0667]

Bridges Ventures U.S. Sustainable Growth Fund, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under section 309 of the Small Business Investment Act of 1958, as amended, and 13 CFR 107.1900 of the Code of Federal Regulations to function as a small business investment company under the Small Business Investment Company License No. 02/32–0667 issued to Bridges Ventures U.S. Sustainable Growth Fund, L.P., said license is hereby declared null and void.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2024–00015 Filed 1–4–24; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0351]

Stonehenge Opportunity Fund V, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Stonehenge Opportunity Fund V, L.P., 191 W Nationwide Boulevard, Suite 600, Columbus, OH 43215, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small business concern, has sought an exemption under section 312 of the Act and 13 CFR 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations. Stonehenge Opportunity Fund V, L.P. is seeking a written exemption from SBA for a proposed financing to True North Asphalt Holdings, LLC, 1241 E 11 Mile Road, Madison Heights, MI 48071.

The financing is brought within the purview of 13 CFR 107.730(a) of the Regulations because True North Asphalt Holdings, LLC is an Associate of Stonehenge Opportunity Fund V, L.P. because Associate Stonehenge Opportunity Fund IV, L.P. owns a greater than ten percent interest in True North Asphalt Holdings, LLC, therefore this transaction is considered Financing which constitute conflicts of interest requiring SBA's prior written exemption.

Notice is hereby given that any interested person may submit written comments on this transaction within fifteen days of the date of this publication to the Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2024–00009 Filed 1–4–24; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 06/06–0356]

Independent Bankers Capital Fund IV, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Independent Bankers Capital Fund IV, L.P., 5949 Sherry Lane, Suite 1472, Dallas, TX 75225, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflict of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Independent Bankers Capital Fund IV, L.P. (''IBCF IV'') is proposing to provide financing to Central States Bus Sales, Inc. (''Company'') to support the Company's growth.

The proposed transaction is brought within the purview of § 107.730 of the Regulations because Diamond State Ventures II, L.P. (''DSV''), an Associate of IBCF IV as defined in § 107.50, holds a 25% of equity interest in the Company. By virtue of DSV's equity ownership, the Company and IBCF IV are also Associates. DSV expects to receive $8.122 million from the proposed transaction.

Therefore, the proposed transaction requires a regulatory exemption pursuant to 13 CFR 107.730. Notice is hereby given that any interested person

[32] 17 CFR 200.30–3(a)(12), (59).

may submit written comments on the transaction within fifteen days of the date of this publication to Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration.

[FR Doc. 2024–00013 Filed 1–4–24; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0700]

RCS SBIC Fund II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that RCS SBIC Fund II, L.P., 800 Boylston Street, Boston, MA 02199, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of two small concerns, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). RCS SBIC Fund II, L.P. proposes to purchase assets from an Associate, Riverside Investment Management Company, LLC.

The financings are brought within the purview of § 107.730(a)(4) of the Regulations because RCS SBIC Fund II, L.P., will purchase from Riverside Investment Management Company, LLC, at the amortized cost basis of each, securities issued by two Small Businesses: Oak Electric Service Intermediate, LLC; and Stratus Technology Services, L.L.C. Because Riverside Investment Management Company, LLC, is an Associate of RCS SBIC Fund II, L.P., this transaction is considered a conflict of interest requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Bailey G. DeVries,

Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration.

[FR Doc. 2024–00019 Filed 1–4–24; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 01/01–0434]

Seacoast Capital Partners IV, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Seacoast Capital Partners IV, L.P., 55 Ferncroft Road, Suite 110, Danvers, MA, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Seacoast Capital Partners IV, L.P. proposes to provide financing to Avenger Flight Group, LLC, 1450 Lee Wagener Blvd., Fort Lauderdale, FL 33315 (''AVF'').

The financing is brought within the purview of § 107.730(a) and (d) of the Regulations because Seacoast Capital Partners III, L.P., an Associate of Seacoast Capital Partners IV, L.P., owns more than ten percent of Avenger Flight Group, LLC, and therefore this transaction is considered a financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration.

[FR Doc. 2024–00010 Filed 1–4–24; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0654]

Saratoga Investment Corp. SBIC, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under section 309 of the Small Business Investment Act of 1958, as amended, and 13 CFR 107.1900 of the Code of Federal Regulations to function as a small business investment company under the Small Business Investment Company License No. 02/02–0654 issued to Saratoga Investment Corp. SBIC, L.P., said license is hereby declared null and void.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2024–00018 Filed 1–4–24; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 01/01–0414]

Ironwood Mezzanine Fund II LP; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under section 309 of the Small Business Investment Act of 1958, as amended, and 13 CFR 107.1900 of the Code of Federal Regulations to function as a small business investment company under the Small Business Investment Company License No. 01/01–0414 issued to Ironwood Mezzanine Fund II LP, said license is hereby declared null and void.

Bailey G. DeVries,

Associate Administrator, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2024–00049 Filed 1–4–24; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 03/03–0253]

NewSpring Mezzanine Capital II, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under section 309 of the Small Business Investment Act of 1958, as amended, and 13 CFR 107.1900 of the Code of Federal Regulations to function as a small business investment company

under the Small Business Investment Company License No. 03/03–0253 issued to NewSpring Mezzanine Capital II, L.P., said license is hereby declared null and void.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2024–00014 Filed 1–4–24; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0294]

Invision Capital I, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under section 309 of the Small Business Investment Act of 1958, as amended, and 13 CFR 107.1900 of the Code of Federal Regulations to function as a small business investment company under the Small Business Investment Company License No. 05/05–0294 issued to Invision Capital I, L.P., said license is hereby declared null and void.

Bailey G. DeVries,

Associate Administrator, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2024–00048 Filed 1–4–24; 8:45 am]

BILLING CODE P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2023–0041]

Privacy Act of 1974; System of Records

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, we are issuing public notice of our intent to modify our existing systems of records listed below under the System Name and Number section. This notice publishes details of the modified systems as set forth below under the caption, **SUPPLEMENTARY INFORMATION**.

DATES: The system of records notice (SORN) is applicable upon its publication in today's **Federal Register**, with the exception of the new routine use, which is effective February 5, 2024.

We invite public comment on the addition of the routine use. In accordance with the Privacy Act of 1974, we are providing the public a 30-day period in which to submit comments. Therefore, please submit any comments by February 5, 2024.

ADDRESSES: The public, Office of Management and Budget (OMB), and Congress may comment on this publication by writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, SSA, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, or through the Federal e-Rulemaking Portal at *https://www.regulations.gov.* Please reference docket number SSA–2023–0041. All comments we receive will be available for public inspection at the above address, and we will post them to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Tristin Dorsey, Government Information Specialist, Privacy Implementation Division, Office of Privacy and Disclosure, Office of the General Counsel, SSA, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 966–5855, email: *OGC.OPD.SORN@ssa.gov.*

SUPPLEMENTARY INFORMATION: In the past, we disclosed information under our efficient administration routine use, from the systems of records listed below, to contractors, cooperative agreement awardees, Federal and State agencies, and Federal congressional support agencies for research and statistical activities. To distinguish disclosures that SSA makes specifically for research purposes, we are adding a new routine use in the systems of records listed below to reflect the following:

To contractors, cooperative agreement awardees, State agencies, Federal agencies, and Federal congressional support agencies for research and statistical activities that are designed to increase knowledge about present or alternative Social Security programs; are of importance to the Social Security program or the Social Security beneficiaries; or are for an epidemiological project that relates to the Social Security program or beneficiaries. We will disclose information under this routine use pursuant only to a written agreement with us.

SYSTEM NAME AND NUMBER:

System number and name	Routine uses	**Federal Register** citation No./ publication date
60–0044—National Disability Determination Services File	No. 13	71 FR 1810, 01/11/06. 72 FR 69723, 12/10/07. 83 FR 54969, 11/01/18.
60–0050—Completed Determination Record—Continuing Disability Determinations	No. 12	71 FR 1813, 01/11/06. 72 FR 69723, 12/10/07. 83 FR 54969, 11/01/18. 84 FR 17907, 04/26/19.
60–0059—Earnings Recording and Self-Employment Income System	No. 37	71 FR 1819, 01/11/06. 78 FR 40542, 07/05/13. 83 FR 54969, 11/01/18.
60–0090—Master Beneficiary Record	No. 43	71 FR 1826, 01/11/06. 72 FR 69723, 12/10/07. 78 FR 40542, 07/05/13. 83 FR 31250, 07/03/18. 83 FR 31251, 07/03/18. 83 FR 54969, 11/01/18.
60–0103—Supplemental Security Income Record and Special Veterans Benefits	No. 41	71 FR 1830, 01/11/06. 72 FR 69723, 12/10/07. 83 FR 31250, 07/03/18. 83 FR 31251, 07/03/18. 83 FR 54969, 11/01/18.

System number and name	Routine uses	**Federal Register** citation No./ publication date
60–0159—Continuous Work History Sample (Statistics)	No. 7	47 FR 45643, 10/13/82. 65 FR 46997, 08/01/00. 72 FR 69723, 12/10/07. 83 FR 54969, 11/01/18.
60–0196—Disability Studies, Surveys, Records, and Extracts (Statistics)	No. 6	57 FR 55265, 11/24/92. 65 FR 46997, 08/01/00. 72 FR 69723, 12/10/07. 83 FR 54969, 11/01/18.
60–0199—Extramural Surveys (Statistics)	No. 6	71 FR 1835, 01/11/06. 72 FR 69723, 12/10/07. 83 FR 54969, 11/01/18.
60–0200—Retirement and Survivors Studies, Surveys, Records, and Extracts (Statistics)	No. 5	47 FR 45649, 10/13/82. 65 FR 46997, 08/01/00. 72 FR 69723, 12/10/07. 83 FR 54969, 11/01/18.
60–0202—Old Age, Survivors, and Disability Beneficiary and Worker Records and Extracts (Statistics).	No. 6	47 FR 45650, 10/13/82. 65 FR 46997, 08/01/00. 69 FR 11693, 03/11/04. 72 FR 69723, 12/10/07. 83 FR 54969, 11/01/18.
60–0203—Supplemental Security Income Studies, Surveys, Records, and Extracts (Statistics)	No. 5	47 FR 45651, 10/13/82. 65 FR 46997, 08/01/00. 72 FR 69723, 12/10/07. 83 FR 54969, 11/01/18.
60–0211—Beneficiary, Family, and Household Surveys, Records, and Extracts System (Statistics).	No. 6	48 FR 51693, 11/10/83. 65 FR 46997, 08/01/00. 69 FR 11693, 03/11/04. 72 FR 69723, 12/10/07. 83 FR 54969, 11/01/18.
60–0221—Vocational Rehabilitation Reimbursement Case Processing System	No. 12	71 FR 1840, 01/11/06. 72 FR 69723, 12/10/07. 83 FR 54969, 11/01/18.
60–0255—Plans for Achieving Self-Support (PASS) Management Information System	No. 11	71 FR 1867, 01/11/06. 72 FR 69723, 12/10/07. 83 FR 54969, 11/01/18.
60–0295—Ticket-to-Work and Self-Sufficiency Program Payment Database	No. 10	66 FR 17985, 04/04/01. 72 FR 69723, 12/10/07. 83 FR 54969, 11/01/18.
60–0300—Ticket-to-Work Program Manager (PM) Management Information System	No. 10	66 FR 32656, 06/15/01. 72 FR 69723, 12/10/07. 83 FR 54969, 11/01/18.
60–0330—eWork	No. 12	68 FR 54037, 09/15/03. 72 FR 69723, 12/10/07. 83 FR 54969, 11/01/18.

We are not republishing the system of records notices in their entirety. Instead, we are republishing only the identification number; the system of records name; the number of the modified routine use; and the issue of the **Federal Register** in which the system of records notice was last published in full, including the subsequent modification to the system of records notice's publication date and page number.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

SSA provides the address of the component and system manager responsible for each system in the **Federal Register** notices listed above.

SYSTEM MANAGER(S):

SSA provides the title, business address, and contact information of the agency official who is responsible for the system in the **Federal Register** notices listed above.

HISTORY:

SSA provides the citation to the last fully published **Federal Register** notice, as well as last subsequent modification notice to the system of records notices listed above.

In accordance with 5 U.S.C. 552a(r), we have provided a report to OMB and Congress on this modified system of records.

Matthew Ramsey,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

[FR Doc. 2024–00001 Filed 1–4–24; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 12299]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Marilyn Stafford: A Life in Photography'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign or custodian for temporary display in the exhibition ''Marilyn Stafford: A Life in Photography'' at the Akron Art Museum, Akron, Ohio, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is

in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW, (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–00064 Filed 1–4–24; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36750]

Empire River Rail LLC—Operation Exemption—in Brooke County, W. Va.

Empire River Rail LLC (ERRA), a non-carrier controlled by Empire Diversified Energy, Inc. (Empire), has filed a verified notice of exemption under 49 CFR 1150.31 to assume common carrier operations over roughly 0.464 miles of railroad trackage located along the Ohio River in Brooke County, W. Va. (the Line.) The Line connects to Norfolk Southern Railway Company's Wells Industrial Track at approximately NSR milepost 3.6 and extends northward. The Line itself has no mileposts.

According to the verified notice, the Line is part of a logistics facility that boasts barge, warehousing, truck, transloading, and railroad service capabilities owned by Empire Trimodal Terminal LLC d/b/a Port of West Virginia (Port of West Virginia),[1] located in Follansbee, W. Va. The notice states that the Line currently is not a Board-regulated line of railroad but that the Port of West Virginia has chosen to arrange for the commencement of common carrier operations and has negotiated an operating agreement with ERRA that extends to ERRA the exclusive right to conduct common carrier service.

ERRA certifies that it's projected annual revenue is not expected to exceed $5 million, and will not result in the creation of a Class II or Class I rail carrier. ERRA further certifies that it will not be contractually limited in its ability to interchange traffic with any third-party connecting carrier.

The earliest this transaction may be consummated is January 21, 2024, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than January 12, 2024 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36750, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on ERRA's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

According to ERRA, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: January 2, 2024.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2024–00046 Filed 1–4–24; 8:45 am]

BILLING CODE 4915–01–P

[1] The notice states that like ERRA, the Port of West Virginia is a holding of Empire.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2023–0002–N–36]

Proposed Agency Information Collection Activities; Comment Request

In notice document 2023–28382 beginning on page 89017 in the issue of Tuesday, December 26, 2023, make the following correction:

On page 89017, in the third column, in the second line ''February 9, 2024'' should read ''February 26, 2024''.

[FR Doc. C1–2023–28382 Filed 1–4–24; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket FTA–2024–0001]

Notice of Establishment of Emergency Relief Docket for Calendar Year 2024

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: By this notice, the Federal Transit Administration (FTA) is establishing an Emergency Relief Docket for calendar year 2024, so grantees and subgrantees affected by a national or regional emergency or disaster may request temporary relief from FTA administrative and statutory requirements.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Graves, Attorney-Advisor, Office of Chief Counsel, Federal Transit Administration, phone: (202) 366–0944, or email, *Bonnie.Graves@dot.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 49 CFR 601.42, FTA is establishing the Emergency Relief Docket for calendar year 2024. In the case of a national or regional emergency or disaster, or in anticipation of such an event, when FTA requirements impede a grantee or subgrantee's ability to respond to the emergency or disaster, a grantee or subgrantee may submit a request for relief from specific FTA requirements.

If FTA determines that a national or regional emergency or disaster has occurred, or in anticipation of such an event, FTA will place a message on its web page (*https://www.transit.dot.gov*) indicating the Emergency Relief Docket has been opened and including the docket number.

All petitions for relief from FTA administrative or statutory requirements

must be posted in the docket in order to receive consideration by FTA. The docket is publicly available and can be accessed 24 hours a day, seven days a week, via the internet at *https://www.regulations.gov/.* Any grantee or subgrantee submitting petitions for relief or comments to the docket must include the agency name (Federal Transit Administration) and docket number FTA–2024–0001.

Interested parties may consult 49 CFR part 601, subpart D for information on FTA's emergency procedures for public transportation systems. FTA strongly encourages grantees and subgrantees to contact their FTA regional office and notify FTA of the intent to submit a petition to the docket.

A grantee or subgrantee seeking relief has three avenues for submitting a petition. First, a grantee or subgrantee may submit a petition for waiver of FTA requirements to *https://www.regulations.gov/,* for posting in the docket (FTA–2024–0001). Alternatively, a grantee or subgrantee may submit a petition in duplicate (two copies) to the FTA Administrator, via U.S. mail or hand delivery to Federal Transit Administration, 1200 New Jersey Ave. SE, Washington, DC 20590; via fax to (202) 366–3472; or via email to *Bonnie.Graves@dot.gov;* or via U.S. mail or hand delivery to the DOT Docket Management Facility, 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590. Thirdly, in the event that a grantee or subgrantee needs to request immediate relief and does not have access to electronic means to request that relief, the grantee or subgrantee may contact any FTA regional office or FTA headquarters and request that FTA staff submit the petition on its behalf.

Federal public transportation law at 49 U.S.C. 5324(d) provides that a grant awarded under section 5324, or under 49 U.S.C. 5307 or 49 U.S.C. 5311, that is made to address an emergency shall be subject to the terms and conditions the Secretary determines are necessary. This language allows FTA to waive certain statutory, as well as administrative, requirements.

An FTA grantee or subgrantee receiving financial assistance under 49 U.S.C. 5324, 5307, or 5311 that is affected by a national or regional emergency or disaster may request a waiver of provisions of chapter 53 of title 49 of the United States Code in connection with such financial assistance, when a grantee or subgrantee demonstrates that the requirement(s) will limit a grantee's or subgrantee's ability to respond to a national or regional emergency or disaster.

Pursuant to 49 CFR 601.42, a grantee or subgrantee must include certain information when requesting a waiver of statutory or administrative requirements. A petition for relief shall:

(a) Include the agency name (Federal Transit Administration) and docket number FTA–2024–0001;

(b) Identify the grantee or subgrantee and its geographic location;

(c) Identify the section of Chapter 53 of Title 49 of the United States Code, or the portion of an FTA policy statement, circular, guidance document or rule, from which the grantee or subgrantee seeks relief;

(d) Specifically address how a requirement in Chapter 53 of Title 49 of the United States Code, or an FTA requirement in a policy statement, circular, agency guidance or rule, will limit a grantee's or subgrantee's ability to respond to a national or regional emergency or disaster; and

(e) Specify if the petition for relief is one-time or ongoing, and if ongoing identify the time period for which the relief is requested. The time period may not exceed three months; however, additional time may be requested through a second petition for relief.

Pursuant to 49 CFR 601.46, a petition for relief from administrative requirements will be conditionally granted for a period of three (3) business days from the date it is submitted to the Emergency Relief Docket. FTA will review the petition after the expiration of the three business days and review any comments submitted regarding the petition. FTA may contact the grantee or subgrantee that submitted the request for relief, or any party that submits comments to the docket, to obtain more information prior to making a decision. FTA shall then post a decision to the Emergency Relief Docket. FTA's decision will be based on whether the petition meets the criteria for use of these emergency procedures, the substance of the request, and any comments submitted regarding the petition. If FTA does not respond to the request for relief to the docket within three business days, the grantee or subgrantee may assume its petition is granted for a period not to exceed three months until and unless FTA states otherwise.

A petition for relief from statutory requirements will not be conditionally granted and requires a written decision from the FTA Administrator. Further, grantees seeking a waiver from Buy America requirements must follow the procedures in 49 CFR 661.7 and 661.9. Buy America waivers will not be granted through the Emergency Relief Docket.

An FTA decision, either granting or denying a petition, shall be posted in the Emergency Relief Docket and shall reference the document number of the petition to which it relates. FTA reserves the right to reconsider any decision made pursuant to these emergency procedures based upon its own initiative, based upon information or comments received subsequent to the three business day comment period, or at the request of a grantee or subgrantee upon denial of a request for relief. FTA shall notify the grantee or subgrantee if FTA plans to reconsider a decision.

Pursuant to FTA's Charter Rule at 49 CFR 604.2(f), grantees and subgrantees may assist with evacuations or other movement of people that might otherwise be considered charter transportation when that transportation is in response to an emergency declared by the President, governor or mayor, or in an emergency requiring immediate action prior to a formal declaration, even if a formal declaration of an emergency is not eventually made by the President, governor or mayor. Therefore, a request for relief is not necessary in order to provide this service. However, if the emergency lasts more than 45 calendar days and the grantee will continue to provide service that would otherwise be considered charter service, the grantee or subgrantee shall follow the procedures set out in this notice.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. Grantees and subgrantees should refer to FTA's regulations, including 49 CFR part 601, for requirements for submitting a request for emergency relief.

Nuria I. Fernandez,

Administrator.

[FR Doc. 2024–00026 Filed 1–4–24; 8:45 am]

BILLING CODE 4910–57–P

FEDERAL REGISTER

Vol. 89 Friday,
No. 4 January 5, 2024

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571

Advanced Impaired Driving Prevention Technology; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2022–0079]

RIN 2127–AM50

Advanced Impaired Driving Prevention Technology

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document initiates rulemaking that would gather the information necessary to develop performance requirements and require that new passenger motor vehicles be equipped with advanced drunk and impaired driving prevention technology through a new Federal Motor Vehicle Safety Standard (FMVSS). In this document, NHTSA presents its various activities related to preventing drunk and impaired driving and discusses the current state of advanced impaired driving technology. NHTSA also asks many questions to gather the information necessary to develop a notice of proposed rulemaking on advanced drunk and impaired driving technology.

DATES: Comments should be submitted no later than March 5, 2024.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail: Docket Management Facility:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below. NHTSA will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, the agency will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: 202–366–9826. Confidential Business Information: If you wish to submit any information under a claim of confidentiality, submit these materials to NHTSA's Office of the Chief Counsel in accordance with 49 CFR part 512. All requests for confidential treatment must be submitted directly to the Office of the Chief Counsel. NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under part 512. If you claim that any of the information or documents provided in your response constitutes confidential business information within the meaning of 5 U.S.C. 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. 1905, you may submit your request via email to Dan Rabinovitz in the Office of the Chief Counsel at *Daniel.Rabinovitz@dot.gov.* Do not send a hardcopy of a request for confidential treatment to NHTSA's headquarters.

FOR FURTHER INFORMATION CONTACT: Ms. Chontyce Pointer, Office of Crash Avoidance Standards, Telephone: 202–366–2987, Ms. Sara R. Bennett, Telephone: 202–366–7304 or Mr. Eli Wachtel, Telephone: 202–366–3065, Office of Chief Counsel. Address: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

Alcohol-impaired driving [1] is a major cause of crashes and fatalities on America's roadways. The National Highway Traffic Safety Administration (NHTSA) has been actively involved in addressing alcohol-impaired driving since the 1970s. Recent developments in vehicle technology present new opportunities to further reduce drunk and impaired driving crashes and fatalities or eliminate them altogether. Private and public researchers have also made significant progress on technologies that are capable of measuring and quantifying driver state and performance (*e.g.,* hands on the steering wheel, visual gaze direction, lane position). However, harnessing these technologies for drunk and impaired driving detection and prevention remains a significant challenge. NHTSA's information gathering and research efforts have found that several technologies show promise for detecting various states of impairment, which for the purposes of this document are alcohol, drowsiness, and distraction. However, technological challenges, such as distinguishing between different impairment states, avoiding false positives, and determining appropriate prevention countermeasures, remain. Due to technology immaturity and a lack of testing protocols, drugged driving is not being considered in this advance notice of proposed rulemaking.

The Infrastructure Investment and Jobs Act (Bipartisan Infrastructure Law or BIL) directs NHTSA to issue a final rule establishing a Federal Motor Vehicle Safety Standard (FMVSS) that requires new passenger vehicles to have

[1] This document discusses both drunk driving and alcohol-impaired driving. Drunk driving, as used in this document, is understood to be operating a vehicle at or above the threshold of alcohol concentration in the blood established by law. Alcohol-impaired driving describes the entire set of impairments of various driving-related skills and can occur at lower concentrations of alcohol.

''advanced drunk and impaired driving prevention technology'' by 2024.[2] The BIL also provides that an FMVSS should be issued only if it meets the requirements of the National Traffic and Motor Vehicle Safety Act. (''Safety Act''). BIL defines the relevant technology as technology that can passively [3] and accurately monitor driver performance to detect impairment or passively and accurately measure driver blood alcohol concentration (BAC) (or both in combination) and prevent or limit vehicle operation if impairment is detected. Given the current state of driver impairment detection technology, NHTSA is issuing this advance notice of proposed rulemaking (ANPRM) to inform a possible future FMVSS that can meet the requirements of the Vehicle Safety Act.

This ANPRM presents a summary of NHTSA's knowledge of alcohol's impact on driver performance and seeks comment on a variety of issues related to the state of development of driver impairment detection technologies. It also sets forth the research and technological advancements necessary to develop a FMVSS for driver impairment. This document also presents three regulatory options for how the agency might mitigate driver impairment: blood alcohol content detection, impairment-detection (driver monitoring), or a combination of the two.

II. Introduction

Driver impairment, as used in reference to motor vehicle safety, is a broad term that could encompass many different driver states that present operational safety risks.[4] There is no clear and consistent engineering or industry definition of ''impairment.'' ''Impaired'' can mean anything that diminishes a person's ability to perform driving tasks and increases the likelihood of a crash. Considering this, driver impairment would include drunk and drugged driving,[5] but it could also include drowsy driving, distracted driving,[6] driving while experiencing an incapacitating medical emergency or condition, or any other factor that would diminish driver performance and increase potential crash risk. All these driver states present operational safety risks, and each presents differing problem sizes and degrees of risk, underlying causes, states of research, data demonstrating risks from that driver state, and potential vehicle technological countermeasures that could resolve or mitigate resulting operational safety risks. Additionally, not all states of driver impairment are immediately redressable, meaning that while a vehicle safety system might help a distracted or drowsy person pay attention again, it may not help a driver be less alcohol- or drug-impaired. This difference among the driver impairment states is particularly important when considering what type of standard or countermeasure would be the most appropriate.

The negative economic and societal impacts related to impaired driving are enormous and devastating in the United States. Recent NHTSA research has identified the scope of causal factors associated with fatal and non-fatal injuries in crashes, revealing key differences among outcomes associated with reported contributory factors versus estimated causal factors.[7] NHTSA estimates here that in 2021: approximately 12,600 traffic fatalities were ''caused by alcohol impairment,'' versus approximately 13,400 fatalities ''involving alcohol;'' 12,400 fatalities were ''due to distraction'' [8], but and drowsy driving led to at least 684 fatalities. Differences in values associated with reported contributory factors versus causal factors are driven by offsetting forces; underreporting is a predominant issue for estimates of fatalities and injuries caused by distraction and possibly drowsy driving, while at least some fatalities and non-fatal injuries associated with alcohol and distraction likely had other causal factors. The enormous safety potential of addressing the three states of impaired driving considered here impels NHTSA's activities relating to driver impairment.

With respect to alcohol impairment, NHTSA has been conducting behavioral research and implementing behavioral safety strategies and programs, public education, and enforcement campaigns to combat drunk driving. Despite these efforts, which have contributed to significant declines in fatalities over the past several decades, drunk driving remains a significant safety risk for the public. NHTSA is also engaged in technology-based research. This includes better understanding of the technological capabilities that measure drivers' eye movements and vehicle inputs. In addition, through the Driver Alcohol Detection System for Safety (DADSS) program, NHTSA is actively involved in cutting-edge research to help develop technology to quickly, accurately, and passively [9] detect a driver's BAC. Upon completion of this development work, this technology may prevent drivers from shifting their vehicles into gear if they attempt to operate the vehicle at a BAC above the legal limit. NHTSA believes that the passive DADSS technology, still in development, may be one way to meet the BIL mandate, and that prevention of drunk driving is the best way to reduce the number of crashes and resulting fatalities and injuries that occur due to alcohol-impaired driving.

Concerted efforts by NHTSA, States, and other partners to implement proven strategies generated significant reductions in alcohol-impaired driving fatalities since the 1970s when NHTSA records began; but progress has stalled. Between 2011 and 2020, an average of almost 10,500 people died each year in alcohol-impaired driving crashes. The agency has seen record increases in overall traffic fatalities over the last few years of the COVID–19 pandemic, likely reflecting increases in alcohol- and

[2] Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429 section 24220 (2021).

[3] For the purposes of this document, NHTSA uses the term ''passive'' to mean that the system functions without direct action from vehicle occupants. Further information about the use of the term ''passive'' is available in the ''NHTSA's Authority'' section.

[4] Part 392 of the Federal Motor Carrier Safety Regulations prohibits any driver from operating a commercial motor vehicle (CMV) while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to continue to operate the CMV. In addition, part 392 prohibits drivers from operating a CMV while (1) under the influence of, or using, specified drugs and other substances, and (2) under the influence of, or using, alcohol within specified time and concentration limits. Further, part 392 prohibits drivers from texting or using a hand-held mobile telephone while driving a CMV.

[5] Drugged driving is excluded from the scope and is discussed more in the Introduction, A. ''Background information about impaired driving states'' of this document.

[6] NHTSA has stated that distracted driving includes talking on mobile phones, texting, eating, and other non-driving activities.

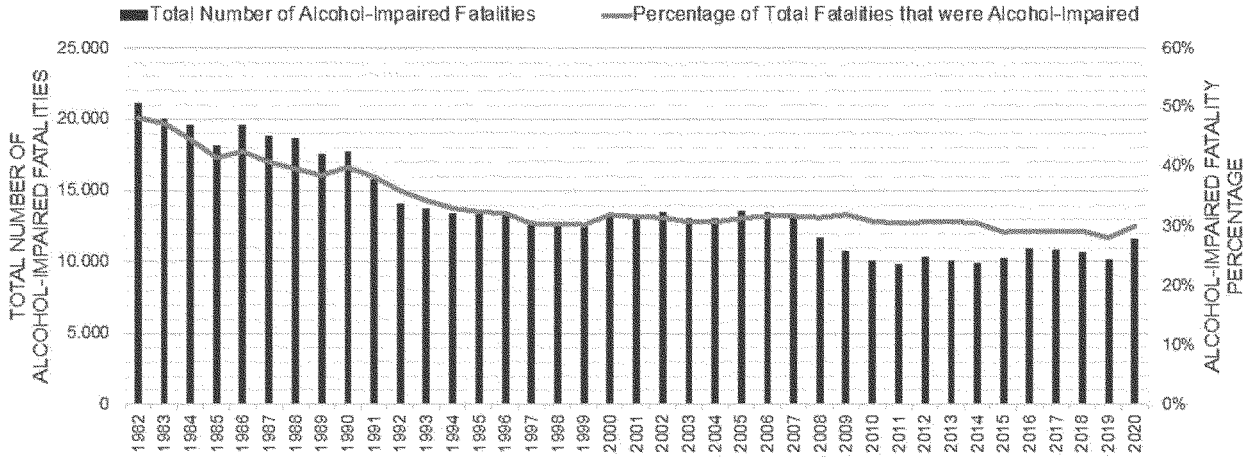
[7] Comprehensive economic costs account for the total societal harm associated with fatalities and injuries, including economic impacts and valuations of lost quality-of-life. *See* Blincoe, L., Miller, T., Wang, J.-S., Swedler, D., Coughlin, T., Lawrence, B., Guo, F., Klauer, S., & Dingus, T. (2023, February). The economic and societal impact of motor vehicle crashes, 2019 (Revised) (Report No. DOT HS 813 403). National Highway Traffic Safety Administration.

[8] Fatalities ''involving reported distraction'' refers to fatalities where a law enforcement officer reported a driver in a fatal crash as having been distracted at the time of the crash, which is associated with underreporting of all crashes, fatalities, and injuries involving and caused by distraction.

[9] The previous DADSS technology requires a directed breath toward a sensor to measure breath alcohol concentration (BrAC). The DADSS research and development effort is continuing to focus on developing technology that does not require a directed breath to detect the presence of alcohol.

drug-impaired driving.[10] While the causes of the recent fatality increases require further study and NHTSA continues to support strategies to change driver behavior, more must be done to reach our goal of zero traffic fatalities. Accordingly, in January 2022, DOT issued its National Roadway Safety Strategy (NRSS) to address the crisis of deaths on the nation's roadways.[11] The NRSS adopts the Safe Systems Approach [12] as the guiding paradigm to address roadway safety and focuses on five key objectives: safer people, safer roads, safer vehicles, safer speeds, and improved post-crash care. The Safe System Approach works by building and reinforcing multiple layers of protection both to prevent crashes from happening in the first place and to minimize the harm to those involved when crashes do occur.[13] Drunk and impaired driving is an NRSS priority.[14] The NRSS's Safe System Approach involves using all available tools, including education, outreach, enforcement, and engineering solutions, including motor vehicle technologies like alcohol, drowsiness, and visual distraction detection systems.[15] Vehicle technologies that can help prevent and mitigate risky behaviors and driver impairment are a key element of the safer vehicles element of this approach. To complement behavioral campaigns, which have reduced, but not eliminated, driving while impaired,[16] NHTSA is considering what technological countermeasures and performance requirements could be applied to motor vehicles that would achieve the NRSS safety objectives. Graph 1 provides an overview of the alcohol-impaired fatalities since the early 1980s.

Graph 1. Alcohol-Impaired Fatality Trend



Addressing each impaired driving state has its own set of unique challenges. For some, such as alcohol, technological solutions are not yet readily available that would consistently prevent a significant proportion of crashes caused by that impaired driving state. For others, such as distraction and drowsiness, there is evidence that police-reported crash data likely underestimate their role in crash causation. Amidst this uncertainty, the agency has many questions that must be answered to develop a proposal that will meet all statutory requirements and Departmental priorities.

Given the breadth of impairment states, severities, detection technologies, and interventions, it is valuable to take this opportunity to clarify the scope of this effort. In view of the larger number of fatalities associated with alcohol impairment and the well-defined legal thresholds and measurements available for alcohol impairment, as compared with other types of impairment, NHTSA is focusing this ANPRM on alcohol impairment.[17] However, based on the language in BIL, NHTSA believes that Congress did not intend to limit NHTSA's efforts under BIL to alcohol impairment. Therefore, while alcohol impairment is the focus, this ANPRM also covers two additional impairment states: drowsy driving and distracted driving. NHTSA chose these states for two reasons. First, the size of the safety problem—in particular that of distracted driving—is immense. Second, certain sensor technologies that have the potential to detect or assist in detecting alcohol impairment and are or can be incorporated into driver monitoring systems (DMS) may also have the potential to detect drowsy and distracted driving. Including these impairment states in this effort therefore presents an opportunity to deliver significant additional safety benefits to the American people. These technological considerations are discussed in greater detail in Section IV. B. ''Vehicle Based Countermeasures''.

Additionally, it is important to understand the many challenges with trying to identify and prevent the different types of impaired driving with a single performance standard. The agency is interested in learning more from commenters about what technologies and associated metrics might identify multiple types of

[10] Office of Behavioral Safety Research (2021, October). *Continuation of research on traffic safety during the COVID–19 public health emergency: January–June 2021.* (Report No. DOT HS 813 210). National Traffic Safety Administration.

[11] Available at *https://www.transportation.gov/NRSS.*

[12] *https://safety.fhwa.dot.gov/zerodeaths/docs/FHWA_SafeSystem_Brochure_V9_508_200717.pdf.*

[13] United States Department of Transportation (2022, October). What is a safe system. Website: *https://www.transportation.gov/NRSS/SafeSystem.*

[14] It also observes that considerable progress in behavioral research has been made to advance the knowledge and understanding of the physiological effects of both alcohol- and drug-impaired driving.

[15] *Id.* at 16.

[16] Taylor, C.L., Byrne, A., Coppinger, K., Fisher, D., Foreman, C., & Mahavier, K. (2022, June). Synthesis of studies that relate amount of enforcement to magnitude of safety outcomes (Report No. DOT HS 813 274–A). National Highway Traffic Safety Administration.

[17] Meaning that metrics, such as BAC, currently exist to measure the type of impairment.

impaired drivers.[18] Also, as discussed in later sections, one of the options the agency is considering presents challenges with accurately differentiating alcohol impairment from other types of impairment, like drowsiness, assuming differentiation is desired and necessary to select appropriate alerts, warnings, or interventions. In later sections, we discuss different types of impairment that might be identified by a particular technology.

It is also important to be clear here that driving while impaired with drugs other than alcohol (drugged driving) is not within the scope of this ANPRM even though drug impairment is also a significant problem. Many different drugs can affect drivers, and current knowledge about the effects of each on driving performance is limited. Furthermore, the technology and testing protocols for drugs other than alcohol, in the driving context, are not mature enough to indicate the degree of impairment and the risk of crash involvement that results from the use of individual drugs. Therefore, drugged driving is beyond the scope of this rulemaking effort but remains important to the Department and agency as it addresses fatal and serious crashes. The complexities inherent in the drugged driving safety problem are discussed in more detail in the following section.

A. Background Information About Impaired Driving States

Drunk Driving

Alcohol[19] impairment can lead to altered and negative behaviors, as well as physical conditions that increase the risk of unintentional injuries, particularly when driving. Alcohol is known to impair various driving-relevant abilities such as perception, visuomotor coordination, psychomotor performance, information processing and decision making, and attention management.[20] When consumed, alcohol is absorbed from the stomach and distributed by the blood stream throughout the body.[21] BAC is measured as the weight of alcohol in a certain volume of blood and expressed in grams per deciliter (g/dL).[22] The rise and fall of alcohol in the bloodstream (and thus, the BAC) depends on the interplay between various factors that determine the metabolization of alcohol within the person's body including frequency and amount of alcohol consumed, age, gender, body mass, consumption of other food, genetic factors, and time since alcohol consumption.[23]

In the United States, in general, a BAC of .08 g/dL and higher in drivers is defined as legally impaired[24] and a condition for arrest (in Utah, a BAC at or above .05 g/dL is the illegal limit). However, alcohol-impairment of various driving-related skills can occur at lower concentrations, and alcohol-impaired drivers can pose serious injury risks to themselves and others with any amount of alcohol in their bodies. As alcohol BAC levels rise in a person's system, the negative effects on the central nervous system increase.[25] Alcohol affects the body in a way that negatively impacts the skills needed for a person to drive safely because it impairs the function of the brain that relates to thinking, reasoning, and muscle coordination.[26] Table 1 provides an overview of the typical and predictable effects on driving over a range of BAC levels.

TABLE 1—EFFECTS OF ALCOHOL ON DRIVING[27] [28]

Blood alcohol concentration (g/dL)	Typical effects	Predictable effects on driving
.02	• Some loss of judgment • Relaxation • Slight body warmth • Altered mood	• Decline in visual functions (rapid tracking of a moving target). • Decline in ability to perform two tasks at the same time (divided attention).
.05	• Exaggerated behavior • May have loss of small-muscle control (*e.g.,* focusing your eyes). • Impaired judgment • Euphoric feeling • Lowered alertness • Release of inhibition	• Reduced coordination. • Reduced ability to track moving objects. • Difficulty steering. • Reduced response to emergency driving situations.
.08	• Muscle coordination becomes poor (*e.g.,* balance, speech, vision, reaction time, and hearing). • Harder to detect danger • Impaired judgment, self-control, reasoning, and memory.	• Reduced concentration. • Short-term memory loss. • Reduced and erratic speed control. • Reduced information processing capability (*e.g.,* signal detection, visual search). • Impaired perception.
.10	• Clear deterioration of reaction time and control • Slurred speech, poor coordination, and slowed thinking.	• Reduced ability to maintain lane position and brake appropriately.
.15	• Far less muscle control than normal • Vomiting may occur (unless this level is reached slowly or a person has developed a high tolerance for alcohol).	• Substantial impairment in vehicle control, attention to driving task, and in necessary visual and auditory information processing.

[18] The realization of additional safety benefits may depend on the performance requirements chosen by NHTSA, or the technological solution deployed by manufacturers.

[19] The term *alcohol* in this report refers to ethyl alcohol, or ethanol, which is the principal ingredient in alcoholic drinks and the substance measured to determine blood alcohol concentration.

[20] Moskowitz, H., & Burns, M. (1990). Effects of alcohol on driving performance. *Alcohol Health & Research World,* 14(1), 12–15.

[21] Paton, A. (2005). Alcohol in the body. *BMJ,* 330(7482), 85–87.

[22] National Highway Traffic Safety Administration. (2016). The ABCs of BAC: A guide to understanding blood alcohol concentration and alcohol impairment. Retrieved from *https://www.nhtsa.gov/document/theabcsofbac.*

[23] Zakhari, S. (2006). Overview: how is alcohol metabolized by the body? *Alcohol research & health,* 29(4), 245.

[24] 23 U.S.C. 163.

[25] *https://www.nhtsa.gov/risky-driving/drunk-driving#the-issue-alcohol-effects.*

[26] *https://www.nhtsa.gov/risky-driving/drunk-driving#:~:text=Alcohol%20is%20a%20substance%20that,the%20central%20nervous%20system%20increase.*

TABLE 1—EFFECTS OF ALCOHOL ON DRIVING [27] [28]—Continued

Blood alcohol concentration (g/dL)	Typical effects	Predictable effects on driving
	• Significant loss of balance.	

The driving skill decrements in Table 1 provide a means of approximating the impairment correlated with BAC levels. However, BAC is a measure of the amount of alcohol in the bloodstream rather than a reliable indicator of the degree of impairment.[29] [30] At least two factors contribute to the lack of a precise one-to-one correlation between BAC and impairment. First, regular drinkers may learn strategies for more cautious driving to compensate for their perceived skill decrements.[31] [32] Second, there is also empirical evidence that some regular drinkers develop a higher tolerance to alcohol, which results in less apparent declines in cognitive and motor performance after consuming low to moderate doses.[33] Therefore, BAC levels provide an imperfect measurement of probable impairment. Nearly two thirds of all alcohol-impaired fatalities involve high blood alcohol levels with a BAC level at or greater than 0.15 g/dL.[34] Yet even a small amount of alcohol can affect an individual's driving ability. In 2020, there were 2,041 people killed in alcohol-related crashes where a driver had a BAC level of .01 to .07 g/dL.

State alcohol impairment laws and alcohol detection devices focus on measuring the alcohol concentration in BAC and breath alcohol concentration (BrAC). These are the two measurements that State laws and alcohol detection devices utilize to determine whether someone is considered driving over the legal limit (*i.e.,* whether the person can be considered driving drunk, with ''drunk'' being defined as above the threshold of alcohol concentration established by law). BrAC is measured with a breath test device that measures the amount of alcohol in a driver's breath. BAC is usually measured via a blood test. Technology is under development that would allow for measurement in new ways. For example, one technology uses touch- or tissue-based detection of light absorption at pre-selected wavelengths from a beam of light reflected from within the skin tissue after an optical module is touched. In other words, BAC is calculated either by a blood test or, in the future, after someone touches a sensor and that sensor calculates the BAC level in the person's blood. NHTSA acknowledges that people may be affected by alcohol at levels below the legal limit used in most States (.08 g/dL), which is why the agency noted above that there are still crashes where alcohol is involved, but the driver's BAC was lower than the legal limit. NHTSA discusses each of these measurements and the vehicle technologies that can measure them later in this document.

Drugged Driving

Drugged driving, though important to prevent, is not included in the scope of this advance notice of proposed rulemaking. There are several complexities to understanding drugged or drug-involved driving.[35] To begin, the term drugs can refer to over-the-counter medications, prescription medications, and illicit drugs. Also, the mere presence of a drug in a person's system does not necessarily indicate impairment. Currently, most information collected on drugs within the driving context can provide information only on whether a driver is ''drug positive.'' [36] The presence of some drugs can remain in the body a considerable time after use, so presence at any point does not necessarily mean the person was or remains impaired by the drug.[37] For some drivers, certain prescribed medications, which may be included in a positive drug test result, may be necessary for safe driving.

Further, there are a wide range of drugs other than alcohol that can be used by drivers. There is limited research on crash risk and how each specific drug affects driving related skills, and the technology and testing protocols are not mature in the driving context. Today's knowledge about the effects of any drug other than alcohol on driving performance remains insufficient to draw connections between their use, driving performance, and crash risk.[38]

Recently, more research has been directed to the effects of cannabis, and specifically Tetrahydrocannabinol (THC), the active component of cannabis that can cause impairing effects on driving that might lend themselves to the development of THC-impaired driving detection techniques, like those that have been developed by NHTSA for use by law enforcement for alcohol-impaired driving.[39] [40] However, many of these effects may also be caused by alcohol, other drugs, and other impairment states like distraction, drowsiness, and incapacitation. Current knowledge about the effects of cannabis on driving is insufficient to allow specification of a simple measure of

[27] Table 1 should be used as a reference point for population-level analysis. The outlined effects may apply to certain individuals, but for the reasons discussed above, may vary from individual to individual. It should also be noted that while some effects are listed at multiple BACs (*e.g.,* difficulty steering), the effects are more likely to occur and more severe at higher BACs. Information in this table shows the BAC level at which the effect usually is first observed.

[28] Adapted from National Highway Traffic Safety Administration. (2016). The ABCs of BAC: A guide to understanding blood alcohol concentration and alcohol impairment. Retrieved from *https://www.nhtsa.gov/document/theabcsofbac.*

[29] Fillmore, M.T., & Vogel-Sprott, M.J.A.C. (1998). Behavioral impairment under alcohol: cognitive and pharmacokinetic factors. *Alcoholism: Clinical and experimental research,* 22(7), 1476–1482.

[30] Nicholson, M.E., Wang, M., Airhihenbuwa, C.O., Mahoney, B.S., Christina, R., & Maney, D.W. (1992a). Variability in behavioral impairment involved in the rising and falling BAC curve. *Journal of Studies on Alcohol,* 53(4), 349–356.

[31] Burian, S.E., Hensberry, R., & Liguori, A. (2003). Differential effects of alcohol and alcohol expectancy on risk-taking during simulated driving. *Human Psychopharmacology: Clinical and Experimental,* 18(3), 175–184.

[32] Vogel-Sprott, M. (1997). Is behavioral tolerance learned? *Alcohol health and research world,* 21(2), 161.

[33] *Id.*

[34] *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813120.*

[35] Berning, A., Smith, R. Drexler, M., Wochinger, K. (2022). Drug Testing and Traffic Safety: What You Need to Know. United States. Department of Transportation. (Report No. DOT HS 813 264). Washington, DC. National Highway Traffic Safety Administration.

[36] ''Drug positive'' indicates that a driver has tested positive for a drug (or drugs). However, testing positive for a drug does not indicate impairment nor any degree of potential impairment.

[37] Berning, et al., 2022.

[38] Compton, R., Vegega, M. Smither, D. (2009). Drug Impaired Driving: Understanding the Problem and Ways to Reduce It. DOT HS 811 268. Washington, DC. NHTSA.

[39] Harris, D.H., Dick, R.A., Casey, A.M., and Jarosz, C.J. (1980) The Visual Detection of Driving While Intoxicated: Field Test of Visual Cues and Detection Methods. DOT–HS–905–620. Washington, DC: NHTSA.

[40] Stuster, J.W. (1997). The Detection of DWI at BACs Below 0.10. (Report No. DOT HS 808 654). Washington, DC: U.S. Department of Transportation, NHTSA.

driving impairment outside of controlled conditions.[41]

Given these challenges, the agency is not yet considering developing performance requirements and a FMVSS for drug impaired driving.

Distracted Driving

NHTSA defines ''driver distraction'' as inattention that occurs when drivers divert their attention away from the driving task to focus on another activity.[42] In general, distractions derive from a variety of sources including electronic devices, such as navigation systems and mobile phones, as well as conventional distractions such as sights or events external to the vehicle, interactions with passengers, and eating or drinking. These distracting tasks can affect drivers in different ways, and can be categorized into the following types:

—*Visual distraction:* Tasks that require or cause the driver to look away from the roadway to visually obtain information.

—*Manual distraction:* Tasks that require or cause the driver to take a hand off the steering wheel and manipulate a device or object.

—*Cognitive distraction:* Tasks that require or cause the driver to divert their mental attention away from the driving task.

Research has shown that eyes-off-road time provides an objective measure of visual distraction, which has a demonstrated relationship with crash risk. Analyses of naturalistic data have shown that eyes-off-road times greater than 2.0 seconds have been shown to increase crash risk at a statistically significant level. Further, the risk of a crash or near-crash event increases rapidly as eyes-off-road time increases above 2.0 seconds.[43] There has been little agreement in the field regarding how to identify and measure cognitive distraction, however.[44]

Distraction can negatively affect driving performance in various ways depending on the type(s) of distraction(s), the demands of the driving task and the secondary task(s), and other factors. These effects can include decrements to reaction time, hazard detection, lateral control (*i.e.,* lane-keeping), and longitudinal control (*e.g.,* speed or following gap), as well as changes to eye movements (*e.g.,* glance patterns, eyes-off-road time), and driver workload.[45] [46] [47] For example, a meta-analysis aggregating the results of 18 simulator experiments and naturalistic driving studies reported that typing or reading text messages while driving significantly slowed reaction time, increased lane deviations, and increased eyes-off-road time.[48]

These degradations in driving performance due to distraction have been shown to translate into an increased risk of crash or near-crash involvement. An analysis of the second Strategic Highway Research Program (SHRP2) Naturalistic Driving Study [49] found that, when compared to alert and attentive driving, the odds of a crash were doubled when a driver was distracted, with secondary tasks that divert the driver's eyes away from the forward roadway having the largest multiplicative increase in crash risk (*e.g.,* dialing a handheld mobile phone increased crash risk by 12.2x, reading/writing increased crash risk by 9.9x, and reaching for a non-mobile device increased crash risk by 9.1x).[50] A similar study found that the use of handheld mobile phones in general, and specifically performing tasks with visual and manual elements (such as texting), were significantly associated with increased crash involvement.[51]

Outside of naturalistic driving studies, the role of distraction in crashes can be difficult to determine because pre-crash distractions often leave no evidence for law enforcement officers or crash investigators to observe, and drivers are often reluctant to admit to having been distracted prior to a crash. A NHTSA analysis of causal factors for fatal and non-fatal injuries estimates that 29 percent of fatal and non-fatal injuries are due to distraction. This estimate is over three times larger than the police-reported share of fatal crashes involving distraction (8.2% of all traffic fatalities in 2021, as reported in the Fatality Analysis Reporting System (FARS)). The difference between these values reflects the large role that underreporting of distraction plays in identifying distraction as a traffic safety risk. Distraction-affected crashes are a relatively new measure that focuses on distractions that are most likely to influence crash involvement, such as dialing a mobile phone or texting, and distraction by an outside person/event.[52] It is also worth noting that many studies on distracted driving and its consequences were conducted prior to the proliferation of smartphones, navigation apps and devices, and built-in technologies. Consequently, it is possible that distraction-related crashes will escalate as the prevalence, diversity, and use of new technologies continue to increase.

Currently, text messaging is banned for drivers in 48 States, handheld mobile phone use is prohibited in 31 States (*e.g.,* hands-free laws), and 36 States prohibit all mobile phone use by novice drivers.[53] When paired with high visibility enforcement campaigns, mobile phone and text messaging laws were shown to reduce drivers' use of handheld mobile phones in several pilot programs.[54]

Drowsy Driving

Drowsiness is ''the intermediate state between wakefulness and sleep as defined electro-physiologically by the pattern of brain waves (*e.g.,* electroencephalogram—EEG), eye

[41] Compton, R. (2017). Marijuana-Impaired Driving—A Report to Congress. DOT HS 812 440. Washington, DC. NHTSA.

[42] 78 FR 24,817 (proposed April 26, 2013). Visual-Manual NHTSA Driver Distraction Guidelines for In-Vehicle Electronic Devices.

[43] Klauer, S.G., Dingus, T.A., Neale, V.L., Sudweeks, J.D., & Ramsey, D.J. (2006). *The impact of driver inattention on near-crash/crash risk: An analysis using the 100-car naturalistic driving study data* (No. DOT HS 810 594). United States. Department of Transportation. National Highway Traffic Safety Administration.

[44] Young, R. (2012). Cognitive distraction while driving: A critical review of definitions and prevalence in crashes. *SAE International journal of passenger cars-electronic and electrical systems, 5*(2012–01–0967), 326–342.

[45] Regan, M.A., Lee, J.D., & Young, K. (2008). *Driver distraction: Theory, effects, and mitigation.* CRC press.

[46] Young, K. & Regan, M. (2007). Driver distraction: A review of the literature. In: I.J. Faulks, M. Regan, M. Stevenson, J. Brown, A. Porter & J.D. Irwin (Eds.). Distracted driving. Sydney, NSW: Australasian College of Road Safety. Pages 379–405.)

[47] Papantoniou, P., Papadimitriou, E., & Yannis, G. (2017). Review of driving performance parameters critical for distracted driving research. *Transportation research procedia, 25,* 1796–1805.

[48] Caird, J.K., Johnston, K.A., Willness, C.R., Asbridge, M., & Steel, P. (2014). A meta-analysis of the effects of texting on driving. *Accident Analysis & Prevention, 71,* 311–318.

[49] SHRP2 large scale data collection effort. Data were collected from over 3,000 drivers. For more information see: *https://www.fhwa.dot.gov/goshrp2/Solutions/All/NDS/Concept_to_Countermeasure__Research_to_Deployment_Using_the_SHRP2_Safety_Data.*

[50] Dingus, T.A., Guo, F., Lee, S., Antin, J.F., Perez, M., Buchanan-King, M., & Hankey, J. (2016). Driver crash risk factors and prevalence evaluation using naturalistic driving data. *Proceedings of the National Academy of Sciences, 113*(10), 2636–2641.

[51] Owens, J.M., Dingus, T.A., Guo, F., Fang, Y., Perez, M., & McClafferty, J. (2018). *Crash risk of cell phone use while driving: A case-crossover analysis of naturalistic driving data.* AAA Foundation for Traffic Safety. *https://aaafoundation.org/wp-content/uploads/2018/01/CellPhoneCrashRisk_FINAL.pdf.*

[52] NHTSA. (2012). *Blueprint for ending distracted driving* (Report No. DOT HS 811 629). *www.nhtsa.gov/sites/nhtsa.dot.gov/files/811629.pdf.*

[53] *https://www.ghsa.org/state-laws/issues/distracted%20driving.*

[54] Chaudhary, N.K., Casanova-Powell, T.D., Cosgrove, L., Reagan, I., & Williams, A. (2014, March). *Evaluation of NHTSA distracted driving demonstration projects in Connecticut and New York* (Report No. DOT HS 81 635). National Highway Traffic Safety Administration.

movements, and muscle activity.'' [55] Driver drowsiness has a variety of biological contributors, including sleeplessness or sleep deprivation, changes in sleep patterns, untreated sleep disorders, and use of drugs with sedative effects, including alcohol.[56] Driver drowsiness can lead to impairments in cognitive and psychomotor speed, attentional distribution, vigilance, and working memory.[57]

Within the driving context, performance measures that have shown drowsiness-related decrements include lane keeping and lane departures,[58] slower driving speed and decreased speed stability,[59] and longer reaction times.[60] Drowsiness can progress into microsleep and sleep events, in which the driver may experience cognitive and/or visual lapses of increasing duration, posing increasingly serious risks of crash involvement.[61] Situational factors such as increasing time on task and monotony of driving environment can contribute to driver drowsiness.[62]

While driver drowsiness cannot be measured directly, it can be indirectly detected and measured using both objective and subjective measures. Objective measures related to driver drowsiness include physiological signals of brain activity (*e.g.,* EEG, EKG,[63], EOG [64]), other biological markers (*e.g.,* heart rate, respiration, galvanic skin response), measures based on observations of the driver (*e.g.,* head pose, eye closure, blink rate), and vehicle control measures (*e.g.,* steering wheel angle, lane departures, speed variation). Using multiple measures in combination may increase the accuracy and reliability of drowsiness detection.[65]

Among brain activity measures, EEG is most frequently used to measure brain states, including drowsiness.[66] While factors such as individual differences, time of day, and other non-drowsiness related brain activity can be confounding factors, signal markers in EEG data can indicate the presence and degree of drowsiness.[67] While EEG and some other direct brain measures are advancing in their ease of use and portability, they are generally not feasible for in-vehicle use at the present time.

Camera-based-systems, however, are increasingly feasible and common in vehicles. Camera-based systems have the potential to measure a wide array of driver head and face characteristics that may be indicative of drowsiness, including driver head pose, driver gaze activity (*e.g.,* number and distribution of glances), the percentage of time the driver's eyes are closed (*i.e.,* PERCLOS [68]), blink speed, eye closure duration, yawns, and other facial expressions.

As noted previously, driver drowsiness tends to become progressively more pronounced over time. The progressive nature of driver drowsiness means that it is possible to estimate a driver's future drowsiness state—seconds or even more than a minute into the future—based on their current drowsiness state. Researchers have used various physiological and behavioral measures to develop models to predict drivers' subjective drowsiness,[69] predict the occurrence of microsleeps,[70] and predict drowsiness as determined by coders looking at video of drivers' faces.[71] While limited research exists to demonstrate the feasibility of drowsiness state prediction under real-world driving conditions, further developments in drowsiness prediction could allow vehicles to provide alerts and interventions to reduce the risks of drowsy driving before they become severe.

As the detection and prediction of driver drowsiness within a vehicle becomes increasingly feasible, it is possible to consider potential vehicle-based countermeasures to reduce risk. While there is limited research investigating interventions to reduce drowsy driving risks, evidence suggests that auditory,[72] visual,[73] and seat belt vibration [74] warnings can help to improve drowsy drivers' driving performance, and that there may be benefits to multi-staged warnings relative to single-stage warnings.[75]

B. Many Different Behavioral Strategies Exist, Yet Impaired Driving Persists

Alcohol-impaired driving is a behavioral issue, and in general, changing human behavior is particularly challenging.[76] NHTSA has made considerable progress in behavioral research to advance the knowledge and understanding of the physiological

[55] Johns, M.W. (2000). A sleep physiologist's view of the drowsy driver. Transportation research part F: traffic psychology and behaviour, 3(4), 241–249.

[56] *https://www.cdc.gov/sleep/features/drowsy-driving.html.*

[57] Goel, N., Rao, H., Durmer, J.S., & Dinges, D.F. (2009, September). Neurocognitive consequences of sleep deprivation. In Seminars in neurology (Vol. 29, No. 04, pp. 320–339).

[58] Fairclough SH, Graham R. Impairment of driving performance caused by sleep deprivation or alcohol: A comparative study. Human Factors. 1999; 41(1):118–128.

[59] Soares, S., Monteiro, T., Lobo, A., Couto, A., Cunha, L., & Ferreira, S. (2020). Analyzing driver drowsiness: From causes to effects. Sustainability, 12(5), 1971.

[60] Kozak, K., Curry, R., Greenberg, J., Artz, B., Blommer, M., & Cathey, L. (2005, September). Leading indicators of drowsiness in simulated driving. In Proceedings of the Human Factors and Ergonomics Society Annual Meeting (Vol. 49, No. 22, pp. 1917–1921).

[61] Blaivas, A. J., Patel, R., Hom, D., Antigua, K., & Ashtyani, H. (2007). Quantifying microsleep to help assess subjective sleepiness. Sleep medicine, 8(2), 156–159.

[62] Thiffault, P., & Bergeron, J. (2003). Monotony of road environment and driver fatigue: a simulator study. Accident Analysis & Prevention, 35(3), 381–391.

[63] Electrocardiogram (EKG or ECG).

[64] Electroocoulogram (EOG).

[65] Albadawi, Y., Takruri, M., & Awad, M. (2022). A review of recent developments in driver drowsiness detection systems. Sensors, 22(5), 2069.

[66] De Gennaro, L., Ferrara, M., Curcio, G., & Cristiani, R. (2001). Antero-posterior EEG changes during the wakefulness–sleep transition. Clinical neurophysiology, 112(10), 1901–1911.

[67] Stancin, I., Cifrek, M., & Jovic, A. (2021). A review of EEG signal features and their application in driver drowsiness detection systems. Sensors, 21(11), 3786.

[68] Hanowski, R.J., Bowman, D., Alden, A., Wierwille, W.W., & Carroll, R. (2008). PERCLOS+: Development of a robust field measure of driver drowsiness. In 15th World Congress on Intelligent Transport Systems and ITS America's 2008 Annual Meeting.

[69] Murata, A., Ohta, Y., & Moriwaka, M. (2016). Multinomial logistic regression model by stepwise method for predicting subjective drowsiness using performance and behavioral measures. In Proceedings of the AHFE 2016 International Conference on Physical Ergonomics and Human Factors, July 27–31, 2016, Walt Disney World®, Florida, USA (pp. 665–674).

[70] Watson, A., & Zhou, G. (2016, June). Microsleep prediction using an EKG capable heart rate monitor. In 2016 IEEE First International Conference on Connected Health: Applications, Systems and Engineering Technologies (CHASE) (pp. 328–329). IEEE.

[71] de Naurois, C.J., Bourdin, C., Stratulat, A., Diaz, E., & Vercher, J.L. (2019). Detection and prediction of driver drowsiness using artificial neural network models. Accident Analysis & Prevention, 126, 95–104.

[72] Berka, C., Levendowski, D., Westbrook, P., Davis, G., Lumicao, M.N., Ramsey, C., . . . & Olmstead, R.E. (2005, July). Implementation of a closed-loop real-time EEG-based drowsiness detection system: Effects of feedback alarms on performance in a driving simulator. In 1st International Conference on Augmented Cognition, Las Vegas, NV (pp. 151–170).

[73] Fairclough, S.H., & van Winsum, W. (2000). The influence of impairment feedback on driver behavior: A simulator study. Transportation human factors, 2(3), 229–246.

[74] Arimitsu, S., Sasaki, K., Hosaka, H., Itoh, M., Ishida, K., & Ito, A. (2007). Seat belt vibration as a stimulating device for awakening drivers. IEEE/ASME Transactions on mechatronics, 12(5), 511–518.

[75] Gaspar, J.G., Brown, T.L., Schwarz, C.W., Lee, J.D., Kang, J., & Higgins, J.S. (2017). Evaluating driver drowsiness countermeasures. Traffic injury prevention, 18(sup1), S58–S63.

[76] In the medical field, the National Institutes of Health (NIH) established a program nearly 15 years ago to study behavior change and try to identify the most successful mechanisms that result in the most behavior change. They understood the problem and developed interventions, but they really did not understand why the intervention worked for some but not others. *See https://scienceofbehavior change.org/what-is-sobc/* for an example of a NIH project focusing on the science behind changing human behaviors.

effects of alcohol impairment on driving. Additionally, NHTSA has taken a multi-pronged approach to trying to eliminate alcohol-impaired driving. Four basic strategies are used to reduce impaired driving crashes and driving under the influence:

1. *Deterrence:* enact, publicize, enforce, and adjudicate laws prohibiting impaired driving so people choose not to drive impaired;

2. *Prevention:* reduce drinking and drug use to keep drivers from becoming impaired;

3. *Communications and outreach:* inform the public of the dangers of impaired driving and establish positive social norms that make driving while impaired unacceptable; and

4. *Alcohol and drug treatment:* reduce alcohol and drug dependency or addiction among drivers.[77]

NHTSA uses and encourages a variety of different behavioral strategies, focusing on those strategies that are demonstrably effective.[78] Some strategies, like laws, enforcement, criminal prosecution, and offender treatment and monitoring, have a deterrent effect. Other strategies focus on prevention, intervention, communications, and outreach.[79]

C. NHTSA's Authority

The National Traffic and Motor Vehicle Safety Act provides NHTSA with broad authority to address motor vehicle safety problems like driver impairment. Under the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30101 *et seq.*) (Safety Act), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms.[80] ''Motor vehicle safety'' is defined in the Safety Act as ''the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle.'' [81] ''Motor vehicle safety standard'' means a minimum standard for motor vehicle or motor vehicle equipment performance.[82] When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information.[83] The Secretary must also consider whether a proposed standard is reasonable, practicable, and appropriate for the types of motor vehicles or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic crashes and associated deaths.[84] The responsibility for promulgation of FMVSS is delegated to NHTSA.[85]

To meet the Safety Act's requirement that standards be ''practicable,'' NHTSA must consider several factors, including technological and economic feasibility [86] and consumer acceptance.[87] Technological feasibility considerations counsel against standards for which ''many technical problems have been identified and no consensus exists for their resolution . . . .'' [88] However, it does not require that the technology be developed, tested, and ready for deployment at the time the standard is promulgated. Economic feasibility considerations focus on whether the cost on industry to comply with the standard would be prohibitive. Finally, NHTSA must consider consumer acceptance. In particular, the U.S. Court of Appeals for the D.C. Circuit has noted that ''motor vehicle safety standards cannot be considered practicable unless we know . . . that motorists will avail themselves of the safety system. And it would be difficult to term 'practicable' a system . . . that so annoyed motorists that they deactivated it.'' [89] NHTSA also understands that if consumers do not accept a required safety technology, the technology will not deliver the safety benefits that NHTSA anticipates.[90]

The Safety Act also contains a ''make inoperative'' provision, which prohibits certain entities from knowingly modifying or deactivating any part of a device or element of design installed in or on a motor vehicle in compliance with an applicable FMVSS.[91] Those entities include vehicle manufacturers, distributors, dealers, rental companies, and repair businesses. Notably, the make inoperative prohibition does not apply to individual vehicle owners.[92] While NHTSA encourages individual vehicle owners not to degrade the safety of their vehicles or equipment by removing, modifying, or deactivating a safety system, the Safety Act does not prohibit them from doing so. This creates a potential source of issues for solutions that lack consumer acceptance, since individual owners would not be prohibited by Federal law from removing or modifying those systems (*i.e.,* using defeat mechanisms).

Section 24220 of BIL, ''Advanced Impaired Driving Technology,'' [93] directs NHTSA to issue a final rule prescribing an FMVSS ''that requires passenger motor vehicles manufactured after the effective date of that standard to be equipped with advanced drunk and impaired driving prevention technology.'' [94] NHTSA is required to issue such a rule only if it would meet the criteria in section 30111 of the Safety Act.[95] As explained above, those criteria include, among other things, that an FMVSS be objective, practicable, and meet the need for motor vehicle safety. In analyzing these criteria, NHTSA must balance benefits and costs and consider safety as the preeminent factor in its considerations.[96]

[77] *https://www.nhtsa.gov/book/countermeasures/alcohol-and-drug-impaired-driving/strategies-reduce-impaired-driving.*

[78] *See https://www.nhtsa.gov/book/countermeasures/alcohol-and-drug-impaired-driving/countermeasures.*

[79] *Id.*

[80] 49 U.S.C. 30111(a).

[81] 49 U.S.C. 30102(a)(9).

[82] Section 30102(a)(10).

[83] Section 30111(b)(1).

[84] Section 30111(b)(3)–(4).

[85] 49 CFR 1.95.

[86] *See, e.g., Paccar, Inc.* v. *Nat'l Highway Traffic Safety Admin.,* 573 F.2d 632, 634 n.5 (''Practicable' is defined to require consideration of all relevant factors, including technological ability to achieve the goal of a particular standard as well as consideration of economic factors.'') (citations and quotations omitted).

[87] *Pac. Legal Found.* v. *Dep't of Transp.,* 593 F.2d 1338, 1345 (D.C. Cir. 1979) (noting in reference to practicable and meet the need for safety, that ''the agency cannot fulfill its statutory responsibility unless it considers popular reaction.'').

[88] *Simms* v. *Nat'l Highway Traffic Safety Admin.,* 45 F.3d 999, 1011 (6th Cir. 1995).

[89] *Pac. Legal Found.,* 593.F.2d at 1346. The court also noted that the Secretary could reasonably anticipate consumers to be more willing to accept airbags than automatic seatbelts and seatbelt interlocks because airbags impose less on the driver and research indicated a lower deactivation rate for airbags than interlock systems.

[90] *See,* 82 FR 3854, 3920. Due to the nature of the technology, consumer acceptance was a key factor discussed in the 2017 NPRM on vehicle-to-vehicle (V2V) technology. NHTSA also conducted significant research into consumer acceptance and beliefs about V2V technology.

[91] 49 U.S.C. 30122.

[92] Letter to Schaye (9/9/19) (''The ''make inoperative'' provision does not apply vehicle owners, and these owners are not precluded from modifying their vehicle by NHTSA's statutes or regulations. State and local laws, however, may impact whether an owner may use a vehicle they have modified in a particular jurisdiction.''), *available at https://www.nhtsa.gov/interpretations/571108-ama-schaye-front-color-changing-light.*

[93] Infrastructure Investment and Jobs Act, Public Law 117–58, section 24220 (2021).

[94] Section 24220(c).

[95] Section 24220(c), (e).

[96] *See, e.g., Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.,* 463 U.S. 29, 55 (1983) (''The agency is correct to look at the costs as well as the benefits of Standard 208 . . . When the agency reexamines its findings as to the likely increase in seat belt usage, it must

Continued

Section 24220 defines ''Advanced Drunk and Impaired Driving Technology'' as a system that

(A) can—

(i) passively monitor the performance of a driver of a motor vehicle to accurately identify whether that driver may be impaired; and

(ii) prevent or limit motor vehicle operation if an impairment is detected; or

(B) can—

(i) passively and accurately detect whether the blood alcohol concentration of a driver of a motor vehicle is equal to or greater than the blood alcohol concentration described in section 163(a) of title 23, United States Code; and

(ii) prevent or limit motor vehicle operation if a blood alcohol concentration above the legal limit is detected; or

(C) is a combination of systems described in subparagraphs (A) and (B).[97]

This means that a final rule could require vehicles be equipped with a system that detects whether the driver is impaired (an impairment-detection system); a system that detects whether the driver's BAC is above a specified threshold (a BAC-detection system); or a combination of these two systems. These options and the technology that might fulfill each option are discussed in greater detail later in this document.

Section 24220 further requires that the ''Advanced Drunk and Impaired Driving Technology'' ''passively'' monitor performance or detect BAC. For the purposes of this advance notice of proposed rulemaking, NHTSA uses the term ''passive'' to mean that the system functions without direct action from vehicle occupants.[98] As such, systems that require a ''directed breath'' towards a sensor, such as the current DADSS reference designs (discussed later in this document) or a breathalyzer that a driver must breathe into in order for the system to detect alcohol would not be considered ''passive'' because these designs require a vehicle occupant to take direct action (*i.e.,* directed breath) for the system to function.

Section 24220 does not require that a final rule give manufacturers the option of choosing between an impairment-detection and a BAC-detection system. NHTSA understands the term ''impairment,'' for the purposes of section 24220, to refer to alcohol-related impairment as well as other types of driver impairment. Of course, regardless of how the term ''impairment'' is construed for the purposes of section 24220, NHTSA also has the authority under the Safety Act to issue an FMVSS addressing any type of driver impairment if the standard would satisfy the criteria in section 30111 of the Safety Act.

The new FMVSS would be required to apply to new vehicles that carry 12 or fewer individuals, not including motorcycles or trucks not designed primarily to carry its operator or passengers.[99]

BIL also establishes a series of deadlines and requirements for NHTSA to report to Congress if those deadlines are not met. The legislation directs NHTSA to issue a final rule (if it would meet the section 30111 criteria) not later than November 15, 2024. If NHTSA does not issue a rule by this date, it must submit a report to Congress explaining (among other things) the reasons for not issuing a final rule.[100] NHTSA must submit such reports annually until it issues a final rule or ten years has expired, from the date of enactment, whichever comes first.[101]

III. Advanced Drunk and Impaired Driving Prevention Safety Problem

The overall safety problem caused by various types of states of impaired driving is substantial, and those impaired states are part of the causal chain for a large percentage of crashes in the United States. A recent NHTSA report, ''The Economic and Societal Impact of Motor Vehicle Crashes (2019),'' reviewed 2019 data and described the state of safety prior to the COVID–19 pandemic.[102] In 2019, the lost lives and costs on our society stemming from motor vehicle crashes were enormous—36,500 people were killed, 4.5 million people were injured, and the economic costs of these crashes totaled $340 billion. Of this $340 billion, nearly half ($167 billion) resulted from alcohol-involved and distracted-driving crashes alone. Furthermore, the overall safety problem has only gotten worse during the COVID–19 pandemic, as NHTSA has confirmed that the increases in fatalities, injuries, and risky driving that the country experienced in 2020 continued through the first two quarters of 2022.[103] Recent first quarter projections for traffic fatalities in 2023 [104] have reversed the trend, with NHTSA *estimating* an overall fatality decrease of about 3.3 percent as compared to the same time period in 2022. The second quarter of 2023 would represent the fifth straight quarterly decline in fatalities after seven consecutive quarters of year-to-year increases in fatalities, beginning with the third quarter of 2020. Please see Graph 2. Fatalities by Quarter [105] below. While this is encouraging overall, far too many people continue to die on our roads every year, and drunk and impaired driving crashes still result in significant numbers of those lives lost.

also reconsider its judgment of the reasonableness of the monetary and other costs associated with the standard. In reaching its judgment, NHTSA should bear in mind that Congress intended safety to be the preeminent factor under the Motor Vehicle Safety Act.'').

[97] Section 24220(b).

[98] FMVSS Nos. 208, ''Occupant crash protection,'' and 212, ''Windshield mounting,'' use a similar definition for completely passive protection systems for occupants. 49 CFR 571.208, 571.212. DADSS has also viewed the term similarly. See Report to Congress on Progress In-Vehicle Alcohol Detection Research, October 1, 2019 through September 30, 2020.

[99] Section 24220 (b)(3), referring to 49 U.S.C. 32101(consumer information statutes).

[100] Section 24220 (e)(2). The report must also describe the deployment of advanced drunk and impaired driving prevention technology in vehicles, any information relating to the ability of vehicle manufacturers to include advanced drunk and impaired driving prevention technology in new passenger motor vehicles, and an anticipated timeline for prescribing the Federal motor vehicle safety standard.

[101] Section 24220 (e)(2)–(3). If, after ten years, NHTSA has not promulgated the FMVSS required by this subsection, the report must state the reasons why the FMVSS was not finalized, the barriers to finalizing the FMVSS, and recommendations to Congress to facilitate the FMVSS.

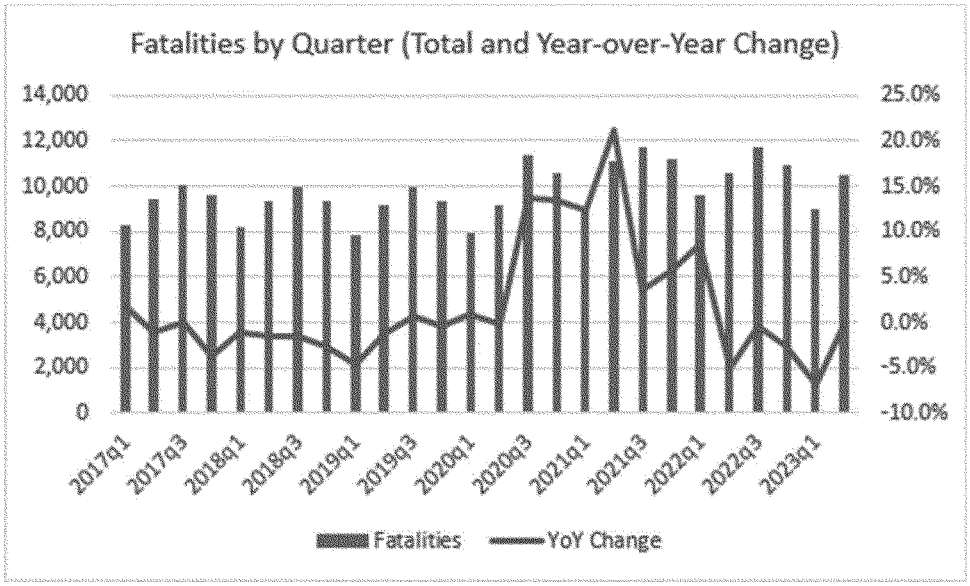
[102] Blincoe, L., Miller, T., Wang, J.S., Swedler, D., Coughlin, T., Lawrence, B., Guo, F. Klauer, S., & Dingus, T. (2023, February). The economic and societal impact of motor vehicle crashes, 2019 (Revised) (Report No. DOT HS 813 403). National Highway Traffic Safety Administration.

[103] See, for example, NHTSA Estimates: Traffic Deaths Third Quarter of 2022 | NHTSA.

[104] Crash Stats: Early Estimate of Motor Vehicle Traffic Fatalities for the First Quarter of 2023 (*dot.gov*)

[105] NHTSA (2023). *Early Estimate of Motor Vehicle Traffic Fatalities for the First Half (January–June) of 2023.* Report No. DOT HS 813 514. National Highway Traffic Safety Administration: Washington, DC. (September)

Graph 2. Fatalities by Quarter



The introduction to this advance notice of proposed rulemaking states that NHTSA is considering focusing primarily on alcohol impairment, both because of the mandate in the BIL and because alcohol impairment has the tangible strategies developed to identify it. But the agency requests comment on this focus because of the danger that other impaired states cause during the driving task and because some options described in later sections provide the opportunity to resolve multiple states of impairment with the same technological solution. In this section, NHTSA will discuss the drunk, drowsy, and distracted driving states that account for most of the fatalities and crashes related to impaired driving. NHTSA has presented the safety problem in this way because the agency is interested in proceeding with whatever practical course of action results in the most lives saved and injuries prevented in the shortest amount of time, regardless of what impaired driving state is the root cause. Additionally, NHTSA believes the public should be aware of the overall safety problem associated with driver impairment so that it may have adequate information when responding to NHTSA's questions about whether focusing on alcohol-impairment is the best path forward to achieve improved motor vehicle safety and protect the public from the complex behavioral issues that result in driver impairment.

For this analysis, we consider the three categories of impaired driving safety impacts most likely to be ameliorated by a safety countermeasure arising from this ANPRM: drunk driving, drowsy driving, and distracted driving. As mentioned in the introduction, NHTSA hopes that the agency's approach may yield additional safety benefits by considering all technologies that have the potential to mitigate or prevent impaired driving fatalities and injuries.

The safety data on drunk driving, and the confidence in those data, are much more substantial than data on other types of impaired driving, and drunk driving results in serious loss of life, injury, and economic costs to the public. This section will present estimates of annual fatalities and injuries due to drunk, drowsy, and distracted driving.

It is also worth noting that in other recent rulemakings, NHTSA decided not to use post-2019 data because the agency was not yet sure whether the disturbing uptick in crashes and fatalities was an anomaly or a trend that reflects a change in vehicle safety that would remain for more than one year or the foreseeable future. Analysis since the issuance of previous documents indicates that data from 2020 and 2021 highlight a potentially dangerous trend in the United States of an increase in motor vehicle crashes and fatalities, which is why this advance notice of proposed rulemaking differs from other documents issued in the recent past in citing post-2019 data.

A. Drunk Driving

Per FARS, in 2021 there were 13,384 traffic fatalities in which at least one driver had a BAC at or above .08 g/dL, (representing approximately 31 percent of all traffic fatalities in the United States). NHTSA's process for identifying fatalities due to drunk driving begins by acknowledging that not all alcohol-related motor vehicle fatalities and injuries are caused by alcohol consumption. In NHTSA's fatality numbers reported in FARS, use of the term ''alcohol-impaired'' does not indicate that a crash or a fatality was caused by alcohol impairment, only that an alcohol-impaired driver was involved in the crash. That is, some of the crashes may have involved causative factors other than alcohol (*e.g.,* one or multiple drivers or vehicles associated with speeding, reckless behavior, or mechanical failure).

Critically for this advance notice of proposed rulemaking, NHTSA's analysis has applied Blomberg et al.'s risk factors to estimate that alcohol is indeed a causal factor in 94 percent of crashes involving at least one driver with a BAC at or above .08 g/dL.[106] Thus, the agency estimates that, among all crashes, fatalities, and injuries involving drivers that have a BAC at or above .08 g/dL, 94 percent of them are due directly to

[106] Blincoe et al., 2023 Blomberg, R., Peck, R.C., Moskowitz, H., Burns, M., & Fiorentino, D. (2005, September). Crash risk of alcohol-involved driving: A case-control study. Dunlap and Associates; Blincoe et al., 2023.

alcohol consumption and are thus within the scope of impaired driving countermeasures that would focus on the legal limit in most States (.08 g/dL). This yields an estimate of approximately 12,581 fatalities in 2021 due to alcohol impairment. At an estimated comprehensive economic cost of approximately $12.7 million per fatality (adjusted to 2022 dollars using the GDP Implicit Price Deflator [107] [108]), fatalities in alcohol impairment-related crashes were associated with societal safety costs of approximately $160 billion in 2021.

B. Distracted Driving

Historically, distracted driving crashes have been more difficult to quantify than drunk driving crashes because unlike BAC, distraction cannot yet be tested for objectively post-crash. However, Blincoe et al. developed and implemented a methodology to estimate both: (1) underreporting of cases involving distraction; and (2) the shares of crashes, fatalities, and injuries caused by distraction.[109] NHTSA applies the results of Blincoe et al. here to 2021 FARS data to estimate fatalities in 2021 due to distracted driving.

Blincoe et al. estimate that 28.9 percent of all crashes (and injuries of all severities within crashes) are due to distraction. Based on this estimate, the agency estimates that distracted driving caused 12,405 fatalities in 2021. This represents a societal safety cost of approximately $158 billion, an economic estimate of the loss of life.

Dingus et al. report that approximately seven percent of cases of distraction also involve some form of impairment. In turn, it is appropriate to assume that there is at least some degree of overlap among drunk driving and distracted driving fatalities. Thus, the combined safety problem associated with drunk driving and distracted driving is likely to be somewhat smaller than the sum of the individual estimates above (*i.e.,* distracted driving fatalities in 2021 not jointly caused by alcohol would be up to 7% lower than the estimate of 12,405 fatalities above).

C. Drowsy Driving

Drowsy driving is more difficult to quantify than drunk driving because, among other factors, there is not currently an accepted standard definition of drowsiness in a driving context, nor a threshold to define drowsiness as a causal factor in motor vehicle crashes. In turn, the level of drowsiness-related crashes and injuries is subject to faulty measurement, with underreporting more likely than overreporting. In defining the drowsy driving safety problem, NHTSA begins with estimates based on police-reported drowsiness as a contributing factor, and then considers external estimates of underreporting.

To estimate fatalities in 2021 associated with drowsy driving, the agency analyzes fatalities reported in FARS in which at least one driver was reported as asleep or drowsy: this revealed 684 fatalities, or approximately 1.6 percent of total annual fatalities.

Applying estimates of the comprehensive economic costs of injury from the last section, NHTSA estimates that reported fatalities associated with drowsy driving in 2021 represent a social cost of approximately $9 billion.

NHTSA's annual estimates of fatalities associated with drowsy driving are consistent with other NHTSA estimates (*e.g.,* annual drowsiness-related fatality estimates in NHTSA's ''Drowsy Driving 2015'').[110] [111] However, the estimates are lower than other external estimates, such as Tefft, which estimates that one-sixth of traffic fatalities are associated with drowsiness,[112] and Owens et. al which estimates that approximately one-tenth of police-reportable crashes are associated with drowsiness.[113] NHTSA does not have sufficient evidence regarding underreporting. On the other hand, consistent with the discussion of drowsiness-related crashes and acknowledges that underreporting distracted driving above, it is a feasible constraint to estimating the scale of the that at least some fatalities caused by drowsy driving safety problem. are also caused by alcohol impairment or distraction (furthermore, the drowsiness itself could be caused by drinking, and the distraction itself could be caused by drowsiness). For this analysis, the agency applies its estimate as a conservative estimate of a significant safety issue (*i.e.,* NHTSA expects the true annual safety costs associated with drowsy driving to be at least as large as estimated here). The agency requests comment and data regarding underreporting of drowsy driving, and interdependencies among drunk driving, distracted driving, and drowsy driving.

IV. Overview of Current Efforts To Address Drunk and Impaired Driving

NHTSA has a robust portfolio of behavioral-prevention and vehicle-research activities focused on preventing drunk and impaired driving. NHTSA believes that the combination of these strategies (*i.e.,* behavioral strategies and vehicle-based countermeasures) is necessary to move towards a nation where alcohol-impaired individuals are unable to drive vehicles and put the lives of everyone around them at risk by doing so. As discussed in the introduction, one of the effects that leads drivers to take such unacceptable risks when intoxicated is alcohol's impact on their brain, especially in impairing judgment.

A. State and Federal Behavioral Prevention Activities

Behavioral prevention activities are public-oriented strategies intended to change the behaviors that lead to drunk and impaired driving. This is distinguished from vehicle-based countermeasures, which are discussed later in this document. To develop and implement these behavioral strategies, NHTSA collaborates with a wide array of national, regional, State, and local traffic safety partners, including those in the following sectors: public safety and criminal justice; medical, public health and emergency services; educators; parents; non-profits; traffic safety organizations; and academic institutions. More recently, NHTSA has expanded these partnerships to include substance use prevention, mental health, and overall wellness efforts as part an overall approach to address issues that lead to drunk and impaired driving.

NHTSA's behavioral prevention activities can be categorized into three main areas. First, NHTSA conducts research to identify the scope of the issue and develop effective evidence-based strategies to address the behaviors that lead to drunk and impaired driving. Second, NHTSA distributes Federal grant funds to individual States, and these funds are used for behavioral strategies.[114] Each State is required to

[107] Blincoe et al., 2023.

[108] *https://fred.stlouisfed.org/series/USAGDPDEFAISMEI.*

[109] Blincoe et al., 2023.

[110] National Center for Statistics and Analysis. (2017 October). Drowsy Driving 2015 (CrashStats Brief Statistical Summary. Report No. DOT HS 812 446). Washington, DC: National Highway Traffic Safety Administration.

[111] Knipling, R. & Wang, J. (1994). Crashes and fatalities related to driver drowsiness/fatigue. Washington, DC: National Highway Traffic Safety Administration.

[112] Tefft, B. (2010). *The Prevalence and Impact of Drowsy Driving* (Technical Report). Washington, DC: AAA Foundation for Traffic Safety.

[113] Owens, J.M., Dingus, T.A.. Guo, F., Fang, Y., Perez, M., McClafferty, J., & Tefft, B.C. (2018). *Prevalence of Drowsy Driving Crashes: Estimates from a Large-Scale Naturalistic Driving Study* (Research Brief). Washington, DC: AAA Foundation for Traffic Safety.

[114] *See, e.g.,* 23 U.S.C. 402 (fund that can be used for any purpose); 23 U.S.C. 405(d) (priority funds,

have a highway safety program, approved by the Secretary of Transportation, that is designed to reduce traffic crashes and the resulting deaths, injuries, and property damage. NHTSA provides grants to each State for their highway safety program as well as funds to address national priorities for reducing highway deaths and injuries, such as impaired driving programs. Third, NHTSA works directly with States and other stakeholders to develop, implement, and support effective programs and strategies to stop drunk and impaired driving. This includes demonstration projects, training and education for traffic safety professionals, and communications campaigns to educate the public. NHTSA also helps States use data to identify their highway safety needs and evaluate safety programs and activities, and the agency provides technical assistance and training to State program managers.

Below we briefly discuss four of the main drunk and impaired driving behavioral strategies that help us execute our three main areas mentioned above: Deterrence; Prevention; Communications and outreach; and alcohol and drug treatment programs.[115]

1. Deterrence

Deterrence includes enacting laws that prohibit drunk and impaired driving, publicizing and enforcing those laws, and identifying and punishing offenders.[116] Deterrence works by changing a driver's behavior through concern for the consequences of certain behaviors, such as being apprehended by law enforcement. Below we provide a brief overview of activities in these areas with respect to drunk and impaired driving, with a focus on State and Federal drunk driving laws and NHTSA's efforts to support and develop training and best practices for law enforcement, prosecutors, judges, and other public safety and criminal justice partners.

a. State and Federal Drunk Driving Laws

State laws, as well as Federal law governing the use of motor vehicles on Federally owned land, prohibit operation of a motor vehicle when the driver is at or exceeds the state's per se illegal limit (*i.e.,* BAC of .08 g/dL in all states, except Utah which has a .05 g/dL illegal limit).

All States have enacted drunk driving laws. Some of these laws have been incentivized by Federal law, because significant portions of the Federal funds available to the States, including State Highway funds, are conditioned on a State enacting and enforcing specific laws related to drunk driving. This includes laws prohibiting operation of a motor vehicle with a BAC of .08 percent or greater;[117] laws prohibiting individuals under the age of 21 from operating a motor vehicle with a BAC of .02 percent or greater (zero-tolerance laws);[118] laws setting a minimum drinking age of 21;[119] and laws prohibiting possession of open alcohol beverage containers and consumption of alcohol in a vehicle (open-container laws).[120] If a State does not have the required laws, it loses significant funding to which it would otherwise be entitled. Accordingly, all States have enacted such laws.[121] Many States have also gone above and beyond the Federally-incentivized laws. For instance, on December 30, 2018, Utah lowered its BAC threshold to .05 g/dL for all drivers. Examples of other laws States have enacted include driver license revocation or suspension if drivers fail or refuse to take BAC tests, and increased penalties for repeat offenders or for offenders with higher BACs.

The National Transportation Safety Board (NTSB) has recently recommended that NHTSA seek legislative authority to award incentive grants for States to establish a per se BAC limit of .05 or lower for all drivers who are not already required to adhere to lower BAC limits.[122] In response to this recommendation, NHTSA published the results of preliminary research on the effects of Utah's law.[123] This research suggests that the .05 g/dL per se law has had quantifiable positive impacts on highway safety in Utah so that lower BAC thresholds may be effective in further reducing alcohol-involved crashes. In addition to these State laws, Federal regulations prohibit drunk driving on Federal lands.[124] An individual may not operate a motor vehicle on Federal land if they are unable to safely operate the vehicle due to the influence of alcohol or other drugs, or if their BAC is .08 g/dL or greater.[125] The law also authorizes testing of three bodily fluids: blood, saliva, and urine. It includes stipulations around proper administration of accepted scientific methods and equipment used by certified personnel, noting that for blood sample testing, there are further restrictions whereby normally a search warrant is required from an authorized individual.

b. Training and Best Practices for Law Enforcement, Prosecutors, Judges, and Other Public Safety and Criminal Justice Partners

NHTSA actively supports efforts to develop training and best practices for law enforcement, prosecutors, judges, and other public safety and criminal justice partners regarding the detection, prosecution, and adjudication of drunk and impaired driving. A brief sampling of NHTSA's work in this area includes the following:

Development and application of field sobriety tests. In the mid-1970s NHTSA, with the cooperation and assistance of the law enforcement community, conducted research that resulted in a standardized battery of three field sobriety tests (the horizontal gaze nystagmus test; the walk-and-turn test; and the one-leg stand test). Police officers use these tests to help establish probable cause for a driving while intoxicated (DWI[126]) arrest.

Standards for alcohol breath-test devices. Evidential breath test devices conform to established specifications and can be used as evidence in court. NHTSA publishes standard specifications for evidential breath-test devices, and a ''Conforming Products List'' of alcohol testing and screening

specifically for impaired driving); 23 U.S.C. 154 (open container); 23 U.S.C. 164 (repeat offender).

[115] *See* Venkatraman, V., Richard, C.M., Magee, K., & Johnson, K. (2021, July). *Countermeasures that work: A highway safety countermeasures guide for State Highway Safety Offices,* 10th edition, 2020 (Report No. DOT HS 813 097). National Highway Traffic Safety Administration. (hereinafter *Countermeasures that work*). Vehicle and infrastructure strategies can also reduce the likelihood of crashes and/or injuries sustained by impaired drivers and passengers, such as improved vehicle structures and centerline rumble strips and barriers. These countermeasures are outside the scope of this discussion.

[116] Venkatraman, V., Richard, C.M., Magee, K., & Johnson, K. (2021, July). Countermeasures that work: A highway safety countermeasures guide for State Highway Safety Offices, 10th edition, 2020 (Report No. DOT HS 813 097). National Highway Traffic Safety Administration.

[117] 23 U.S.C. 163.

[118] 23 U.S.C. 161.

[119] 23 U.S.C. 158.

[120] 23 U.S.C. 154.

[121] *See https://www.ghsa.org/state-laws/issues/alcohol%20impaired%20driving* (last accessed January 5, 2023); *https://www.ncsl.org/research/transportation/drunken-driving.aspx* (last accessed January 5, 2023).

[122] *https://www.ntsb.gov/safety/safety-studies/Documents/SR1301.pdf.*

[123] Thomas, F.D., Blomberg R., Darrah, J., Graham, L., Southcott, T., Dennert, R., Taylor, E., Treffers, R., Tippetts, S., McKnight, S., & Berning, A. (2022, February). Evaluation of Utah's .05 BAC per se law. DOT HS 813 233. NHTSA.

[124] 36 CFR 4.23.

[125] If State law establishes more restrictive BAC limits, those more restrictive limits supersede the .08 g/dL limit specified in the Federal regulations.

[126] DWI and DUI are used interchangeably throughout this document.

devices.[127] Law enforcement officers use the totality of the evidence in determining whether sufficient probable cause exists to effectuate an arrest for drunk driving. This includes observation of the vehicle in motion, results of the standardized field sobriety tests, and other information to establish probable cause. An officer may use a preliminary or evidential breath test device to measure BrAC. A suspect may also be requested to provide a blood or urine sample.

Arrest and crash reporting. NHTSA provides training on arrest and crash reporting to law enforcement so that the data collected during a traffic stop or arrest, or at the scene of a crash, is uniform, clear, and concise.

Training curriculum development for law enforcement, prosecutors, judges, and other public safety and criminal justice partners. Through cooperative agreements and partnerships, NHTSA supports training for law enforcement, prosecutors, judges, and other public safety and criminal justice partners.

For example, NHTSA provides (through a cooperative agreement with the International Association of Chiefs of Police) funding for curricula development and management of programs developed to train law enforcement in detecting, investigating, and apprehending impaired drivers. NHTSA also provides the law enforcement community with resources to carry out local DWI programs, such as supplying laminated pocket guides for the standard field sobriety tests to aid officers. Through partnerships with national law enforcement organizations such as the National Criminal Justice Training Center, NHTSA maintains a wide reach when providing these resources.

NHTSA also helps ensure that organizations representing prosecutors, judges, and pretrial, parole, supervision, and probation officers have accurate and up-to-date information about the harm caused by impaired driving, the crash risk of various impairing substances, and evidence-based sanction and treatment options. For example, NHTSA has cooperative agreements with the National Traffic Law Center and the National Association of Prosecutor Coordinators to develop curricula and provide training to prosecutors working on impaired driving cases. Through these agreements, NHTSA provides prosecutors with information on relevant case law, monographs on various legal issues, an expert witness database, training courses, and peer-to-peer support from Traffic Safety Resource Prosecutors (TSRP) in each State. The TSRP Program trains current and former prosecutors to become instructors for traffic crimes prosecutors and law enforcement personnel.[128] This facilitates a coordinated, multidisciplinary approach to the prosecution of drunk and impaired driving. NHTSA also funds training through the National Judicial College on (among other things) evidence-based sentencing and supervision practices, toxicology, the use of ignition interlocks, and DWI Courts. NHTSA also funds the American Bar Association to conduct the Judicial Outreach Liaison program providing trial judges with current evidence-based practices, peer-to-peer judicial education, a liaison to the broader highway safety community.

Based on these models, NHTSA is also piloting similar education programs for pretrial, probation, parole, and supervision professionals[129] and toxicologists.

2. Prevention

Prevention strategies reduce impaired driving by reducing use of impairing substances or preventing driving by people who have been drinking or using other drugs. There are a variety of prevention countermeasures. Below we discuss the main ones.

a. Alcohol Ignition Interlocks

One impaired driving prevention strategy is requiring the installation of alcohol ignition interlocks. Ignition interlocks are devices that measure the driver's BrAC and prevent the vehicle from starting if it exceeds a pre-set level (usually .02 g/dL). Interlocks are highly effective in allowing vehicles to be started by sober drivers, but not by alcohol-impaired drivers. Alcohol ignition interlocks are typically used as a condition of probation for DWI offenders after their driver's licenses have been reinstated. Forty-four States require the devices for repeat, high-BAC, or all offenders.[130]

There is evidence that requiring interlocks for driving under the influence (DUI) offenders helps reduce recidivism. NHTSA evaluated the New Mexico Ignition Interlock program in 2010[131] and found that alcohol-sensing technology in vehicles can be successfully deployed to protect the public from alcohol-impaired drivers and that recidivism rates can be reduced if penetration of these devices is sufficient. In 2015, NHTSA reported on interlock use in 28 States.[132] This 2015 report identified important program elements for States to achieve and sustain high interlock use rates including: strong interlock requirements and incentives coupled with effective penalties for non-compliance; strong program management involving monitoring, uniformity, coordination, and education; and data and resources to support program management and to evaluate changes in program design.

A more recent study found that laws mandating alcohol ignition interlocks, especially those covering all offenders, are an effective alcohol-impaired driving countermeasure that reduces the number of alcohol-impaired drivers in fatal crashes.[133]

NHTSA has also conducted research, developed model specifications, and provided information and funding to improve State ignition interlock programs. NHTSA research on ignition interlocks dates back to early studies on the increased likelihood for DWI offenders to be involved in fatal crashes while intoxicated.[134] Based on research that license suspension alone did not keep DWI offenders from driving, NHTSA conducted research into performance-based interlocks that could prevent a drunk driver from starting the vehicle.[135] NHTSA also drafted and revised model specifications for interlock devices. These specifications have developed over time and are published in the **Federal Register** as guidelines for State interlock programs.[136] NHTSA has published an

[127] **Federal Register**/Vol. 58, No. 179/pp 48705–48710/Friday, September 17,1993/Notices (58 FR 48705) **Federal Register**/Vol. 77, No. 115/pp 35745–35750/Thursday, June 14, 2012/Notices (77 FR 35745, 77 FR 35747).

[128] *https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/12323_tsrpmanual_092216_v3-tag.pdf.*

[129] *https://www.appa-net.org/idarc/training-faculty.html.*

[130] *https://www.ncsl.org/research/transportation/state-ignition-interlock-laws.aspx.*

[131] Evaluation of the New Mexico Ignition Interlock Program (2010). DOT HS 811 410.

[132] Evaluation of State Ignition Interlock Programs: Interlock Use Analyses from 28 States, 2006–2011 (2015) DOT HS 812 145.

[133] Teoh, Eric R./Fell, James C./Scherer, Michael/Wolfe, Danielle E.R., State alcohol ignition interlock laws and fatal crashes, *Traffic Injury Prevention (TIP),* October 2021.

[134] Hedlund, J., & Fell, J. (1995). Persistent drinking drivers in the U.S., 39th Annual Proceedings of the Association for the Advancement of Automotive Medicine, October 16–18, 1995, Chicago, IL (pp. 1–12). Des Plaines, IL: Association for the Advancement of Automotive Medicine.

[135] This research also considered impairment including drugs and drowsiness.

[136] 78 FR 26849 (May 8, 2013), *available at https://www.volpe.dot.gov/sites/volpe.dot.gov/files/docs/Breath%20Alcohol%20Ignition%20Interlock%20Device%20%28BAIID%29%20Model%20Specifications.pdf.*

ignition interlock toolkit,[137] a program guide on key features for ignition interlock programs,[138] and various case studies and evaluation reports.[139] NHTSA continues to fund the Association of Ignition Interlock Program Administrators.[140]

As discussed later in greater detail, since 2008 NHTSA has participated in and helped fund a cooperative research program, known as DADSS, which is developing next-generation vehicle alcohol detection technologies.

b. Designated Driver and Alternative Transportation Programs

NHTSA also supports designated driver and alternative transportation programs as another avenue for preventing impaired driving.

Designated driver programs encourage drinkers to include someone in their party who does not drink and will be able to provide a safe ride home. Some designated-driver programs provide incentives such as free soft drinks for designated drivers. Mass-media campaigns—such as the NHTSA-sponsored Ad Council campaign ''Friends Don't Let Friends Drive Drunk''—seek to raise awareness and promote the use of these programs.

Alternative transportation programs offer methods people can use to get to and from places where they drink without having to drive. This includes public transportation (such as subways and buses) as well as for-profit and nonprofit ''safe rides.'' For-profit safe rides include transportation network companies that are on-demand and may be accessed through a mobile application. Nonprofit safe-ride programs are free to patrons or charge minimal fees and often operate in specific regions or at specific times such as weekends and holidays when impaired crashes occur at higher rates. Several States fund alternative transportation as part of their impaired driving prevention efforts.

c. Alcohol Sales and Service Regulations/Programs

Another common strategy to prevent impaired driving are regulations and programs that target the point at which alcoholic beverages are sold. Responsible beverage service programs cover alcohol sales policies and practices that prevent or discourage restaurant or bar patrons from drinking excessively or from driving while impaired by alcohol. NHTSA supports server training programs to teach servers how to recognize the signs of intoxication, how to prevent intoxicated patrons from further drinking and from driving, as well as bar and restaurant management policies to reduce impaired driving.

d. Underage Impaired Driving Prevention

One particular focus of prevention strategies is preventing underage impaired driving. Teenagers drink and drive less often than adults but are more likely to crash when they do drink and drive.[141] While many of the prevention strategies discussed above apply both to adults and teenagers, NHTSA supports several prevention strategies directed specifically to those under the age of 21. NHTSA publishes fact sheets,[142] research, and funded program guides [143] on teen traffic safety and effective practices to reduce teen impaired driving. NHTSA also partners with youth advocacy organizations as well as primary and secondary education organizations to provide youth-focused impaired driving prevention education, messages, teacher resources, and educational materials for drivers of all ages. Furthermore, NHTSA partners with driver educators to teach teen and novice drivers about the dangers of impaired driving and to develop driver education standards.

3. Communications Campaigns

Public service messaging and coordinated enforcement are also important behavioral strategies. Communications campaigns inform the public of the dangers of impaired driving and promote positive social norms of not driving while impaired. NHTSA coordinates with States and other traffic safety stakeholders to educate the public about the impairing effects of alcohol and drugs and the dangers they pose to drivers of all ages. NHTSA produces a communications calendar annually with details about specific campaign and enforcement periods, holidays, and other notable events during which time there may be increased dissemination of campaign messages and coordinated law enforcement efforts at the State and local level. Campaign materials are made accessible to the public and stakeholders online at Traffic Safety Marketing (TSM).[144] These communications efforts can be divided into two categories: high-visibility enforcement and social norming campaigns.

a. High-Visibility Enforcement Campaigns

High-visibility enforcement campaigns coordinate highly visible and proactive law enforcement activities with public service messages highlighting the dangers of impaired driving and the enhanced enforcement efforts. NHTSA runs two national high-visibility impaired driving campaigns each year—one in August, leading up to and including Labor Day weekend, and one in December, during the winter holiday period. High-visibility enforcement campaigns include national media segments that air on TV and radio as well as digital media in English and Spanish. Both campaigns include national paid media buys incorporating both an alcohol-impaired driving message (Drive Sober or Get Pulled Over) and a drug-impaired driving message (If You Feel Different, You Drive Different. Drive High, Get a DUI). These campaign assets are available at no cost for States, regions, and other stakeholders to download and use during applicable campaign periods. During each campaign timeframe, NHTSA encourages law enforcement and other State agencies to use the provided assets on social media. State leaders can also engage with the local news media to expand awareness of the campaigns and associated messages. Each campaign period comes with information on how to conduct Media Buys, and its reports on the number of impressions made.

b. Social-Norming Campaigns

Communications efforts are not limited to high-visibility enforcement campaigns but also continue throughout the year. For instance, NHTSA has public service announcement campaigns that rely on donated time

[137] *https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/ignitioninterlocks_811883_112619.pdf.* This is a toolkit for policymakers, highway safety professionals and advocates that brings together resources that explain and support the use of alcohol ignition interlocks, identifies issues faced by ignition interlock programs and includes information on the use of interlocks in each State and the District of Columbia. It is designed to advance the understanding of ignition interlock technology, improving its application as an effective strategy to save lives and prevent impaired driving injuries.

[138] *https://www.nhtsa.gov/sites/nhtsa.gov/files/811262.pdf.*

[139] *See, e.g., https://rosap.ntl.bts.gov/view/dot/1909.*

[140] *https://aiipaonline.org/.*

[141] Bingham CR, Shope JT, Parow JE, Raghunathan TE. Crash types: markers of increased risk of alcohol-involved crashes among teen drivers. J Stud Alcohol Drugs. 2009 Jul;70(4):528–35. doi: 10.15288/jsad.2009.70.528. PMID: 19515292; PMCID: PMC2696293.

[142] *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813313.*

[143] *See e.g., https://www.ghsa.org/resources/Peer-to-Peer19.*

[144] *https://www.trafficsafetymarketing.gov/.*

and space from various media outlets throughout the nation. The main message for alcohol-impaired driving is ''Buzzed Driving is Drunk Driving,'' and the main message for drug-impaired driving is ''If you Feel Different, You Drive Different.'' NHTSA works with the Ad Council to produce campaign resources (TV, radio, digital, print, and outdoor advertising) and distributes them to organizations that donate time and space to support campaign messaging.

4. Alcohol and Drug Treatment, Monitoring, and Control

Treatment for substance use is another major strategy to address the behaviors leading to drunk and impaired driving. It is widely recognized that many DWI first offenders and most repeat offenders meet criteria for an alcohol use disorder and are likely to continue to drink and drive unless the underlying substance use disorder is addressed. DWI arrests provide an opportunity to identify offenders with alcohol use problems, and as part of a plea bargain or diversion program, refer them to treatment in addition to imposing sanctions.

NHTSA endorses the use of the Substance Abuse and Mental Health Services Administration's Screening, Brief Intervention and Referral to Treatment (SBIRT) approach. This is a comprehensive, integrated, public health approach to the delivery of early intervention and treatment services for persons with substance use disorders, as well as those who are at risk of developing these disorders.[145] To help States use an SBIRT approach NHTSA funded the American Probation and Parole Association to develop the Impaired Driving Assessment. This tool provides a framework for screening impaired drivers, estimating their risk for future impaired driving, and assessing responsivity to intervention efforts, among other things.

NHTSA also encourages States and jurisdictions to establish DWI courts. DWI courts are specialized, comprehensive programs providing treatment, supervision, and accountability for repeat DWI offenders. These courts follow the well-established drug court model and are usually aimed at drivers with prior DWI offenses or those with BACs of .15 g/dL or higher. In 2019, NHTSA entered into a cooperative agreement with the National Center for DWI Courts to develop the 10 Guiding Principles for DWI Courts document, provide education and training for both new and existing DWI Courts, fund technology for the expansion of reach to underserved populations, and fund services (*e.g.,* treatment) to high-risk/high-need offenders.[146] There is evidence that DWI courts have greater success in changing driver behavior compared to traditional court processes and sanctions. A 2011 evaluation by NHTSA of three Georgia DUI Courts found substantial reductions in recidivism for repeat DUI offenders.[147]

B. Vehicle-Based Countermeasures

While the previous section discussed the various behavioral efforts that NHTSA has engaged in, NHTSA is conducting complementary research on vehicle safety technologies that have the potential to prevent or mitigate drunk and impaired driving. The behavioral campaigns and the vehicle-based countermeasures are part of NHTSA's dynamic strategy to achieve zero fatalities related to driver impairment.

1. Summary of Research on Vehicle-Based Countermeasures

This section summarizes five major research efforts focused on vehicle safety technologies: (1) Driver Alcohol Detection System for Safety, (2) Driver Monitoring of Inattention and Impairment Using Vehicle Equipment, (3) NHTSA's Request for Information, (4) Technology Scans, and (5) Additional ongoing research.

a. Driver Alcohol Detection System for Safety

NHTSA has been conducting research to understand ways to detect driver impairment. A major research program is DADSS. NHTSA began the DADSS Program in 2008 through a Cooperative Agreement between the Agency and the Automotive Coalition for Traffic Safety (ACTS) to develop non-invasive technology to prevent alcohol-impaired driving by measuring blood or breath alcohol accurately, precisely, and rapidly. Exploratory research in early phases of the program established the feasibility of two sensor approaches for in-vehicle use: breath- and touch-based. Since then, there have been significant advances in sensor hardware and software development, as the program works toward meeting high-performance standards required for passive, accurate, and reliable alcohol measurement.

There are two technology approaches under development for DADSS, and both use infrared spectroscopy to measure a driver's alcohol concentration. The DADSS touch sensor measures the BAC in the capillary blood in the dermis layer of the skin on the palmar side of a driver's hand. A touch pad with an optical module could be integrated into an ignition switch or steering wheel. When the driver touches the steering wheel or ignition switch, a near infrared light shines into the driver's skin. The portion of the near infrared light that is reflected back is collected by the touch pad. This light transmits information about the skin's chemical properties, including the concentration of alcohol present. The DADSS breath sensor uses detectors that simultaneously measure the concentrations of alcohol and carbon dioxide (CO_2) in a driver's exhaled breath.[148] The diluted breath is drawn into a measurement cavity where optical detectors measure the amount of infrared light absorbed by the alcohol and CO_2. Using these measurements, the driver's BrAC is calculated.

It is worth emphasizing that the current DADSS breath sensor requires directed puff of breath toward the sensor and would therefore not be considered passive under BIL. The end design that the DADSS program is working toward is a breath sensor that will capture naturally exhaled breath to make the calculation and may be considered passive as required by the BIL. The goal is not to require the driver to actively blow or puff air or take other action to provide the requisite sample for the system to analyze. The DADSS touch sensor is being designed to be embedded in something that the driver must touch to operate the vehicle, for example, push-to-start button, the steering wheel, or the gear shift selector. Therefore, NHTSA tentatively determines that such a touch sensor could be considered passive.

As part of the cooperative agreement with NHTSA, ACTS is planning to develop DADSS Reference Designs for the sensors that include schematics, specifications, minimum hardware requirements, and other documentation for the DADSS sensors so the technology can be licensed, and sensors manufactured. ACTS plans for open licensing of the sensors, which means the technology will be made available on the same terms to any automaker or supplier interested in installing the technology into their vehicles or products. The first DADSS Reference Design—a directed-breath, zero-tolerance (BrAC >.02 g/dL) accessory

[145] *https://www.samhsa.gov/sbirt.*

[146] *https://rosap.ntl.bts.gov/view/dot/2055.*

[147] *https://rosap.ntl.bts.gov/view/dot/2055.*

[148] The concentration of CO_2 in the breath provides an indication of the degree of dilution of the alcohol concentration indicating the distance from the sensor the breath was exhaled to determine if the sample is from the driver.

system for limited deployment in fleet vehicles—was released for open licensing in December 2021. A second DADSS zero-tolerance touch system reference design intended for fleet vehicles is expected in 2024, according to ACTS. ACTS expects touch and breath sensor reference designs for private vehicles, capable of higher BAC measurements, in 2025.[149] NHTSA is aware that these delivery dates may be affected by several factors including further research and development and continued supply-chain issues resulting from the COVID–19 pandemic. These dates do not include the time necessary for any manufacturer to consider and implement design changes necessary to integrate these systems into vehicles.

b. Driver Monitoring of Inattention and Impairment Using Vehicle Equipment

Another research initiative that NHTSA has conducted is a program with the University of Iowa National Advanced Driving Simulator called Driver Monitoring of Inattention and Impairment Using Vehicle Equipment (DrIIVE).[150] The research program explored driver impairment through two separate tracks of research: (1) detection, and (2) mitigation. The main goal of the DrIIVE detection track was to develop and evaluate a system of vehicle-based algorithms to identify alcohol, drowsiness, and distraction impairment. Three impairment-detection algorithms, covering impairment from alcohol intoxication, drowsiness, and distraction, successfully detected matching impairment type (*e.g.,* drowsiness algorithm identified drowsy drivers from a dataset of drowsy and non-drowsy drivers) but had mixed results when applied to cross-impairment datasets (*e.g.,* drowsiness algorithm identifying drowsiness from a dataset of drowsy and distracted drivers).

The alcohol intoxication algorithm adapted well to the distracted and drowsy datasets, assuming that there was no alcohol intoxication present in those datasets (participants in the non-alcohol condition were neither dosed with alcohol, nor was BAC measured). The distraction algorithm also worked moderately well when applied to a cross-impairment dataset, although it worked better with head pose incorporated as a driver-based sensor signal (*e.g.,* head pose, body posture), as discussed further below.

It is important to note that the DrIIVE projects have focused on vehicle-based sensor data; however, they have also incorporated driver-based sensor signals. Additionally, the researchers investigated the benefits of taking individual differences between drivers into account in the training and operation of an algorithm. Driver-based sensors provided an added benefit to the performance and generalization of the distraction-detection algorithm, while individualizing the algorithms for individuals provided an added benefit to a drowsiness algorithm and an alcohol-intoxication algorithm. NHTSA recognizes that there are substantive challenges in individualizing algorithms across the entire driving population.

Overall, the algorithms showed good success rates at correctly identifying driver impairment (and the correct source). However, the results of these studies also showed an interesting finding in which, in rare instances, drowsy drivers were categorized as alcohol impaired (despite not being dosed with alcohol). NHTSA has plans to initiate follow on research to refine the algorithm with the aim of determining if alcohol impairment detection can be achieved with a higher degree of accuracy. NHTSA recognizes the importance of accuracy of alcohol-impaired driver detection so that non-impaired drivers are not inconvenienced.

The DrIIVE mitigation research demonstrated the potential short-term effectiveness of both haptic and auditory staged alerts (*i.e.,* the ability to improve driving performance for a period of time after the drowsiness alert is provided). Results show that drowsy drivers who received mitigation alerts maintained better vehicle control and had fewer drowsy lane departures than drowsy drivers without this mitigation. Additionally, drowsy drivers with mitigation showed less variability in speed maintenance. Furthermore, the research suggested that staged alerts may be more effective than discrete alerts for very drowsy drivers. Finally, alert modality did not affect driving performance, nor did the alerts significantly lower self-reported drowsiness. NHTSA has ongoing warning mitigation research for intoxication.

c. NHTSA's November 12, 2020 Request for Information

NHTSA also sought input from the public on impaired driving technologies through its November 12, 2020, NHTSA Request for Information (RFI).[151] The notice requested information to inform NHTSA about the capabilities, limitations, and maturity of available technologies or those under advanced stages of development that target impaired driving. Specifically, it requested details about technologies that can detect degrees of driver impairment through a range of approaches including: (1) technologies that can monitor driver action, activity, behavior, or responses, such as vehicle movements during lane keeping, erratic control, or sudden maneuvers; (2) technologies that can directly monitor driver impairment (*e.g.,* breath, touch-based detection through skin); (3) technologies that can monitor a driver's physical characteristics, such as eye tracking or other measures of impairment; and (4) technologies or sensors that aim to achieve direct measurement of a driver's physiological indicators that are already linked to forms of impaired driving (*e.g.,* BAC level for alcohol-impaired driving). NHTSA received 12 responses to the request for information. The following provides a high-level summary of those responses.

The Alliance for Automotive Innovation (Auto Innovators) noted that Driver State Monitoring and Driver Behavior Systems are promising technologies that, with continued development, have the potential to significantly reduce distracted and drowsy driving. The Auto Innovators also stated that they are ''. . . unaware of existing research demonstrating the robust effectiveness of these systems in detecting alcohol impairment. . . .'' The Auto Innovators further stated that ''Driver State Monitoring/Driver Behavior Systems' ability to identify high-functioning individuals impaired by alcohol is unknown, but likely poor. Additional research is needed to understand the opportunities and limitations of these systems relative to individual alcohol impairment. Pre-operation systems, including DADSS, are not so limited because they are designed to quantify a driver's BAC.''

Three automotive suppliers [152] of camera-based DMSs and occupant monitoring systems responded to the November 12, 2020, Request for

[149] *https://dadss.org/news/updates/when-might-the-dadss-technology-be-in-u-s-cars-and-trucks.*

[150] Brown, T.L., & Schwarz, C.W., Jasper, J.G., Lee, J.D., Marshall, D., Ahmad, O. (in press) ''Driver Monitoring of Inattention and Impairment Using Vehicle Equipment (DrIIVE) Phase 2.'' National Highway Traffic Safety Administration.

[151] 85 FR 71987, *available at https://www.regulations.gov/docket/NHTSA-2020-0102.*

[152] While not a passive device, a fourth supplier, Evanostics, provided information on a table-top oral fluid testing device that it suggests can test for alcohol and 10 classes of drugs in 15 minutes. A second supplier, Impirica, provided information on a mobile (tablet and phone) based cognitive screening that is designed to evaluate real time driving impairment.

Information. Veoneer, a worldwide supplier of automotive technology, reported that it launched its first camera-based DMS to the market in 2020. Its technology uses a true eye gaze system that determines the directional attributes of where the eyes are focused. Seeing Machines Limited, a DMS supplier, described their technology as providing evidence for the ability to reliably detect both drowsiness and visual distraction. Sony Depthsensing Solutions, an in-cabin occupant monitoring systems provider, described their ability to recognize driver features such as eye open/close and body position. The information they gain through sensors is used ''to extract higher level features such as drowsiness, microsleep, sleep, distraction (long and short) detection, emotion estimation or sudden sickness detection.'' Veoneer and Seeing Machines both noted that detecting driver alcohol impairment is more challenging and requires more technology development and research. Sony Depthsensing Solutions did not comment on the ability to detect other forms of impairment (*e.g.,* alcohol). Eyegaze Inc., an eye tracking technology supplier, suggested their product, with additional work, could provide a solution to monitor driver attention when housed in an automobile.

Safety advocates generally provided support for vehicle safety technologies. The National Safety Council, a safety advocate group, stated their support for in-vehicle passive alcohol detection technology options and DMSs. The Advocates for Highway and Auto Safety, a roadway safety advocacy group, noted their support for vehicle safety technologies, including voicing support for crash avoidance technologies, expedited DADSS research and offender ignition interlocks, among other things. Mothers Against Drunk Driving (MADD) submitted two separate comment submissions to the docket, which included 241 examples of technology related to detection of alcohol in blood or breath, other indicators of alcohol intoxication, drug impairment, drowsiness, and driver distraction/inattention. Finally, a submission by the American National Standards Institute, Inc, provided research references on eye tracking as an indicator of impairment.

d. Technology Scans

In addition to the aforementioned RFI, NHTSA contracted with two different groups to independently review the state of publicly available information related to impairment detection. The first is an update to the ''Review of Technology to Prevent Alcohol- and Drug-Impaired Crashes (TOPIC)'' report.[153] This report updates the 2007 evaluation of vehicular technology alternatives to detect driver BAC and alcohol-impaired driving. It includes additional findings related to the detection of impaired driving due to drugs other than alcohol, drowsiness, and distraction. This report reviews relevant literature and technologies and incorporates input from stakeholders and the public (*i.e.,* information received from the RFI). The report finds that tissue spectroscopy technologies are more accurate in estimating BAC than other technologies available at this time. Although driver attention monitoring technologies are presently able to detect drowsy driving and distracted driving, none specifically able to detect alcohol- or drug-impaired driving were found to be commercially available.

The second technology scan is ''Assessment of Driver Monitoring Systems for Alcohol Impairment Detection and Level 2 Automation.'' The report presents a review of DMS for alcohol impairment detection. A total of 331 systems were reviewed, more than 280 of which met inclusion criteria and are included in the report. The study found that few technologies are commercially available for alcohol impairment detection; some were not designed for in-vehicle use, and others were identified based on patent applications rather than evidence of functional systems. The review focused on features that were explicitly mentioned or indicated on the manufacturers' websites, patents, device manuals, publications, or reports. The review, which was completed in October 2022, noted that camera-based DMS have been in vehicles since 2018 for monitoring driver inattention to the forward roadway for SAE Level 2 driving automation systems,[154] as well as other vehicle-based sensors such as lane position monitoring and steering wheel torque monitoring to measure driver engagement and performance.

The DMS were reviewed with a focus on the applicability of each system to driver alcohol impairment detection. The systems were classified as physiology-based, tissue spectroscopy-based, camera-based, vehicle kinematics-based, hybrid (*i.e.,* two or more of the classification types), and patent-stage systems. A key focus was to review systems that are being developed with the potential to detect alcohol-based driving impairment, as well as systems that can precisely estimate BAC.

Of the systems reviewed, no commercially available product was found to estimate the amount of alcohol or identify alcohol-based impairment in the driver during the driving task. Behavioral indicators investigated included eye glances, facial features, posture, and vehicle kinematic metrics. However, systems with these capabilities are currently at various stages of the research and development process.

Based on industry stakeholder interviews and expert review of technology documentation, the researchers found that approaches that are furthest along in the development process are those which measure the presence and amount of alcohol in a person's body using BrAC and tissue spectroscopy. Camera-based and most physiology-based DMS are still in stages of preliminary research and design for alcohol-based impairment detection in passenger vehicles. The efficacy of vehicle kinematic measures in identifying alcohol-based impairment is currently unknown. Finally, hybrid systems are promising in being able to discern between driver states due to the number of different measures used in making state determinations.

e. NHTSA's Driver Monitoring Research Plans

In addition to state-of-the-art assessments on DMSs, NHTSA has conducted research on driver state monitoring used in conjunction with SAE Level 2 driving automation.[155] While using Level 2 driving automation, drivers are expected to both monitor the environment and supervise vehicle automation which is simultaneously providing lateral and longitudinal support to the driver. Some systems do not require the driver to have their hands on the wheel, while others include advanced features like automated lane changes and point-to-point navigation. The research included a literature review, stakeholder interviews, and system assessments. Many, but not all, Level 2 driving automation systems monitor visual and physical driver indicators, using camera-based sensing systems. Useful

[153] Pollard, J.K., Nadler, E.D., & Melnik, G.A. (In Press). Review of Technology to Prevent Alcohol- and Drug-Impaired Crashes (TOPIC): Update. National Highway Traffic Safety Administration.

[154] SAE International, Standard J3016, ''Taxonomy and Definitions for Terms Related to On-Road Motor Vehicle Automated Driving Systems,'' April 2021.

[155] Prendez, D.M., Brown, J.L., Venkatraman, V., Textor, C., Parong, J., & Robinson, E. (in press). Assessment of Driver Monitoring Systems for Alcohol Impairment Detection and Level 2 Automation. National Highway Traffic Safety Administration.

measures of general driver visual attention include measures of eye/pupil movement (*e.g.,* fixation duration), measures of glance location (*e.g.,* eyes on/off road), and measures of glance spread and range (*e.g.,* scan path).

While NHTSA's research on DMS for Level 2 driving automation systems has implications for DMS applied to detection of alcohol impairment with regard to technological feasibility, there are important differences between these two applications. The safety issues, indicators and measures of driver risk, consumer acceptance, and potential interventions may be different for Level 2 driving automation than they are for alcohol impairment. For example, drivers who are impaired by alcohol may appear to be visually attentive as measured by eye gaze toward the forward roadway, so alternative measures will be important to achieve reliable detection of impairment. Additionally, while alerts may prompt inattentive drivers to return their attention to the road, alerts alone cannot remedy driver impairment from alcohol. Additionally, the use of Level 1 and higher driving automation itself may pose challenges for the detection of alcohol impairment. This is because some of the driving performance measures that may be indicative of alcohol impairment (*e.g.,* instability of lane position and speed) cannot be used when the vehicle itself is controlling that portion of the dynamic driving task. NHTSA is currently conducting research examining distraction that does not specifically focus on drunk driving or metrics but might be helpful to consider if the agency pursues an approach that requires camera-based driver monitoring to detect drunk driving.

2. Passive Detection Methods and Available Technologies

The ''advanced drunk and impaired driving prevention technology'' under BIL prescribes three methods of passive detection—(1) passively monitor the performance of a driver of a motor vehicle to accurately identify whether that driver may be impaired; (2) passively and accurately detect whether the blood alcohol concentration of a driver of a motor vehicle is equal to or greater than the blood alcohol concentration described in section 163(a) of title 23, United States Code; [156] or (3) a combination of the first and second options.

NHTSA interprets the first option as passively monitoring the driver's performance (*e.g.,* eyes on the forward roadway; taking appropriate steering, braking, or accelerating action) to gain an accurate determination of whether the driver may be impaired. Since ''driver impairment'' could include more than just alcohol-impairment, the collective states of driver impairment would constitute the largest real-world safety problem. NHTSA interprets the second option to require passive and accurate detection of BAC over a prescribed limit (which is currently .08 g/dL). This would exclusively target a subset of driver impairment conditions (*i.e.,* alcohol-impaired drivers) focused on BAC detection. Alcohol-impaired drivers constitute the largest fatal driver impairment type. The third option is a combination of both the first and second. The following subsections discuss each of these options.

a. *Passively Monitor the Performance of a Driver To Accurately Identify Whether That Driver May Be Impaired*

For the purposes of this section, the following driver impairments were considered: drowsiness, distraction, and drunk, in the order of increasing fatality counts in the United States. While drugged driving is another known driver impairment, the ability to explicitly detect drug-impaired drivers is currently limited. Some of the effects of drugged driving, however, may be similar to the effects of alcohol-impaired or distracted driving, and therefore it is possible that vehicle technologies designed to detect other forms of impairment may also have the ability to detect some drug-induced impairments as well. As stated in the introduction, NHTSA is considering prioritizing alcohol impairment due to the significant safety problem caused by drivers intoxicated by alcohol and requests comment on whether that scope is most appropriate and whether its focus should be expanded to other types of impairment, including those discussed in this section.

Driver performance generally consists of being attentive to the driving task, and taking appropriate vehicle control actions (*i.e.,* steering, accelerating, and braking). Modern vehicles are equipped with many crash avoidance and driver assistance sensors that may provide opportunity to contribute to the detection of driver impairment. The following provides examples of those sensing technologies.

Camera-Based Driver Monitoring Sensors: Camera-based DMSs are becoming more prevalent in vehicles with Level 2 driving automation features (*i.e.,* adaptive cruise control and lane centering).[157] NHTSA reviewed several available and prototype camera-based driving monitoring systems that publicly state the ability to monitor aspects of driver state, including driver's eye gaze, eyelid/eye closure, pupil size, head/neck position, posture, hand/foot position, and facial emotion during the driving task.[158] The review found that most systems are currently available and intended for use in detecting driver drowsiness, inattention, and sudden sickness/non-responsive drivers and few are for specifically detecting alcohol-impairment. Although measures such as eye closure over time, pupil diameter, saccades (an eye movement between fixations), and fixations are parameters under study for detecting alcohol impairment, the review found that there was a lack of clinical and psychophysiological research to aid in specifically detecting driver alcohol impairment. The review found only three systems that claimed alcohol-based impairment detection as the objective, but the systems with these capabilities are not available on the market.

It is notable, however, that other past NHTSA research suggested that the driver states of drowsiness and alcohol-impairment can present similarly to a driver monitoring system.[159] So there may be an opportunity ''to detect'' some alcohol-impaired drivers that present as drowsy. However, as discussed further below, the countermeasure for ''prevention'' applied to a sober drowsy driver, as opposed to an alcohol-impaired driver, may not be the same. For example, NHTSA contemplates and seeks comment on whether a sober drowsy driver may respond favorably to a warning and may even take a break from driving to recover, whereas an alcohol-impaired driver may not respond to a warning at all, or worse,

[156] 23 U.S.C. 163(a) states ''The Secretary shall make a grant, in accordance with this section, to any State that has enacted and is enforcing a law that provides that any person with a blood alcohol concentration of 0.08 percent or greater . . .''.

[157] The Path to Safe Hands-Free Driving | GM Stories; Ford BlueCruise | Consumer Reports Top-Rated Active Driving Assistance System | *Ford.com;* Nissan ProPILOT Assist Technology | Nissan USA; Teammate Advanced Drive Backgrounder—Lexus USA Newsroom.

[158] Prendez, D.M., Brown, J.L., Venkatraman, V., Textor, C., Parong, J., & Robinson, E. (in press). Assessment of Driver Monitoring Systems for Alcohol Impairment Detection and Level 2 Automation. National Highway Traffic Safety Administration.

[159] Brown, T.L., & Schwarz, C.W, Jasper, J.G., Lee, J.D., Marshall, D., Ahmad, O. (in press) ''Driver Monitoring of Inattention and Impairment Using Vehicle Equipment (DrIIVE) Phase 2.'' National Highway Traffic Safety Administration.

respond in a negative way (*e.g.,* becoming a more risky driver).

Hands-On-Wheel Sensors: Drivers with their hands off the steering wheel for an extended period of time can be an indicator of driver inattention. Vehicles equipped with Level 2 features often have capacitive or steering torque sensors to confirm that the driver has at least one hand on the steering wheel. Capacitive sensing detects the change in capacitance of the steering wheel that results from the driver's hands being removed from the wheel. Steering wheel torque sensing detects small steering inputs made by the driver. These sensors are commonly used in algorithms to encourage drivers to remain attentive during driving.[160] It should be noted, however, that some Level 2 feature designs permit hands-off-wheel while supervising the vehicle automation. Current production vehicles with Level 2 features that permit drivers to remove their hands from the wheel have camera-based DMS that alert drivers if they look away from the forward roadway for more than a few seconds.

Lane Departure and Steering Sensors: Poor precision as indicated by unintended lane excursions may indicate unsuitable driver states, including alcohol-based impairment.[161] Alcohol reduces driving precision, and lane positioning is a key skill that is affected, even at low doses. Deviation of lane position from the lane center increases with increasing doses of alcohol.[162] The Standard Deviation of Lane Position (SDLP) is considered a sensitive (but not specific) measure of alcohol impairment.[163] Relatedly, measures of steering inputs can be used to detect alcohol impairment.[164] Specifically, drivers who are impaired due to alcohol may exhibit more erratic driving patterns with tendencies to deviate from their lane position.[165]

The following crash avoidance sensor technologies equipped on modern vehicles could aid in detecting lane departure: forward-looking external cameras; steering wheel torque sensors; and blind spot detection sensors.

When driven manually, forward-looking external cameras commonly used in lane departure warning systems have the potential to identify a vehicle drifting out of its travel lane, typically when lane markings are present and observable (*i.e.,* not snow-covered or worn). This could include drifting off the roadway or drifting into oncoming traffic. Tracking a vehicle's lane departure warning activations over time could present as an indicator of a driver directing the vehicle to weave in and out of its travel lane (weaving and weaving across lanes are cues used by officers in detection of impaired driving).[166] NHTSA's research suggests that many vehicle manufacturers use lane position monitoring for detecting unintentional lane drift from several driver impairments—drowsiness and inattention.[167] Some vehicle manufacturers were found to use lane position monitoring in available features, such as oncoming lane mitigation and run-off road mitigation.[168]

Some vehicles are equipped with steering wheel torque sensors that monitor a driver's steering inputs. Such sensors could detect and monitor erratic steering corrections over time during the course of a trip. NHTSA's research suggests that some vehicle manufacturers use steering input monitoring for detecting inattention, drowsiness, or sudden sickness/non-responsive driver for vehicles equipped with Level 2 systems (used in an active emergency stop assist application).[169]

Many modern vehicles also come with blind spot warning sensors on the sides of the vehicle that can identify a vehicle in an adjacent lane.[170] If an impaired driver attempts to steer into an adjacent lane of travel when another vehicle is in its blind spot, a vehicle equipped with this technology can warn the driver, or in some vehicles, even intervene via active blind spot intervention technology.

Speed/Braking Sensors: Speed maintenance is generally affected by high BAC levels. NHTSA's research has found that driver alcohol doses greater than BAC .05 g/dL can significantly impair an individual's ability to maintain appropriate speed, particularly in complex environments.[171] While some studies report increased speeds by alcohol-impaired drivers, others report speed decreases.[172] The reduced ability to maintain consistent speed is referred to as the Standard Deviation of Speed Deviation (SDPD), which is commonly used to measure relative performance of impaired drivers compared to control groups. While findings concerning speed directionality (*i.e.,* increase or decrease) are mixed, studies have consistently shown that speed deviation from posted speed limits tends to increase in alcohol-impaired driver groups.[173]

That said, some forward-looking external cameras can detect and interpret posted speed limit signs, which could provide an indicator of speeding when compared to the actual speed the vehicle is traveling. Some vehicles have telematics and maps that provide posted speed limit information. Vehicles also have brake sensors that could be monitored over time to sense repeated incidences of hard braking during a trip.

Time-Based Sensors: Two other vehicle sensors that could be used in an overall driver impairment algorithm include duration of trip, and time of day. Monitoring the trip duration is used in some vehicle algorithms to warn about drowsy driving.[174] After a certain

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[160] Driver Monitoring | Alliance For Automotive Innovation (*autosinnovate.org*).

[161] *https://www.nhtsa.gov/sites/nhtsa.gov/files/808677.pdf.*

[162] Harrison, E.L., & Fillmore, M.T. (2005). Are bad drivers more impaired by alcohol? Sober driving precision predicts impairment from alcohol in a simulated driving task. Accident Analysis & Prevention, 37(5):882–9. doi: 10.1016/j.aap.2005.04.005; Lee JD, Fiorentino D, Reyes ML, Brown TL, Ahmad O, Fell J, Ward N, Dufour R. (2010). Assessing the Feasibility of Vehicle-Based Sensors to Detect Alcohol Impairment. National Highway Traffic Safety Administration. Report No. DOT HS 811–358; Calhoun, V.D. & Pearlson, G.D. (2012). A selective review of simulated driving studies: Combining naturalistic and hybrid paradigms, analysis approaches, and future directions. *NeuroImage, 59*(1), 22–35; Irwin C, Iudakhina E, Desbrow B, McCartney D. (2017). Effects of acute alcohol consumption on measures of simulated driving: A systematic review and meta-analysis. *Accident Analysis & Prevention, (102),*248–266. doi: 10.1016/j.aap.2017.03.001. Epub 2017 Mar 24. PMID: 28343124.

[163] Irwin C, Iudakhina E, Desbrow B, McCartney D. (2017). Effects of acute alcohol consumption on measures of simulated driving: A systematic review and meta-analysis. *Accident Analysis & Prevention, (102)*248–266. doi: 10.1016/j.aap.2017.03.001. Epub 2017 Mar 24. PMID: 28343124.

[164] Das D., Zhou S., Lee J. D. (2012). Differentiating alcohol-induced driving behavior using steering wheel signals. *IEEE Trans. Intel. Transp. Syst.* 13 1355–1368. 10.1109/TITS.2012.2188891.

[165] Kersloot, Tanita & Flint, Andrew & Parkes, Andrew. (2003). Steering Entropy as a Measure of Impairment.

[166] *https://www.nhtsa.gov/sites/nhtsa.gov/files/808677.pdf*

[167] Prendez, D.M., Brown, J.L., Venkatraman, V., Textor, C., Parong, J., & Robinson, E. (in press). Assessment of Driver Monitoring Systems for Alcohol Impairment Detection and Level 2 Automation. National Highway Traffic Safety Administration.

[168] Prendez, D.M., Brown, J.L., Venkatraman, V., Textor, C., Parong, J., & Robinson, E. (in press). Assessment of Driver Monitoring Systems for Alcohol Impairment Detection and Level 2 Automation. National Highway Traffic Safety Administration.

[169] Prendez, D.M., Brown, J.L., Venkatraman, V., Textor, C., Parong, J., & Robinson, E. (in press). Assessment of Driver Monitoring Systems for Alcohol Impairment Detection and Level 2 Automation. National Highway Traffic Safety Administration.

[170] *https://www.nhtsa.gov/equipment/driver-assistance-technologies.*

[171] Veldstra et al., 2012; Mets et al., 2011.

[172] Rezaee-Zavareh et al., 2017; Lee et al., 2010; West et al., 1993; Irwin et al., 2017; Lenne et al., 2010.

[173] Arnedt et al., 2001; Yadav & Velaga, 2020; Irwin et al., 2017.

[174] Driver Attention Warning | Hyundai.

length of time, a vehicle may provide an icon (*e.g.,* a coffee cup-like symbol) on the instrument panel to suggest a driver take a break from the driving task. Monitoring the trip duration may also help in identifying repeated lane departures over time. Monitoring the time of day could be added to other detection methods to help confirm detection of drowsiness or alcohol-impairment states at late night times. Most alcohol-impaired driving fatalities in the United States occur between 6 p.m. and 3 a.m.[175]

Physiological Sensors: There are also a variety of physiological-based systems under research that use biometric measures from the driver to infer driver state. These could include heart rate, sweat, and blood pressure, among others. NHTSA's research found that many were in the research and development stage, including those for breath alcohol detection (which will be discussed in the next section).[176] A practical limitation of their use may be the fact that detecting driver impairment may be reliant upon background knowledge of a specific driver's baseline physiological characteristics (to sense elevated levels) and can be attributable to multiple physiological states (*e.g.,* stress).

In summary, NHTSA's research suggests that many driver impairment detection strategies use different combinations of measures, but the available documentation of multi-detection approaches is rare, and when present, details of the underlying algorithms are sparse.[177] It is reasonable to assume that the combination of more sensors and driver metrics will improve the confidence in driver state inference. Little data is available, however, to inform NHTSA on which combination of sensors and indicators of driver state, if any, would achieve greater accuracy and reliability of impairment detection.

Vehicle manufacturers have announced concept vehicles or production plans for active/passive technologies to mitigate alcohol-impaired driving for many years. For example, a media article[178] cited alcohol-impaired driver research by General Motors dating back to the 1970s on a critical tracking test (CTT) ''experimental deterrent'' that used the result from a 10-second test the driver took each time he or she got behind the wheel to determine whether the car would start. Tests were reported to use driver steering wheel movement and a gauge on the instrument panel where the driver would have to keep the needle on the gauge in the acceptable range through a series of progressive needle movements. Another concept involved cognitive tests where a series of five numbers appeared above five numbered white buttons on the instrument panel (or on a keypad). To pass the test, the driver must replicate the number sequence by using buttons and complete it in a designated timeframe.

More recently, a 2016 patent held by General Motors, ''Method and System for Mitigating the Effects of an Impaired Driver,'' aims to detect inattention and alcohol-based impairment through use of camera-based detection measures (*i.e.,* eye gaze, eyelid/eye closure, and facial/emotional measures), as well as lane monitoring and steering input.[179]

Similarly, in 2007, Toyota announced its intent to create a fail-safe system for cars that detects drunk drivers and automatically shuts the vehicle down if sensors pick up signs of excessive alcohol consumption. According to a media report,[180] cars fitted with the detection system will not start if sweat sensors in the driving wheel detect high levels of alcohol. The system could also detect abnormal steering, or if a special camera shows that the driver's pupils are not in focus, the car would be slowed to a halt. Toyota had reportedly hoped to fit cars with the system by the end of 2009. NHTSA does not know the current status of this Toyota technology and seeks comment on its effectiveness and availability.

During the same timeframe, Nissan also reportedly developed a concept car with technology to detect alcohol in the breath and sweat of the driver.[181] Nissan's concept car had an alcohol sensor in the transmission shift knob, and in the driver's and passenger's seats. Both reportedly worked together to detect traces of alcohol in the cabin past a certain threshold. If the driver's seat or shift knob had detected any alcohol while still parked, the transmission locked and made the car immobile. A second feature was a facial monitoring system built to monitor signs of drowsiness or distraction by monitoring the driver blinking rate. Once detected, a voice message alert was issued, and the seat belt was tightened to gain the attention of the driver. A third concept that was further developed after the 2007 timeframe was a road monitoring system. Nissan put technology in vehicles that monitored lanes and alerted drivers when the vehicle drifted out of the current lane, which Nissan reportedly believed mitigated safety risks associated with distracted driving.

Hyundai Mobis, a global Tier 1[182] supplier, has been researching a technology called DDREM—Departed Driver Rescue and Exit Maneuver. Initially announced at the Consumer Electronics Show in 2018,[183] DDREM uses an infrared camera to capture driver facial and eye movements to determine if the driver keeps eyes forward, changes blinking patterns, or exhibits other signs of drowsiness. The technology also looks for key identifiers used in advanced driver assistance systems (*e.g.,* if the driver is moving in and out of a lane, crossing lanes, zig zagging, or making erratic movements).

On March 20, 2019, Volvo Cars announced plans to deploy in-car cameras and intervention against intoxication and distraction.[184] Its press release stated, ''Volvo Cars believes intoxication and distraction should be addressed by installing in-car cameras and other sensors that monitor the driver and allow the car to intervene if a clearly intoxicated or distracted driver does not respond to warning signals and is risking an accident involving serious injury or death.'' The press release provided examples of behaviors to be detected: a complete lack of steering input for extended periods of time, drivers who are detected to have their eyes closed or off the road for extended

[175] Traffic Safety Facts 2020: A Compilation of Motor Vehicle Crash Data (*dot.gov*) Table 31.

[176] Prendez, D.M., Brown, J.L., Venkatraman, V., Textor, C., Parong, J., & Robinson, E. (in press). Assessment of Driver Monitoring Systems for Alcohol Impairment Detection and Level 2 Automation. National Highway Traffic Safety Administration.

[177] Prendez, D.M., Brown, J.L., Venkatraman, V., Textor, C., Parong, J., & Robinson, E. (in press). Assessment of Driver Monitoring Systems for Alcohol Impairment Detection and Level 2 Automation. National Highway Traffic Safety Administration.

[178] A GM onboard experimental alcohol and drug impairment detection device of the 1970s | Hemmings

[179] Prendez, D.M., Brown, J.L., Venkatraman, V., Textor, C., Parong, J., & Robinson, E. (in press). Assessment of Driver Monitoring Systems for Alcohol Impairment Detection and Level 2 Automation. National Highway Traffic Safety Administration.

[180] Toyota creating alcohol detection system (*nbcnews.com*).

[181] Nissan Is Ahead of Its Time in Developing Anti-Drunk Driving Technology Over a Decade Before Potential Federal Mandate | *GetJerry.com.*

[182] Tier 1 suppliers are companies that are direct suppliers to Original Equipment Manufacturers (OEM).

[183] *https://www.businesswire.com/news/home/20180103005023/en/2018-CES-Hyundai-Mobis-Announces-Lifesaving-Autonomous-Vehicle-Technology-to-Potentially-Eliminate-Drowsy-Driving-Fatalities,* last accessed July 7, 2023.

[184] *https://www.media.volvocars.com/global/en-gb/media/pressreleases/250015/volvo-cars-to-deploy-in-car-cameras-and-intervention-against-intoxic.*

periods of time, as well as extreme weaving across lanes or excessively slow reaction times. It further stated introduction of the cameras on all Volvo models will start on the next generation of Volvo's scalable SPA2 vehicle platform in the early 2020s.

Most recently, Volvo introduced the model year 2024 Volvo EX 90 that has a ''Driver Understanding System,'' which uses two interior sensors and a capacitive steering wheel along with the vehicle's exterior sensors to understand if a driver is distracted or drowsy and when the vehicle may need to step in and support.[185]

Given the advancements in driver impairment detection (*i.e.,* due to use in combination with SAE Level 2 driving automation technology), it is expected that other approaches will improve over time as strategies for mitigating inattention, incapacitation, drowsiness, and alcohol-impairment detection evolve—both from a technology perspective and a consumer acceptance stance. For example, Consumer Reports published an article suggesting that early versions of these driver impairment technologies are already appearing on cars in other countries.[186] NHTSA seeks comment on the current state of technology and its effectiveness in passively detecting driver impairment.

[185] 2024 Volvo EX90 Full Electric 7 Seater SUV | Volvo Car USA (*volvocars.com*) According to its website, the vehicle's ''Pilot Assistance'' feature ''can help keep an eye on the traffic and lane markings and support you by adapting your speed and distances given the current driving conditions. It can provide speed control in steep curves and steering support while changing lanes. If the car detects any sign of the driver being unresponsive, it can brake the vehicle to a standstill within the lane.''

[186] *https://www.consumerreports.org/car-safety/driver-monitoring-can-pull-car-over-if-driver-incapacitated-a1204997865/* ''Some Volkswagen Arteon sedans sold in Europe and equipped with the Emergency Assist 2.0 feature will turn on their flashers and pull over to the side of the road if a driver becomes unresponsive. According to the automaker, if the car senses that a driver is not using the accelerator, brake, or steering wheel, it will first try to awaken a driver by sounding alarms and tapping the brakes to ''jolt'' the driver into awareness. If the driver still doesn't respond, it will automatically steer itself to the lane furthest from traffic on a multilane road and bring the vehicle to a stop. In Japan, Mazda has said it will debut its Co-Pilot system on new vehicles this year. Tamara Mlynarczyk, a Mazda spokesperson, tells CR that the system is ''continuously monitoring'' the driver's performance. ''In a potential emergency situation where the driver loses consciousness, the system is prepared to intervene and assist the driver or pull the car over to a safer location,'' she says. On a multilane road, it may be able to pull the vehicle to the road's shoulder.''

Questions on Technologies That Passively Monitor the Performance of a Driver To Accurately Detect Whether That Driver May Be Impaired

1.1. NHTSA requests feedback on the two technology scan findings. Are there technologies, or technology capabilities or limitations not captured in these reports? If so, what are they?

1.2. NHTSA is concerned that behaviors consistent with drunk driving, like repeated potential lane departure and erratic speeding/braking, would be masked by an engaged SAE Level 2 driving automation systems. Would there be enough information from other sensors (*e.g.,* camera-based DMS, hands-on-wheel detection) to detect driver impairment and driver impairment type when SAE Level 1 or 2 driving automation systems are active? [187]

1.3. NHTSA is concerned about the limitations of vehicle sensor-based impairment detection systems to operate fully when certain sensors are impeded. External circumstances may include common roadway conditions such as darkness, heavy weather, roads with poor markings, or unpaved roads. Circumstances within the vehicle may include driver accessories, such as infrared light-blocking sunglasses, masks, or hats that may obscure the view of the driver to a DMS camera. If one or more sensors are impeded by such conditions, is there enough information from other sensors to detect driver impairment? Does this vary by impairment type? What are the operational limitations of such systems?

1.4. NHTSA is seeking input on how a test procedure for driver impairment detection systems could be developed and executed in a FMVSS. For example, does the test need to be conducted in a moving vehicle to capture lane drift or weaving? If so, what are potential testing approaches or procedures? Are humans required for camera-based DMS assessment? Are there particular accessories (*e.g.,* sunglass types, facial coverings) that would be required for testing? Is it feasible to conduct testing in darkness? What type of accuracy could be attained? How might this vary based on intended impairment type detection?

1.5. What kind of performance requirement should NHTSA consider to mitigate defeat strategies (*e.g.,* taping over the camera-based DMS or removing/replacing rear-view mirrors that contain driver monitoring equipment)?

[187] 2020 Data: Alcohol-Impaired Driving (*dot.gov*).

1.6. What metrics and thresholds (*e.g.,* eye gaze, lane departure violations, speed, blind spot warning triggers, lane position variability, speed variability), or combination thereof, are most effective at measuring driver impairment? These would include time-based parameters from the start of the ignition cycle and those used for continuous monitoring. How feasible is it to implement these metrics in passenger vehicles? Should these vary by impairment type? Might these measures conflict across impairment types? Should NHTSA require impairment detection systems be able to collect specific metrics? Why or why not?

1.7. NHTSA seeks comment on whether it should be necessary for an impairment detection system to determine what kind of impairment a driver has (*e.g.,* drowsy, distracted, drunk) if the driver triggers certain metrics that indicate the driver is impaired by at least one of those impairments? For example, incapacitation, drowsiness, and distraction could be captured by camera-based monitoring systems, but they may also detect some alcohol-impaired drivers.

1.8. Are there characteristics that would separate sober impairments from alcohol-induced impairments (*e.g.,* horizontal gaze nystagmus or myokymia)? If so, what are they? Are there other non-alcohol induced conditions in which some of these characteristics might appear? If so, please provide examples.

1.9. NHTSA seeks comment about whether certain conditions listed in the previous question (*e.g.,* myokymia) might result in false positives [188] in certain situations (*e.g.,* stress) or with certain populations (*e.g.,* older drivers).

1.10. What precision and accuracy should driver monitoring technology be required to meet for the purposes of detecting alcohol impairment? Under what conditions should these technologies be demonstrated to work? Are there driver characteristics, environmental conditions, or other factors that might limit the usefulness or applicability of certain technologies under certain conditions? Should there be a maximum time allowed for a system to develop a determination of impairment, after the indicators of impairment are detected?

1.11. Under what conditions should a vehicle allow a driver to turn off driver impairment monitoring, if at all? If

[188] A false positive could occur when the system indicates a person is at the detection level for impairment, when they are not impaired.

allowed, should a system be reset to ''on'' upon the next ignition cycle?

1.12. NHTSA is interested in data, studies, or information pertaining to the effectiveness of various sensors or algorithms in correctly detecting driver impairment (collectively, and individual impairments). NHTSA is seeking comment on which metrics, thresholds, sensors, and algorithms employed by existing DMS technology that could be used in an alcohol impairment detection system could be sufficiently robust to meet the requirement that an FMVSS be objective.

1.13. Are there other innovative technologies, such as impaired-voice recognition,[189] that could be used to detect driver impairment at start-up? If so, how might these function passively without inconveniencing unimpaired drivers? How mature and accurate are these technologies?

1.14. What level of sensitivity and specificity is necessary to ensure the DMS technology does not unduly burden unimpaired drivers or prevent unimpaired drivers from driving? Are there any DMS available on the market capable of detecting alcohol impairment with the level of sensitivity and specificity necessary to ensure this?

1.15. How can developers of DMS technology ensure that people with disabilities are not disproportionately impacted? Specifically, how can the technology accurately account for facial/body differences, chronic health conditions, and adaptive driving technologies?

1.16. How repeatable and reliable must these systems be? Is there societal acceptance of some potential false positives that could inconvenience sober drivers knowing that it would capture drunk drivers? If so, what countermeasure might best facilitate this? In considering a possible performance standard, what false positive rate would place too great a burden on unimpaired drivers?

1.17. What can be done to mitigate physical destruction or misuse concerns? If mitigations exist, how might these mitigations impact the effectiveness of DMS monitoring driver impairment?

1.18. NHTSA seeks to ensure fairness and equity in its programs and regulations. As NHTSA considers technologies that can passively detect impairment, some of which monitor facial features through camera-based systems or voice recognition, how can NHTSA, in the context of an FMVSS, best ensure these systems meet the needs of vehicle users of all genders, races and ethnicities, and those with disabilities?

b. Passively and Accurately Detect Whether the Blood Alcohol Concentration of a Driver of a Motor Vehicle Is Equal to or Greater Than the Blood Alcohol Concentration Described in Section 163(a) of Title 23, United States Code

The second option presented in BIL is one that requires the passive and accurate detection of a driver of a motor vehicle whose BAC is equal to or greater than the BAC described in Section 163 (a) of title 23, United States Code.

Section 163(a) of title 23 of the United States Code currently reads as follows:

(a) General Authority.—

The Secretary shall make a grant, in accordance with this section, to any State that has enacted and is enforcing a law that provides that any person with a blood alcohol concentration of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a per se offense of driving while intoxicated (or an equivalent per se offense).

Therefore, for this BIL option, a technology would need to passively and accurately detect whether the BAC of a driver of a motor vehicle is equal to or greater than .08 g/dL. Typically, BAC is measured as the weight of alcohol in a certain volume of blood (expressed in g/dL). Accurate measurement of BAC typically requires a driver's blood being drawn by a phlebotomist and sent to a lab where a medical laboratory scientist prepares samples and performs tests using machines known as analyzers.

To measure BAC passively and accurately in a motor vehicle setting would therefore require alternative detection methods. The DADSS breath-based sensor, discussed above, can measure driver breath samples at the start of the trip or during the drive to measure driver BrAC. The DADSS touch-based sensor has the potential to be located on the ignition push-button or on the steering wheel. Similarly, it will be designed to take measurements at the start of the trip, or during the drive, in the case of the steering wheel application.

Previous research through the DADSS program has established that the alcohol measurements from breath and touch sensors can be consistent, reproducible, and correlate well with traditional blood and breath alcohol measurements.[190] As noted, the prototypes under development for a passive, accurate breath-based sensor[191] are planned for design completion in 2024 and a passive, accurate touch-based sensor[192] for 2025, with additional time needed to integrate systems in vehicle models and conduct verification and validation. Preliminary estimates suggest that manufacturers will need at least 18–24 months to integrate the technology into vehicles.[193]

Therefore, a current limitation of this option is the fact that NHTSA is not aware of a passive and accurate .08 g/dL BAC detection technology available for production vehicles today, and hence the timeframe for fleet implementation may be an issue.

Questions on Technologies Aimed at Passively and Accurately Detecting Whether the BAC of a Driver of a Motor Vehicle Is Equal to or Greater Than .08 g/dL

2.1. In a follow-up to NHTSA's technology scans, NHTSA seeks any new information on technologies that can passively and accurately detect whether the BAC of a motor vehicle driver is equal to or greater than .08 g/dL.

2.2. Although the legal thresholds for DUI/DWI laws focus on BAC/BrAC, BAC/BrAC are typically not used in isolation by law enforcement to determine impairment. BrAC/BAC may provide additional evidence of impairment after an officer has observed driving behavior, the appearance of the driver (*e.g.,* face flushed, speech slurred, odor of alcoholic beverages on breath), the behavior of the driver, and any statements the driver has made about alcohol or drug use. Additionally, an officer may have administered the Standard Field Sobriety Test. Considering this, should regulatory options use BAC/BrAC in isolation to determine whether drivers are above the legal limit? If so, why?

[189] *https://neurosciencenews.com/ai-alcohol-voice-22191/.*

[190] Lukas S.E., Ryan E., McNeil J., Shepherd J., Bingham L., Davis K., Ozdemir K., Dalal N., Pirooz K., Willis M., Zaouk A. 2019. Driver alcohol detection system for safety (DADSS)—human testing of two passive methods of detecting alcohol in tissue and breath compared to venous blood. Paper Number 19–0268. Proceedings of the 26th International Technical Conference on the Enhanced Safety of Vehicles.

[191] The breath sensor is being designed to capture a driver's naturally exhaled breath upon first entering the vehicle.

[192] The touch sensor is being designed to be imbedded in something that the driver is required to touch to operate the vehicle such as the push-to-start button or the steering wheel rim.

[193] When might the DADSS technology be in U.S. cars and trucks?—DADSS—Driver Alcohol Detection System. (last accessed 3/20/2023), available at *https://dadss.org/news/updates/when-might-the-dadss-technology-be-in-u-s-cars-and-trucks/.*

2.3. Are commenters concerned about using the legal limit (.08 g/dL) when there are indications that some individuals exhibit intoxication that would impact driving at lower or higher levels, depending on a number of factors discussed in the introduction? Why or why not? Might drivers with a BAC greater than 0 g/dL but less than .08 g/dL interpret the fact that their vehicle allows them to drive as an indication that it is safe for them to drive after drinking? If so, are there ways to mitigate this possible unintended consequence?

2.4. Given the quantifiable positive impacts on highway safety that Utah has experienced since lowering its BAC thresholds to .05 g/dL, should NHTSA consider setting a threshold lower than .08 g/dL?

2.5. Is a BrAC detection that correlates to a BAC of .08 g/dL or above sufficiently accurate?

2.6. Would a standard that allows or requires systems that approximate BAC using BrAC (at any concentration) meet the Safety Act's requirement that standards be objective? Would the technology detect BAC?

2.7. NHTSA is seeking input on how a .08 g/dL BAC detection test procedure could be developed and executed in a FMVSS. For example, are dosed humans required or would a test device to simulate human dosing be required? What type of accuracy could be attained? Would static test procedures accurately simulate dynamic performance? In a BrAC evaluation, how would variance in vehicle cabin volume be accounted for?

2.8. What precision/accuracy should BAC detection technology be required to meet? Should any precision/accuracy requirement be fixed at a final rule stage, or should it become progressively more stringent over time with a phase-in?

2.9. For a BAC-based sensor, NHTSA seeks comment on when during a vehicle's start-up sequence an impairment detection measurement should occur. For example, should an initial measurement of BAC/BrAC be required upon vehicle start-up, or before the vehicle is put into drive, and why? What is a reasonable amount of time for that reading to occur?

2.10. NHTSA recognizes that ongoing detection would be necessary to identify if a driver reaches an impairment threshold only after commencing a trip, particularly if drinking during a drive. NHTSA seeks comment on whether BAC/BrAC measurements should be required on an ongoing basis once driving has commenced, and, if so, with what frequency, and why. Further, would a differentiation of the concentration threshold between initial and ongoing detection be recommended and why?

2.11. NHTSA requests comments on operational difficulties in using touch-based sensing (*e.g.,* consumer acceptance in colder climates when gloves may interfere) or in using breath-based sensing (*e.g.,* mouthwash, vaping, alcohol-drenched clothing, or other false positive indicators).

2.12. What can be done to mitigate physical destruction and misuse? Examples may include having a sober passenger press the touch sensor or breathe toward the breath sensor. If mitigations exist, how might these mitigations impact the effectiveness of alcohol detection systems?

2.13. Are there cybersecurity threats related to impairment detection systems? If so, what are they? Are there potential vulnerabilities that might allow outside actors to interfere with vehicles' impairment detection systems or gain unauthorized access to system data? How can cybersecurity threats be mitigated? Are there impairment detection methods or technologies that are less vulnerable than others?

2.14. What temporal considerations should NHTSA include in any performance standards it develops (*i.e.,* should NHTSA specify the amount of time a system needs to make a first detection upon startup before it will enable driving)? What amount of time is reasonable?

c. A Combination Detection Approach: Passively Monitor the Performance of a Driver of a Motor Vehicle To Accurately Identify Whether That Driver May Be Impaired and Passively and Accurately Detect Whether the BAC of a Driver of a Motor Vehicle Is Equal to or Greater Than .08 g/dL

This regulatory option combines the prior two. The combination of driver impairment detection (*e.g.,* using camera-based driver monitoring and other vehicle sensors) and .08 g/dL BAC detection may provide more opportunity to capture alcohol-impaired drivers at the start of the trip as well as those that have elevated BAC during the drive. It further may have the potential to help mitigate false positive detections by providing multiple detection methods.

In a NHTSA research study,[194] all the reviewed hybrid systems used camera-based DMS measures in addition to vehicle kinematic or physiological measures. The study further suggested that augmentation of camera-based measures with other measures is expected to be a trend in driver state monitoring systems, particularly those that measure alcohol impairment. Specifically, NHTSA's research study found sensors from two vehicle manufacturers, Toyota and Nissan, that used variables that have been found sensitive to alcohol impairment, including eye and eye closure measures, sweat, and BrAC. However, neither is on the market.

Therefore, a current limitation of this option is the fact that NHTSA is not aware of a passive and accurate .08 g/dL BAC detection technology available for production vehicles, as discussed in the previous section, and hence the timeframe for implementation may be a limiting factor.

Questions on Technologies Aimed at a Combination of Driver Impairment and BAC Detection

3.1. In light of the technology development needs to both passively and accurately detect .08 g/dL BAC and passively monitor the performance of a driver of a motor vehicle to accurately identify whether that driver may be impaired, are there interim strategies NHTSA should pursue?

3.2. If an alcohol impairment detection system utilizes both BAC detection and DMS components, which DMS metrics best complement a BAC system to ensure accuracy, precision, and reliability?

3.3. One possible benefit of a hybrid approach is that a camera system could help prevent intentional defeat of BAC/BrAC sensors. For example, when a driver presses a touch sensor to measure BAC, a camera using machine vision could verify that it is the driver and not a passenger who touches the sensor. Could the camera provide additional benefits against defeating the system?

3.4. NHTSA is considering a phased approach to addressing alcohol impairment. The agency is concerned about false positives. Effectively, this approach could have a first phase that aims to address alcohol-impaired drivers with a BAC of .15 g/dL or higher, where an alcohol sensor could have better accuracy in detecting alcohol-impairment, in combination with a camera-based DMS and/or other vehicle technologies. By improving the BAC detection accuracy, it may gain more consumer acceptance by lowering the false positive rate (*i.e.,* the chance that someone with a BAC below .08 g/dL is incorrectly identified as alcohol-

[194] Prendez, D.M., Brown, J.L., Venkatraman, V., Textor, C., Parong, J., & Robinson, E. (in press). Assessment of Driver Monitoring Systems for Alcohol Impairment Detection and Level 2 Automation. National Highway Traffic Safety Administration.

impaired by a vehicle system). This would also target the drivers with the highest levels of impairment. With time and accuracy improvement, a second phase could be pursued to achieve the .08 g/dL BAC accuracy needed to comply with BIL. NHTSA therefore seeks comment on the viability of this regulatory approach. Is a BAC of .15 g/dL the right limit to phase in?

3.4. An option could also be a system with primary and secondary indicators within a driver impairment algorithm. For example, a system could incorporate a zero or low (.02 g/dL) tolerance BAC detection technology to initially sense whether alcohol is present in the vehicle. This would serve to ''wake up'' a driver impairment algorithm. Since this could be hand sanitizer or alcohol on a person's clothing, a second confirmation of driver impairment from a driver monitoring system would be needed. Driver performance measures, such as eye gaze, lane weaving, etc. would be the primary indicators of impairment and utilize evidence of alcohol as a supplementary indicator for alcohol impairment. Given this approach, would such a system allow a vehicle to better distinguish between alcohol impairment and other forms of impairment that have similar indicators (*i.e.,* the percentage of eyelid closure can be an indicator of both drowsy and drunk driving)? NHTSA notes that it has not identified any passive, production-ready, alcohol-impaired driver detection technology capable of accurate detection at .02 g/dL and seeks comment on the status of such technology.

3. Proposed Vehicle Interventions Once Driver Impairment or BAC Is Detected

Once drunk driving or driver impairment is detected by a vehicle, the question becomes—what does the vehicle do with that information? BIL states that advanced drunk and impaired driving technologies include the ability to ''prevent or limit'' motor vehicle operation. There are a variety of strategies to prevent or limit operations that have been under research or have been implemented in production vehicles, such as the ignition interlocks discussed above.[195] Others range from not allowing the vehicle to move out of park (transmission interlocks), to warnings (used perhaps as a supplement to an intervention approach), to slowing or stopping the vehicle (in lane, or on the shoulder or right-most lane). There are also many considerations involved in selecting appropriate interventions, given the timing of impairment detection (*i.e.,* prior to the start of driving or during driving). Additionally, interventions appropriate for drunk driving may be different than those employed for other forms of driver impairment. For example, drunk drivers may respond more slowly to warnings than a sober but drowsy driver. Additionally, repeatedly warning a driver beyond the level or frequency that generates a positive reaction could lead to consumer annoyance and defeat efforts. NHTSA seeks to balance these concerns.

a. Prohibiting Driving at Start of the Trip

Ideally, once a defined level of alcohol has been accurately sensed from an impaired driver by vehicle technology, that individual would be prohibited from driving the vehicle. For example, this prohibition could be accomplished through an ignition or transmission shift interlock for an internal combustion engine vehicle. The vehicle could be put in accessory mode, and not able to move. Prohibiting an impaired driver from driving the vehicle at the start of a trip targets the largest number of alcohol-impaired fatalities.

The .08 g/dL BAC touch-sensor and/or breath-sensor detection technologies, which can ideally take immediate BAC measurements, are better suited for prohibiting driving at the start of the trip versus others that require a temporal measure of driver performance. While the technology readiness of the DADSS technologies to provide accurate .08 g/dL BAC detection is still undergoing research and development at this time, there are still many challenges associated with this prevention method that should be considered if it were to become a viable regulatory option.

Assuming an accurate detection technology is fully developed (including a standardized method for testing), NHTSA would have to consider the overall effectiveness of the intervention strategy and the overall cost (economic, societal, etc.). Some considerations would, among other things, include: consumer acceptance; defeat strategies; unintended consequences of immobilizing a vehicle; need for an emergency override; and time between disablement and re-enablement. NHTSA is seeking feedback on the following questions.

Questions on Prohibiting Driving at the Start of the Trip

4.1. How would an alcohol-impaired person react to their vehicle not starting, and how can/should this be considered? Would some individuals decide to walk to their destination in the road, increasing their risk of being hit by another vehicle? Would they get a sober person to start their vehicle and then take over the driving task themselves? Are there countermeasures to discourage this practice by shutting down the vehicle for a period of time after two failed attempts? NHTSA seeks comment on potential research designs to develop better information in this area.

4.2. What are the pros/cons of an ignition interlock as opposed to a transmission interlock prevention method for internal combustion engine vehicles? Is one superior to the other? Should both be acceptable compliance options if considered for an FMVSS? How would this differ for electric vehicles and what issues specific to electric vehicles should NHTSA consider?

4.3. NHTSA seeks comment on any adverse consequences of an impaired driver being unable to drive his/her vehicle. For example, this could result in an alcohol-impaired person being stranded late at night for hours and susceptible to being a victim of crime or environmental conditions (*e.g.,* weather). Or an alcohol-impaired camper may need to use his/her vehicle to escape from a rapidly approaching wildfire or environmental conditions (weather). How often would such incidences expect to occur (assuming full fleet implementation)? Are there logical strategies for mitigating the negative effects? What if the vehicle owner wishes to drive their vehicle on private land (*i.e.,* not on public roads)?

4.4. Given the previous examples, should there be an override feature for emergencies? Should the maximum speed of the vehicle be limited during override? How could an override feature be preserved for extreme situations and not used routinely when alcohol-impaired?

4.5. If a system detects alcohol impairment prior to the start of a trip and an interlock is activated, should retest(s) be allowed, at what elapsed time interval(s), and why? NHTSA especially seeks comment on test/data analysis methods for determining an optimal retest interval strategy. Finally, should data be recorded on the vehicle if retesting is permitted?

b. Vehicle Warnings Once Impairment Detected (On-Road)

In addition to driver impairment being detected and prevented at the start of a trip, driver impairment can be monitored over time during the drive. Detecting that a driver is alcohol-impaired mid-trip is obviously a less

[195] NHTSA notes that nothing in this document is intended to replace ignition interlocks used as a sanction for impaired driving offenses.

desirable scenario (than detecting that a driver is impaired via an ignition/transmission interlock) since an alcohol-impaired driver may have the unfortunate opportunity to get in a crash before the driver impairment is detected. However, this type of strategy may mitigate a larger group of driver-impairment fatalities, not just alcohol, and vehicle warnings could be relatively low cost.

That said, there are many challenges associated with this intervention that should be addressed for it to become a viable regulatory option. Assuming an accurate detection technology was fully developed (including a standardized method for testing), NHTSA would have to consider the overall effectiveness of warnings as an intervention strategy against the various driver impairments, and the overall cost (*e.g.,* economic, societal). Some of the considerations would, among other things, include: consumer acceptance, defeat strategies, unintended consequences of warnings, need for an incapacitation sensor, etc. NHTSA is seeking feedback on the following questions.

Questions on Vehicle Warnings Once Impairment Is Detected

5.1. NHTSA is aware of many vehicle manufacturers using visual/auditory warnings (*e.g.,* a coffee cup icon) and encouraging drivers to take a break from the driving task. There are also visual/auditory/haptic warnings to identify distracted driving or hands off the steering wheel while Level 2 driving automation systems are engaged. NHTSA is interested in any studies to support the effectiveness of these warnings, including designing against defeat strategies. NHTSA also seeks comment and studies on whether similar warnings may be effective for alcohol-impaired or incapacitated drivers or would additional interventions be needed. The system attributes that enhance a system's effectiveness are of particular interest to NHTSA. Are there any unintended consequences from these warnings? If so, what are they?

5.2. NHTSA's research suggested that indicators of alcohol impairment are often also potential indicators of other conditions, such as drowsiness. Hence, the preventative measures of each condition may need to be addressed differently. For example, distracted drivers can quickly return their attention to the driving task, and drowsy drivers can recover with adequate rest as an intervention, but drunk drivers may need a much longer recovery time as alcohol metabolizes.[196] NHTSA therefore requests research and information on what warning strategy would effectively encourage both drivers that are alcohol-impaired and drivers that have a different impairment to improve their performance in the driving task (*e.g.,* by resting, getting a caffeinated beverage)? Or is there research to support that a warning would only be effective for a distracted driver or a drowsy driver, but may aggravate an alcohol-impaired driver? Are there other adverse consequences from using warnings to address multiple types of impairment? If so, what are they?

5.3. NHTSA seeks comment on how manufacturers balance multiple alerts in response to different impairment detections. Given the many forms of impairment, if systems are developed that can distinguish effectively between alcohol impairment and other forms, is it practicable to employ a variety of different responses? Will multiple warnings (auditory, visual, or haptic) or other interventions for different forms of impairment only serve to confuse drunk drivers and lessen effectiveness for responses to drunk driving?

5.4. NHTSA seeks comment on how warnings, especially multiple warnings, may impact drivers with an auditory or sensory processing disability. Would multiple warnings distract some drivers?

5.5. NHTSA seeks comment on how systems react if the drowsy driver (or other inattentive or impaired driver) does not respond to warnings? What types of warning escalation strategies (timing, perceived urgency, and frequency) are used in industry and are they consistent among manufacturers?

c. Vehicle Interventions Once Impairment Is Detected (On-Road)

The most challenging countermeasure for preventing drunk and impaired driving fatalities is implementing vehicle interventions while the vehicle is in motion. There are a variety of strategies that have been under research, in development, or in production. Some are discussed below:

Limp Home Mode—once impairment (or incapacitation) is detected, the vehicle speed is reduced to a lower speed for a given amount of time. Adaptive cruise control with a long following gap setting could be turned on to prevent a forward crash with other vehicles. Systems may provide the driver a warning that the driver needs to leave the highway.

Stop in Lane—depending upon the vehicle manufacturer, the vehicle reduces speed and ultimately stops in the lane after a given time period of unresponsiveness of the driver (typically when the Level 2 driving automation system is engaged), putting on emergency flashers and unlocking the doors for easier entry into the vehicle. This presents a new hazard to motorists approaching the stopped vehicle, and a different kind of hazard for occupants of the stopped vehicle (*i.e.,* the original hazard was the drunk driver, but now the hazard is potentially being hit by other motorists). Some SAE Level 2 driving automation systems make use of this feature if the driver becomes unresponsive and some also can call for assistance.

Pull over to the Slow Lane (Right Lane) or Shoulder—some vehicle manufacturers have introduced more advanced concept or production vehicles that can pull over to the side of the road or into the ''slow lane'' once driver impairment (or incapacitation) is detected when Level 2 systems are engaged.[197] This requires the vehicle to be equipped with lane-changing capability, where a vehicle needs to be able to understand whether there are vehicles or other road users in (or approaching) its blind spot in order to make a lane change. Modern vehicles increasingly have the technology to detect lane lines and blind spots, and to automate lane changes, under certain circumstances.

For example, in 2019, media reports suggested a Volvo system would detect drunkenness, drowsiness, or distraction,[198] and interventions could include limiting the speed of the vehicle or slowing it down and safely parking the car.[199] The agency believes this Volvo system will not be available on production vehicles in the U.S. until 2024.[200] The agency will evaluate technologies as they become available.

Questions on Vehicle Interventions Once Detected (On-Road)

6.1. What types of vehicle interventions are in use today for SAE Level 2 driving automation systems when the system detects the driver is incapacitated? What prevents their use

[196] Hancock, P.A. (2017). Driven to distraction and back again. In Driver Distraction and Inattention (pp. 9–26). CRC Press.

[197] *https://www.forbes.com/wheels/advice/automatic-emergency-stop-assistance/.*

[198] *https://www.motortrend.com/news/volvo-drunk-driving-distracted-cameras-sensors-safety/.*

[199] *https://www.theverge.com/2019/3/20/18274235/volvo-driver-monitoring-camera-drunk-distracted-driving.*

[200] *https://www.volvocars.com/us/cars/ex90-electric/.*

in being coupled with driver impairment or BAC detection technology? What is the feasibility of using these interventions without engaging Level 2 driving automation?

6.2. Stopping in the middle of the road could introduce new motor vehicle safety problems, including potential collisions with stopped vehicles and impaired drivers walking in the roadway. What strategies can be used to prevent these risks? How are risks different if the vehicle stops on the shoulder of the road? What preventative measures could be implemented for vehicles approaching the stopped vehicle? What are the risks to occupants involved in those scenarios?

6.3. What is the minimum sensor and hardware technology that would be needed to pull over to a slower lane or a shoulder and the cost?

Questions on Other Approaches To Reduce Impaired Driving

7.1. As vehicle technologies continue to develop with potential to reduce impaired driving, what steps or approaches should NHTSA consider now, including potential partnerships with States or other entities?

7.2. Which best practices have States found most effective in reducing impaired driving? Have States found approaches such as sharing information about drunk driving convictions to be helpful in reducing impaired driving?

V. Summary of Other Efforts Related to Impaired Driving

NHTSA is aware of several other ongoing efforts by external entities to establish performance requirements for systems to detect alcohol impairment or otherwise influence the development of such performance requirements.

SAE International has developed SAE J3214, a ''Breath-Based Alcohol Detection System'' standard. This standard focuses on directed breath zero-tolerance systems, which are systems that look for any level of alcohol via the driver's BrAC and require that a driver direct a breath toward a device for measurement. The standard was published on June 27, 2021.[201]

The various New Car Assessment Programs (NCAPs) from around the world are also considering protocols for detection of driver state and system warning or intervention.[202] Euro NCAP focuses on DMS and while its assessment protocol mentions impaired driving, the actual assessment focuses only on distraction, fatigue (*i.e.,* drowsiness), and unresponsive drivers.[203] Euro NCAP currently describes no specific assessment for alcohol impairment. Euro NCAP Vision 2030 states that expanding the program's scope of driver impairment by adding specific detection of driving under the influence is a priority for the mid-term: ''. . . [A] key real-world priority for the midterm therefore is to expand the scope of driver impairment adding specific detection of driving under the influence and sudden sickness with advanced vision and/or biometric sensors and introducing more advanced requirements for risk mitigation functions.'' [204] Mid-term is not defined in the text of the document, but a graphic indicates that 2032 is Euro NCAP's targeted timeline. Even so, NHTSA is monitoring Euro NCAP's efforts to see if they might be leveraged in this rulemaking activity. NHTSA's understanding is that Australasian NCAP is considering protocols like Euro NCAP. Additionally, NHTSA has sought comment on the inclusion of DMS and alcohol detection systems in U.S. NCAP.[205] NHTSA is in the process of considering all comments received and drafting a final decision that will establish a roadmap that includes plans to upgrade U.S. NCAP in phases over the next several years. Other organizations, like Consumer Reports [206] and the Insurance Institute for Highway Safety (IIHS),[207] include DMS in their programs. Finally, NHTSA is aware of and following the work of the Impairment Technical Working Group that is intended to assist with the implementation of advanced impaired driving technology.[208] The group is co-chaired by members of the Johns Hopkins Center for Injury Research and Policy at the John Hopkins Bloomberg School of Public Health and MADD. The Impairment Technical Working Group formed with the goal of ''identifying efficient and effective approaches for implementing driver impairment prevention technology in new cars.'' The Impairment Technical Working Group is one of many groups or organizations interested in influencing this rulemaking proceeding. On April 18, 2023, the Impairment Technical Working Group issued a short ''Views Statement'' that included three recommendations for implementing advanced impaired driving technology.[209] These three recommendations are largely duplicative of the mandate in BIL but deviate slightly in that they explicitly request that multiple impairment types be included through this rulemaking (*i.e.,* not limited to alcohol impairment). Also, the group's three recommendations, when read together, describe the group's preference for the third (*i.e.,* hybrid) option in BIL.

VI. Privacy and Security

In considering next steps, NHTSA is aware of the need for comprehensive analysis of the privacy considerations that are relevant to developing performance requirements for systems that would identify and prevent individuals who are intoxicated from driving. Per the E-Government Act of 2002 and internal DOT policies and procedures, NHTSA intends to conduct a privacy threshold analysis (PTA) to determine whether the agency should publish a draft Privacy Impact Assessment (PIA) concurrent with its issuance of a regulatory proposal that would establish performance requirements for advanced impaired driving technology. Although NHTSA welcomes privacy-related comments in response to this advance notice of proposed rulemaking, the agency expects that any future regulatory proposal and any accompanying draft PIA would provide the public with more detailed analysis necessary to evaluate potential privacy risks and proposed mitigation controls associated with advanced impaired driving technology.

NHTSA also intends to consider closely any potential security implications that are relevant to developing performance requirements

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[201] *https://www.sae.org/standards/content/j3214_202101/.*

[202] NHTSA's New Car Assessment Program (NCAP) provides comparative information on the safety performance of new vehicles to assist customers with vehicle purchasing decisions and to encourage safety improvements. In addition to star ratings for crash protection and rollover resistance, the NCAP program recommends particular advanced driver assistance systems (ADAS) technologies and identifies the vehicles in the marketplace that offer the systems that pass NCAP performance test criteria for those systems.

[203] *https://cdn.euroncap.com/media/70315/euro-ncap-assessment-protocol-sa-safe-driving-v101.pdf.*

[204] *https://cdn.euroncap.com/media/74468/euro-ncap-roadmap-vision-2030.pdf.*

[205] 87 FR 13452 (March 9, 2022), *available at https://www.federalregister.gov/documents/2022/03/09/2022-04894/new-car-assessment-program.*

[206] Driver Monitoring Systems Can Help You Be Safer on the Road—Consumer Reports.

[207] IIHS creates safeguard ratings for partial automation.

[208] U.S. Senator Ben Ray Luján (2022) Luján, Advocates Announce Technical Working Group to Implement Advanced Impaired Driving Prevention Technology. June 14, 2022. *https://www.lujan.senate.gov/newsroom/press-releases/%EF%BF%BClujan-advocates-announce-technical-working-group-to-implement-advanced-impaired-driving-prevention-technology/.*

[209] *https://advocacy.consumerreports.org/research/technical-working-group-on-advanced-impaired-driving-prevention-technology-views-statement-on-implementing-driver-impairment-prevention-technology/.*

for systems that would identify and prevent individuals who are intoxicated from driving. NHTSA requests comments on privacy and security issues that the agency should consider while developing its proposal. NHTSA acknowledges that many of the answers to these questions would be design-specific, and thus, expects that commenters might provide generalized input now with more specific input at the proposal stage.

Questions About Privacy and Security Considerations

8.1. NHTSA understands that personal privacy considerations are critical to the design of any system that monitors driver behavior or condition. Such considerations are also one component of consumer acceptance of systems described in this advance notice of proposed rulemaking. NHTSA seeks comment on privacy considerations related to use and potential storage of data by alcohol and impairment detection systems and how best to preserve driver and passenger personal privacy. Are there strategies or requirements (*e.g.,* prohibitions on camera-based DMS from recording certain types of imagery) to protect privacy?

8.2. Given the potential for different privacy impacts associated with different types of systems and information used in those systems, how should NHTSA weigh the different potential privacy impacts? For example, how should accuracy be weighed against privacy? Do certain metrics result in less privacy impact than others while providing the same or more accuracy? If so, how?

8.3. What performance-based security controls should NHTSA consider including in its potential performance requirements for advanced impaired driving technology? Are there any industry or voluntary standards specific to these technologies that NHTSA should consider? If not, which standards do commenters believe would be most appropriate for these systems to comply with and why?

8.4. Are there any additional security vulnerabilities that these systems would present that do not already exist in modern vehicles (*e.g.,* passenger vehicles that are equipped with various technologies such as automatic emergency braking, lane keeping support, and others)? If so, what needs to be done to mitigate those potential vulnerabilities?

8.5. What suggestions do commenters have regarding how the agency should go about educating the public about security and privacy aspects of advanced impairment and drunk driving detection technology?

VII. Consumer Acceptance

As discussed in the authority section of this document, consumer acceptance is one component of practicability that NHTSA must consider when developing a FMVSS. NHTSA is aware that a combination of misinformation related to advanced drunk and impaired driving technologies, and misbelief that there exists a right to drive while drunk [210] have resulted in some individuals believing that this rulemaking is pursuing a course of action that might unduly infringe upon their rights. NHTSA has received correspondence that leads the agency to believe that some individuals believe that they not only have a right to drive,[211] but a right to drive while intoxicated by alcohol.[212] As NHTSA has said before, driving is a privilege, not a right.[213] These examples highlight potential consumer acceptance challenges, but not all such instances would be considered legitimate or sufficient to undermine the practicability prong of the Safety Act.

Additionally, NHTSA is encouraged by the results of a recent study conducted by researchers with Johns Hopkins Bloomberg School of Public Health and published in the Journal of the American Medical Association Network Open.[214] This study provides survey results from a relatively small-scale study with the objective of measuring public support for driver monitoring and lockout technologies. The survey contained two parts, one part querying whether participants supported or opposed ''the recent action by Congress to require drunk driving prevention in all new vehicles.'' The second part ask participants to indicate their level of agreement regarding six different warning or lockout technologies. A five-point scale was used for responses to both parts of the survey (strongly agree to strongly disagree). The primary findings of the study were that support for the congressional mandate on vehicle impairment detection technology was high, with 63.4 percent of respondents supporting the law (survey part 1.) For survey part 2, the author reported that 64.9 percent of respondents either agreed or strongly agreed with the statement, ''All new cars should have an automatic sensor to prevent the car from being driven by someone who is over the legal alcohol limit.'' Results for neutral and negative responses were only reported in graphical form, not exact measurements (*i.e.,* reported percentages and confidence intervals).

Safety is the predominant consideration when evaluating potential vehicle performance requirements designed to combat drunk driving effectively. However, the public may not realize estimated associated benefits if vehicle performance requirements and the technologies that meet them are not designed to differentiate with precision drivers who are impaired from those who are not, minimize interventions to those necessary to achieve results, and conform with principles of human factors engineering and design.

Question About Consumer Acceptance

9.1. NHTSA requests comment on legitimate consumer acceptance issues related to advanced drunk and impaired driving technologies and suggestions for how the agency might be able to craft future proposed performance requirements to remedy any consumer acceptance issues.

VIII. General Questions for the Public

In the preceding preamble, NHTSA seeks comment on a variety of complex issues related to establishing a new FMVSS to require that passenger motor vehicles be equipped with advanced drunk and impaired driving prevention technology. These questions are numbered and included throughout the preamble text in the appropriate sections. But not all questions fit neatly under the preceding titles. As such,

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[210] *https://www.rollingstone.com/culture/culture-news/tiktok-drunk-driving-booze-cruise-gang-alcohol-1234588210/.* NHTSA would believe this trend was entirely edgy satire if it had not received correspondence that indicates that some genuinely believe they have a right to drive drunk. ''Few would react the same to someone announcing they occasionally text while driving as they would to admitting to the occasional booze cruise while statistically there isn't much difference in added danger.'' NHTSA agrees that both texting while driving and driving while intoxicated are dangerous activities that put the safety of the public at risk.

[211] NHTSA has said before that driving is a privilege, not a fundamental right. See *https://www.nhtsa.gov/open-letter-driving-public#:~:text=Driving%20is%20a%20privilege%2C%20and,to%20protect%20all%20of%20us.* Obeying the rules of the road is a prerequisite for the privilege of driving. See *https://www.nhtsa.gov/teen-driving/parents-hold-keys-safe-teen-driving.*

[212] Assertions that drunk driving is acceptable, or even a right, are not new. This 1984 opinion piece in the New York Times provides an example of someone who thought he was entitled to drive drunk, seemingly because he hadn't killed or injured anyone yet. See *https://jalopnik.com/check-out-this-pro-drunk-driving-op-ed-the-nyt-publishe-1847408294; https://www.nytimes.com/1984/06/03/nyregion/long-island-opinion-drinking-and-driving-can-mix.html.* Please visit the docket for a letter NHTSA received that appears to assert that some individuals should be permitted to drive drunk.

[213] *Id.*

[214] *https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2803962?utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_term=042023.*

NHTSA also seeks comment on the remaining questions listed below.

10.1. NHTSA seeks comment on any reliability or durability considerations for alcohol impairment detection technology that may impact functionality over its useful life.

10.2. NHTSA requests any information regarding the final installed costs, including maintenance costs, of impairment detection systems.

10.3. Should NHTSA propose a standardized telltale [215] or indicator [216] (or set of telltales) indicating that impairment has been detected (and/or that vehicle systems have been limited in response)? Are there standardized industry telltales or indicators already developed for this sort of system that NHTSA should consider?

10.4. NHTSA broadly seeks comment on how to best ensure that manufacturers have the flexibility to develop more effective impairment detection technology while preserving a minimum level of accuracy and reliability.

10.5. Should NHTSA consider establishing a requirement that allows a vehicle's BAC detection threshold to be adjusted downward based on the BAC thresholds of local jurisdictions or fleet owners? Note, this technology would not be intended or designed to replace a State's enforcement of its own statutes.

10.6. Earlier in this document, NHTSA noted that progress in reducing drunk driving resulting from many behavioral safety campaigns has plateaued. Should NHTSA devote more of its behavioral safety resources towards those programs and efforts that address underlying contributors to alcohol use disorder, including drunk driving, like mental health conditions? Are there effective behavioral safety campaigns or tactics NHTSA is not using?

[215] Telltale means an optical signal that, when illuminated, indicates the actuation of a device, a correct or improper functioning or condition, or a failure to function.

[216] Indicator means a device that shows the magnitude of the physical characteristics that the instrument is designed to sense.

IX. Rulemaking Analyses

A. Executive Order 12866, Executive Order 13563, Executive Order 14094, and DOT Regulatory Policies and Procedures

The agency has considered the impact of this ANPRM under Executive Orders (E.O.) 12866, 13563, 14094 and the Department of Transportation's regulatory policies and procedures. This action has been determined to be significant under E.O. 12866 (Regulatory Planning and Review), supplemented and reaffirmed by E.O. 13563 and amended by E.O. 14094, and DOT Order 2100.6A, ''Rulemaking and Guidance Procedures.'' It has been reviewed by the Office of Management and Budget under E.O. 12866. E.O. 12866 and 13563 require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' Additionally, E.O. 12866 and 13563 require agencies to provide a meaningful opportunity for public participation, and E.O. 14094 affirms that regulatory actions should ''promote equitable and meaningful participation by a range of interested or affected parties, including underserved communities.'' We have asked commenters to answer a variety of questions to elicit practical information about the approach that best meets these principles and the Safety Act and any relevant data or information that might help support a future proposal.

B. Privacy Act

Anyone can search the electronic form of all documents received into any of NHTSA's dockets by the name of the individual submitting the document (or signing it, if submitted on behalf of an association, business, labor union, etc.). 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-systemrecords-notices,* the comments are searchable by the name of the submitter.

C. Regulation Identifier Number (RIN)

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Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

Ann Carlson,

Acting Administrator.

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