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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 10684 of December 8, 2023

Human Rights Day and Human Rights Week, 2023

By the President of the United States of America

A Proclamation

Seventy-five years ago, the Universal Declaration of Human Rights captured a remarkable act of collective hope. Drafted by a committee representing different regions, faiths, and philosophies and adopted by the United Nations General Assembly, the rights enumerated in the declaration are universal and enduring. On Human Rights Day and during Human Rights Week, we reaffirm our commitment to upholding the equal and inalienable rights of all.

The United States was founded on an idea, at once the simplest and the most powerful idea in the history of the world: that we are all created equal and endowed with certain inalienable rights. Generations later, in the wake of World War II and the Holocaust, the United States joined countries around the world to create the United Nations and enshrine that same idea in the Universal Declaration of Human Rights.

Today, the United States—together with our partners and allies—continues to defend fundamental freedoms and human rights wherever they are under threat. We stand with people everywhere defending their rights against the forces of autocracy—demonstrating to the world that the flame of liberty still lights the souls of free people everywhere.

This year, we also affirmed our commitment to democratic renewal globally at the second Summit for Democracy, bringing together nearly 100 government leaders and hundreds of representatives from civil society and the private sector as well as journalists, technologists, and youth leaders from around the world. The Summit galvanized progress to protect human rights, bolster democratic reforms, fight corruption, support free and independent media, advance technology that works for democracy, combat the misuse of technology, and defend free and fair elections and political processes.

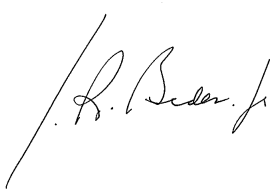
I have often said that one of America's greatest strengths is that we lead not by the example of our power but by the power of our example. We are strongest in the world when we live by our values at home, and we must never cease working to uphold the dignity and protect the rights of every person in this country and promote protection of those same rights globally. That is why my Administration has established the White House Gender Policy Council, which works to ensure women and girls enjoy equal rights and equal participation in society by advancing the women, peace and security agenda, preventing and responding to gender-based violence, and more. We have worked to strengthen civil rights for LGBTQI+ people at home and around the world and to protect same-sex marriage. We have led an intensive effort to counter the proliferation and misuse of commercial spyware that has enabled human rights abuses around the world. We are working to address systemic racism, advance racial equity, bolster support for underserved communities throughout the Federal Government, address inequities in our law enforcement and criminal justice systems, and expand accessibility for people with disabilities. As we look at today's global challenges online and offline, from conflict, democratic backsliding, and global pandemics to misinformation, the misuse of technology, the climate crisis, and food insecurity, the Universal Declaration of Human Rights is a bedrock

upon which we must tackle these issues and promote the full enjoyment of all human rights.

Today, as we celebrate Human Rights Day, the start of Human Rights Week, and the 75th anniversary of the Universal Declaration of Human Rights, may we all recommit to securing the equal rights of every member of the human family and working together for the advancement of all humankind. Together, we can—and we will—bend the arc of history toward a freer and more just world for all.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim December 10, 2023, as Human Rights Day and the week beginning December 10, 2023, as Human Rights Week. I call upon the people of the United States to mark these observances with appropriate ceremonies and activities.

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



[FR Doc. 2023–27485
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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Doc. No. AMS–NOP–21–0073]

RIN 0581–AE06

National Organic Program (NOP); Organic Livestock and Poultry Standards; Delay of Effective Date and Update of Compliance Date

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

ACTION: Final rule; delay of effective date and update of compliance date.

SUMMARY: The Agricultural Marketing Service (AMS) is delaying the effective date of the Organic Livestock and Poultry Standards (OLPS) final rule, published on November 2, 2023, to meet the requirements of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act (CRA)). The CRA requires that agencies provide Congress with at least 60 days to review a major rule before it takes effect. For the OLPS final rule, AMS provided the required notice to Congress on November 13, 2023, after publication of the rule. Therefore, the published effective date did not provide 60 days for congressional review. This final rule delays the effective date of the OLPS final rule by 10 days to meet the 60-day requirement. AMS is making a technical correction to the compliance date of January 5, 2029, for indoor and outdoor stocking density requirements and soil and vegetation requirements for broiler operations to January 2, 2029. All other compliance dates of the OLPS final rule remain unchanged. Additionally, in acknowledgement of the U.S. Government Accountability Office assessment of the final rule, AMS confirms that the Administrative Pay-As-You-Go Act of 2023 does not apply to the OLPS final rule because it does not increase direct spending.

DATES:

Effective date: The effective date of the Organic Livestock and Poultry Standards final rule amending 7 CFR part 205, published at 88 FR 75394 on November 2, 2023, is delayed until January 12, 2024.

Compliance dates: All organic operations must comply with the requirements of the OLPS final rule by January 2, 2025, except:

(1) Currently certified organic layer operations and layer operations that are certified before January 2, 2025, must comply with § 205.241(c)(2), (4), and (5), concerning outdoor stocking density requirements and soil and vegetation requirements, by January 2, 2029.

(2) Currently certified organic broiler operations and broiler operations that are certified before January 2, 2025, must comply with § 205.241(b)(10) and (c)(2) and (6), concerning indoor and outdoor stocking density requirements and soil and vegetation requirements, by January 2, 2029.

(3) Currently certified organic poultry operations and poultry operations that are certified before January 2, 2025, must comply with § 205.241(b)(4), concerning poultry house exit area requirements, by January 2, 2029.

FOR FURTHER INFORMATION CONTACT: Erin Healy, Director, Standards Division; Telephone: (202) 720–3252; Email: *erin.healy@usda.gov.*

SUPPLEMENTARY INFORMATION: The OLPS final rule published on November 2, 2023, at 88 FR 75394. It amends the USDA organic regulations (7 CFR part 205) related to the production of livestock, including poultry, marketed as organic. The rule adds detailed regulations related to animal health care, indoor and outdoor space standards, manure management, temporary confinement of livestock, access to the outdoors, transportation conditions, and humane euthanasia and slaughter. The rule clarifies aspects of the existing USDA organic regulations that are not interpreted or enforced in a consistent manner. In turn, the detailed regulations in the final rule will better assure consumers that organic livestock products meet a consistent standard, as intended by the Organic Foods Production Act of 1990 (OFPA).

This final rule delays the effective date of the OLPS rule in order to meet the requirements of the Congressional Review Act or ''CRA'' (5 U.S.C. 801–808). The CRA requires that before a rule can take effect, a report must be submitted to each House of the Congress and to the Comptroller General that includes a copy of the rule, a concise general statement of the rule, and its proposed effective date (5 U.S.C. 801(a)(1)). Furthermore, the effective date of a ''major rule,'' as defined at 5 U.S.C. 804, must be ''the later of the date occurring 60 days after the date on which . . . the Congress received the [required] report . . . or . . . the rule is published in the **Federal Register** . . ..'' (5 U.S.C. 801(a)(3)). For the OLPS final rule (which meets the criteria of a major rule), the required information was not received by Congress until November 13, 2023,[1] so the rule cannot be effective until 60 days after that date, *i.e.,* January 12, 2024. Therefore, the published effective date, which was calculated as 60 days after the date of publication of the rule in the **Federal Register**, is erroneous. This final rule delays the previously published effective date from January 2, 2024, to January 12, 2024.

In this action, AMS is not changing any of the compliance dates in the OLPS final rule, except to correct the compliance date for indoor and outdoor stocking density requirements and soil and vegetation requirements for broiler operations from January 5, 2029, as stated in the OLPS final rule, to January 2, 2029. This technical correction will make the date consistent with the other compliance dates in that rule. AMS has previously publicly discussed the OLPS final rule's compliance dates with certifiers, producers, and stakeholders and believes maintaining them will minimize confusion and allow existing plans for compliance by the original compliance dates to be maintained.

AMS acknowledges that the preamble text of the OLPS final rule is now incorrect when it states compliance dates are ''one year following the effective date of the final rule'' or ''five years from the effective date.'' All compliance dates should be understood as one year or five years from the original effective date of January 2, 2024.

Section 553 of the Administrative Procedure Act, 5 U.S.C.553(b)(B), provides that, when an agency for good cause finds that notice and public

[1] U.S. Government Accountability Office. Report B–335744, November 16, 2023, available at *https://www.gao.gov/products/b-335744.*

procedure are impracticable, unnecessary, or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. AMS has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because AMS is merely delaying the effective date and correcting one compliance date. AMS is delaying the effective date of the OLPS rule to be consistent with the requirements of the CRA as a matter of law and has no discretion in this matter. The compliance dates erroneously listed as January 5, 2029, in the OLPS final rule will now be corrected to January 2, 2029. These changes are administrative and minor in nature. Accordingly, AMS finds that there is good cause to dispense with notice and public procedure under 5 U.S.C. 553(b)(B).

Administrative Pay-As-You-Go-Act of 2023

The U.S. Government Accountability Office (GAO) assessment of the OLPS final rule reported that AMS did not discuss the Administrative Pay-As-You-Go-Act of 2023 (Pub. L. 118–5, div. B, title III, 137 Stat 3) (Act) in the final rule.[2] The Office of Management and Budget memorandum on the Administrative Pay-As-You-Go-Act of 2023 stated that the requirements of the Act ''apply to all rules that have not yet been submitted to the Office of Information and Regulatory Affairs (OIRA) as of the date of this memorandum.'' [3] Based on AMS' understanding, analysis was not required. AMS submitted the OLPS final rule to OIRA on July 31, 2023, before the memorandum was published on September 1, 2023. However, AMS does confirm the Act does not apply to the OLPS final rule because it does not increase direct spending.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–27255 Filed 12–12–23; 8:45 am]

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[2] U.S. Government Accountability Office. Report B–335744, November 16, 2023, available at *https://www.gao.gov/products/b-335744.*

[3] Office of Management and Budget. Memorandum for the Heads of Executive Departments and Agencies, September 1, 2023, available at *https://www.whitehouse.gov/wp-content/uploads/2023/09/M-23-21-Admin-PAYGO-Guidance.pdf.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2239; Project Identifier MCAI–2023–01201–R; Amendment 39–22627; AD 2023–24–51]

RIN 2120–AA64

Airworthiness Directives; Hélicoptères Guimbal Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Hélicoptères Guimbal Model Cabri G2 helicopters. This AD was prompted by reports of a crack in the pilot cyclic stick base. This AD requires repetitively inspecting certain part-numbered pilot and co-pilot cyclic stick bases and, depending on the results, corrective action. This AD also prohibits installing those pilot and co-pilot cyclic stick bases unless certain requirements are met. These actions are specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA previously sent this AD as an emergency AD to all known U.S. owners and operators of these helicopters. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 28, 2023. Emergency AD 2023–24–51, issued on November 21, 2023, which contained the requirements of this amendment, was effective with actual notice.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 28, 2023.

The FAA must receive comments on this AD by January 29, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2239; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material identified in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*
- For Guimbal service information identified in this final rule, contact Hélicoptères Guimbal, 1070, rue du Lieutenant Parayre, Aérodrome d'Aix-en-Provence, 13290 Les Milles, France; phone 33–04–42–39–10–88; email *support@guimbal.com;* or at *guimbal.com.*
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–2239.

FOR FURTHER INFORMATION CONTACT: Dan McCully, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone (404) 474–5548; email *william.mccully@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–2239; Project Identifier MCAI–2023–01201–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Dan McCully, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone (404) 474–5548; email *william.mccully@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued Emergency AD 2023–24–51, dated November 21, 2023 (the emergency AD), to address an unsafe condition on all Hélicoptères Guimbal Model Cabri G2 helicopters. The FAA sent the emergency AD to all known U.S. owners and operators of these helicopters. The emergency AD requires repetitively inspecting certain part-numbered pilot and co-pilot cyclic stick bases for a crack and, depending on the results, removing the cracked cyclic stick base from service and replacing it with a serviceable cyclic stick base in accordance with a method approved by the FAA, EASA, or Hélicoptères Guimbal EASA Design Organization Approval (DOA). The emergency AD also prohibits installing an affected pilot or co-pilot cyclic stick base unless it is new (zero total hours time-in-service) or it has passed its required inspection.

The emergency AD was prompted by EASA Emergency AD 2023–0204–E, dated November 20, 2023 (EASA AD 2023–0204–E), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition on Hélicoptères Guimbal Model Cabri G2 helicopters. EASA AD 2023–0204–E states that further investigation determined that the root cause of the cracks is fatigue, primarily related to induced loads on the cyclic stick during pre-flight (free play) checks. Accordingly, EASA AD 2023–0204–E requires repetitively inspecting certain part-numbered pilot and co-pilot cyclic stick bases and, depending on the results, corrective action. EASA AD 2023–0204–E also prohibits installing those pilot and co-pilot cyclic stick bases unless its requirements are met.

You may examine EASA AD 2023–0204–E in the AD docket at *regulations.gov* under Docket No. FAA–2023–2239.

The FAA is issuing this AD to detect a cracked pilot or co-pilot cyclic stick base. This condition, if not addressed, could result in failure of the pilot or co-pilot cyclic stick base and subsequent loss of control of the helicopter.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2023–0204–E, which requires repetitively inspecting pilot cyclic stick base part number (P/N) G41–42–801 and co-pilot cyclic stick base P/Ns G41–43–801 and G41–43–802 for a crack. Depending on the results, EASA AD 2023–0204–E requires contacting HG [Hélicoptères Guimbal] for approved instructions to replace a cracked cyclic stick base and accomplishing those instructions accordingly. EASA AD 2023–0204–E also allows removing the dual control (co-pilot cyclic stick) instead of replacing a cracked co-pilot cyclic stick base. Lastly, EASA AD 2023–0204–E prohibits installing a specified pilot or co-pilot cyclic stick base unless it is a new (never installed before) part or, before installation, has passed its required inspection.

The FAA also reviewed Guimbal Mandatory Service Bulletin SB 23–006, Revision B, dated November 14, 2023 (SB 23–006B), which specifies procedures for an initial and repetitive inspections of both the pilot and copilot cyclic bases for cracks. SB 23–006B specifies doing the inspection using a flashlight and in case of doubt, performing a dye-penetrant inspection. If there is a crack on the pilot's side, SB 23–006B specifies grounding the helicopter and contacting HG [Hélicoptères Guimbal]; if there is a crack on the copilot's side, SB 23–006B specifies removing the dual controls and contacting HG.

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

FAA's Determination

These helicopters have been approved by the aviation authority of the European Union and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA, its technical representative, has notified the FAA of the unsafe condition described in its emergency AD. The FAA is issuing this AD after evaluating all pertinent information and determining that the unsafe condition exists and is likely to exist or develop on other helicopters of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2023–0204–E, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under ''Differences Between this AD and the EASA Emergency AD.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2023–0204–E is incorporated by reference in this FAA final rule. This AD, therefore, requires compliance with EASA AD 2023–0204–E in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0204–E does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0204–E. Service information referenced in EASA AD 2023–0204–E for compliance will be available at *regulations.gov* under Docket No. FAA–2023–2239 after this final rule is published.

Differences Between This AD and the EASA Emergency AD

The service information referenced in EASA AD 2023–0204–E specifies performing a dye-penetrant inspection in case of a doubt regarding if there is a crack, whereas this AD does not require that action. If there is cracked

pilot or co-pilot cyclic stick base, EASA AD 2023–0204–E requires contacting HG [Hélicoptères Guimbal] for approved instructions to replace it with a serviceable part and accomplishing those instructions accordingly and the service information referenced in EASA AD 2023–0204–E specifies contacting HG [Hélicoptères Guimbal] or removing the dual controls and contacting HG [Hélicoptères Guimbal], whereas this AD requires removing the cracked cyclic stick base from service and replacing it with a serviceable cyclic stick base in accordance with a method approved by the FAA, EASA, or Hélicoptères Guimbal EASA DOA.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that required the immediate adoption of Emergency AD 2023–24–51, issued on November 21, 2023, to all known U.S. owners and operators of these helicopters. The FAA found that the risk to the flying public justified waiving notice and comment prior to adoption of this rule because the affected component is part of an assembly that is critical to the control of a helicopter. As the FAA also has no information pertaining to the quantity of cracked components that may currently exist in the U.S. fleet or how quickly the condition may propagate to failure, the actions required by this AD must be accomplished before further flight for certain helicopters. These conditions still exist, therefore, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forego notice and comment.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 49 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Inspecting a pilot or co-pilot cyclic stick base takes a minimal amount of time for a nominal cost. If required, replacing a pilot cyclic stick base takes about 3 work-hours and parts cost about $1,585 for an estimated cost of $1,840 per helicopter; and replacing a co-pilot cyclic stick base takes about 1 work-hour and parts cost about $711 for an estimated cost of $796 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–24–51 Hélicoptères Guimbal: Amendment 39–22627; Docket No. FAA–2023–2239; Project Identifier MCAI–2023–01201–R.

(a) Effective Date

The FAA issued Emergency Airworthiness Directive (AD) 2023–24–51 on November 21, 2023, directly to affected owners and operators. As a result of such actual notice, that emergency AD was effective for those owners and operators on the date it was provided. This AD contains the same requirements as that emergency AD and, for those who did not receive actual notice, is effective on December 28, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Hélicoptères Guimbal Model Cabri G2 helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code: 6710, Main Rotor Control.

(e) Unsafe Condition

This AD was prompted by reports of a crack in the pilot cyclic stick base. The FAA is issuing this AD to detect a cracked pilot or co-pilot cyclic stick base. The unsafe condition, if not addressed, could result in failure of the pilot or co-pilot cyclic stick base and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation

Safety Agency (EASA) Emergency AD 2023–0204–E, dated November 20, 2023 (EASA AD 2023–0204–E).

(h) Exceptions to EASA AD 2023–0204–E

(1) Where EASA AD 2023–0204–E defines ''the SB,'' this AD requires using Guimbal Mandatory Service Bulletin SB 23–006, Revision B, dated November 14, 2023.

(2) Where EASA AD 2023–0204–E refers to its effective date, this AD requires using the effective date of this AD.

(3) Where EASA AD 2023–0204–E requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(4) Where Table 1 in EASA AD 2023–0204–E states, ''Compliance Time after the Effetive Date,'' for this AD, replace that text with, ''Compliance Time after the Effective Date.''

(5) Where Note (1) of EASA AD 2023–0204–E states, ''For the initial inspection, a single ferry flight without passengers is allowed to a maintenance location, where the actions required by this AD can be accomplished,'' for this AD, replace that text with, ''For the initial inspection, a single special flight permit may be issued in accordance with 14 CFR 21.197 and 21.199 to a maintenance location where the actions required by this AD can be accomplished, provided there are no passengers onboard.''

(6) Where the service information referenced in EASA AD 2023–0204–E states performing a dye-penetrant inspection, this AD does not require that action.

(7) Instead of complying with paragraphs (2) and (3) of EASA AD 2023–0204–E and paragraph d) of the service information referenced in EASA AD 2023–0204–E, for this AD, comply with the following: ''As a result of an inspection required by paragraph (1) of EASA AD 2023–0204–E, if there is a crack, before further flight, remove the affected part, as defined in EASA AD 2023–0204–E, from service and replace it with a serviceable part, as defined in EASA AD 2023–0204–E, in accordance with a method approved by the Manager, International Validation Branch, FAA; or EASA; or Hélicoptères Guimbal EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.''

(8) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0204–E.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Additional Information

For more information about this AD, contact Dan McCully, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone (404) 474–5548; email *william.mccully@faa.gov.*

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) Emergency AD 2023–0204–E, dated November 20, 2023.

(ii) Guimbal Mandatory Service Bulletin SB 23–006, Revision B, dated November 14, 2023.

(3) For EASA AD 2023–0174–E, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*

(4) For Guimbal service information identified in this AD, contact contact Hélicoptères Guimbal, 1070, rue du Lieutenant Parayre, Aérodrome d'Aix-en-Provence, 13290 Les Milles, France; phone 33–04–42–39–10–88; email *support@guimbal.com;* or at *guimbal.com.*

(5) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on December 8, 2023.

Victor Wicklund,

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

[FR Doc. 2023–27429 Filed 12–11–23; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1397; Project Identifier MCAI–2023–00014–E; Amendment 39–22626; AD 2023–24–09]

RIN 2120–AA64

Airworthiness Directives; Safran Helicopter Engines, S.A. (Type Certificate Previously Held by Turbomeca S.A.) Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Safran Helicopter Engines, S.A. (Safran) (type certificate previously held by Turbomeca S.A.) Model Arrius 2R engines. This AD is prompted by reports of inconsistencies between the torque (TQ) and measured gas temperature (MGT) conformation values recorded in the avionics and the TQ and MGT conformation values recorded on the engine log cards following replacement of the M01 and M02 modules installed on the engine. This AD requires a one-time check of the consistency between the TQ and MGT conformation values recorded in the avionics and the values recorded on the engine log cards, and, if necessary, recalibrating the values and updating the engine logs, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 17, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 17, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1397; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

• For service information identified in this final rule, contact EASA, Konrad-

Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *ad.easa.europa.eu.*

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–1397.

FOR FURTHER INFORMATION CONTACT: Kevin Clark, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7088; email: *kevin.m.clark@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Safran Helicopter Engines, S.A. Model Arrius 2R engines. The NPRM published in the **Federal Register** on July 12, 2023 (88 FR 44232). The NPRM was prompted by EASA AD 2022–0265R1, dated January 6, 2023 (EASA AD 2022–0265R1) (also referred to as the MCAI), issued by EASA, which is the Technical Agent for the Member States of the European Union. The MCAI states that inconsistencies were reported between the TQ and MGT conformation values recorded in the avionics and the values recorded on the engine log cards following replacement of the M01 or M02 modules installed on the engine. This condition, if not corrected, could affect the engine power assurance check and lead to underestimated or overestimated TQ and MGT conformation values. Underestimated MGT conformation values could lead to an exceedance of the certified thermal limit of the high-pressure (HP) blades, possibly resulting in HP blade rupture with consequent sudden power loss and release of low-energy debris. Underestimated TQ conformation values could lead to overpassing the helicopter transmission limit. Overestimated TQ and MGT conformation values could lead to an electronic engine control unit embedded value that could result in power non-availability. Each of the above conditions could result in reduced control of the helicopter.

In the NPRM, the FAA proposed to require accomplishing the actions specified in the MCAI, except for any differences identified as exceptions in the regulatory text. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1397.

Discussion of Final Airworthiness Directive

The FAA received a comment from one commenter, Summit Helicopters, Inc (Summit). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Not Incorporate the EASA AD by Reference

Summit objected to incorporating the foreign government's AD by reference in FAA ADs, including this one. Summit mentioned that the work of revising the EASA AD to match the exceptions in the AD significantly increases the paperwork and hours needed to complete the requirements of the AD. Summit also objected to requiring U.S.-based mechanics to access foreign government websites to comply with the AD. Summit pointed out that accessing the foreign government website to retrieve and, further, modify the EASA AD with the exceptions contained in the FAA AD, specifically to comply, has the potential for confusion, especially with to the differing effective dates of the EASA AD and the FAA AD. Summit suggested that the FAA instead copy the required actions from the foreign AD into the FAA AD. The FAA also infers that Summit is requesting that the FAA discontinue the incorporation by reference of foreign ADs in all FAA ADs.

The FAA disagrees with the request. While this newer type of AD format results in another document needing to be reviewed by the mechanic, there is a benefit to operators that is not readily apparent. Most MCAIs permit using future approved revisions of required and related material without the need for an operator to request an alternative method of compliance (AMOC). The FAA is not permitted to include ''or future approved revisions'' directly in an AD. When an MCAI is not incorporated by reference, the FAA would require operators to be issued an AMOC allowing future, alleviating revisions of required material. Therefore, this method minimizes the need for AMOCs. Finally, since the MCAI is made available within the docket on *regulations.gov* when the NPRM is published, it is unnecessary for a U.S.-based person to access a foreign website to obtain a copy.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0265R1, which specifies instructions for a one-time check of the consistency between the TQ and MGT conformation values recorded in the avionics and the values recorded in the engine log cards, and, if necessary, recalibrating the values and updating the engine logs.

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

Costs of Compliance

The FAA estimates that this AD affects 145 engines installed on helicopters of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Perform consistency check	1 work-hour × $85 per hour = $85	$0	$85	$12,325

The FAA estimates the following costs to do any necessary recalibration that would be required based on the results of the consistency check. The agency has no way of determining the number of aircraft that might need recalibration:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Recalibrate conformation values and update records.	1 work-hour × $85 per hour = $85	$0	$85

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–24–09 Safran Helicopter Engines, S.A. (Type Certificate Previously Held by Turbomeca, S.A.): Amendment 39–22626; Docket No. FAA–2023–1397; Project Identifier MCAI–2023–00014–E.

(a) Effective Date

This airworthiness directive (AD) is effective January 17, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Safran Helicopter Engines, S.A. (type certificate previously held by Turbomeca S.A.) Model Arrius 2R engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7700, Engine Indicating System.

(e) Unsafe Condition

This AD was prompted by reports of inconsistencies between the torque (TQ) and measured gas temperature (MGT) conformation values recorded in the avionics and the TQ and MGT conformation values recorded on the engine log cards following replacement of the M01 or M02 modules installed on the engine. The FAA is issuing this AD to address inconsistencies between the TQ and MGT conformation values recorded. The unsafe condition, if not addressed, could result in reduced control of the helicopter due to one or more of the following: a power non-availability; a high-pressure blade rupture with consequent power loss and release of low-energy debris; or an overpassing of the helicopter transmission limit.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraphs (h) and (i) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0265R1, dated January 6, 2023 (EASA AD 2022–0265R1).

(h) Exceptions to EASA AD 2022–0265R1

(1) Where EASA AD 2022–0265R1 refers to January 4, 2023 (the effective date of the original issue of EASA AD 2022–0265), this AD requires using the effective date of this AD.

(2) This AD does not adopt the Remarks paragraph of EASA AD 2022–0265R1.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0265R1 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD and email to: *ANE-AD-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Additional Information

For more information about this AD, contact Kevin Clark, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7088; email: *kevin.m.clark@faa.gov.*

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0265R1, dated January 6, 2023.

(ii) [Reserved]

(3) For EASA AD 2022–0265R1, contact EASA, Konrad-Adenauer-Ufer 3, 50668

Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this 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* or email *fr.inspection@nara.gov.*

Issued on November 30, 2023.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–27257 Filed 12–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–1222]

Specific Listing for Three Currently Controlled Schedule I Substances

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration (DEA) is establishing a specific listing and DEA Controlled Substances Code Number (drug code) for three substances: *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-butyl-1*H*-indazole-3-carboxamide (also known as ADB–BUTINACA); 4-methyl-1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one (also known as α-PiHP or *alpha*-PiHP); and 2-(methylamino)-1-(3-methylphenyl)propan-1-one (also known as 3–MMC or 3-methylmethcathinone) in schedule I of the Controlled Substances Act (CSA). Although ADB–BUTINACA, α-PiHP, and 3–MMC are not specifically listed in schedule I of the CSA with their own unique drug codes, they are schedule I controlled substances in the United States because they are positional isomers of AB–PINACA (controlled January 30, 2015), α-PHP (controlled July 18, 2019), and mephedrone (controlled as a hallucinogen July 9, 2012), respectively, each of which are schedule I hallucinogens. Therefore, DEA is simply amending the schedule I hallucinogenic substances list in its regulations to separately include ADB–BUTINACA, α-PiHP, and 3–MMC.

DATES: Effective December 13, 2023.

FOR FURTHER INFORMATION CONTACT: Dr. Terrence L. Boos, Drug and Chemical Evaluation, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–3249.

SUPPLEMENTARY INFORMATION:

ADB–BUTINACA Control

ADB–BUTINACA (also known as *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-butyl-1*H*-indazole-3-carboxamide) is a chemical substance that is structurally related to AB–PINACA (also known as *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide). AB–PINACA is listed as a hallucinogenic substance in schedule I at 21 CFR 1308.11(d)(70). The introductory text to paragraph (d) provides: (1) A listed substance includes ''any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation,'' and (2) the term ''isomer'' includes the ''optical, position[al], and geometric isomers.''

When compared to the chemical structure of AB–PINACA, ADB–BUTINACA meets the definition of a positional isomer in 21 CFR 1300.01(b), which cross-references the term ''positional isomer'' in 21 CFR 1308.11(d). Both AB–PINACA and ADB–BUTINACA possess the same molecular formula and core structure, and they have the same functional groups. They only differ from one another by a rearrangement of an alkyl moiety between functional groups that does not create new chemical functionalities or destroy existing chemical functionalities. Accordingly, under 21 CFR 1308.11(d), ADB–BUTINACA, as a positional isomer of AB–PINACA, has been and continues to be a schedule I controlled substance.[1]

α-PiHP Control

α-PiHP (also known as 4-methyl-1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one or *alpha*-PiHP) is a chemical substance that is structurally related to α-PHP (also known as 1-phenyl-2-(pyrrolidin-1-yl)hexan-1-one). α-PHP is listed as a hallucinogenic substance in schedule I at 21 CFR 1308.11(d)(95). When compared to the chemical structure of α-PHP, α-PiHP meets the definition of a positional isomer in 21 CFR 1300.01(b), which cross-references the term ''positional isomer'' in 21 CFR 1308.11(d). Both α-PHP and α-PiHP possess the same molecular formula and core structure, and they have the same functional groups. They only differ from one another by a rearrangement of an alkyl moiety that does not create new chemical functionalities or destroy existing chemical functionalities. Accordingly, under 21 CFR 1308.11(d), α-PiHP, as a positional isomer of α-PHP, has been and continues to be a schedule I controlled substance.[2]

3–MMC Control

3–MMC (also known 2-(methylamino)-1-(3-methylphenyl)propan-1-one or 3-methylmethcathinone) is a chemical substance that is structurally related to mephedrone (also known as 4-methylmethcathinone). Mephedrone is listed as a hallucinogenic substance in schedule I at 21 CFR 1308.11(d)(36). When compared to the chemical structure of mephedrone, 3–MMC meets the definition of a positional isomer in 21 CFR 1300.01(b), which cross-references the term ''positional isomer'' in 21 CFR 1308.11(d). Both mephedrone and 3–MMC possess the same molecular formula and core structure, and they have the same functional groups. They only differ from one another by a repositioning of an alkyl moiety. Accordingly, under 21 CFR 1308.11(d), 3–MMC, as a positional isomer of mephedrone, has been and continues to be a schedule I controlled substance.[3]

The Drug Enforcement Administration's (DEA) Authority To Control ADB–BUTINACA, α-PiHP, and 3–MMC

This rule is prompted by a letter dated May 17, 2023, in which the United States government was informed by the Secretariat of the United Nations that ADB–BUTINACA, α-PiHP, and 3–MMC have been added to Schedule II of the Convention on Psychotropic Substances of 1971 (1971 Convention). This letter was prompted by decisions at the 66th Session of the Commission on Narcotic Drugs (CND) in March 2023 to schedule ADB–BUTINACA, α-PiHP, and 3–MMC under Schedule II of the 1971

[1] AB–PINACA (and its isomers) has been subject to temporary schedule I controls since January 30, 2015, first pursuant to a final order (January 30, 2015, 80 FR 5042) and the subsequent one-year extension of that order (January 27, 2017, 82 FR 8590), and then permanently pursuant to a final rule, which continued the imposition of those controls (October 16, 2017, 82 FR 47971).

[2] α-PHP (and its isomers) has been subject to temporary schedule I controls since July 18, 2019, first pursuant to a temporary scheduling order (July 18, 2019, 84 FR 34291) and the subsequent one-year extension of that order (July 16, 2021, 86 FR 37672), and then permanently pursuant to a final rule which continued the imposition of those controls (June 1, 2022, 87 FR 32996).

[3] Positional isomers of mephedrone have been subject to permanent schedule I controls since July 9, 2012 (Synthetic Drug Abuse Prevention Act of 2012 or SDAPA, Public Law 112–144, Title XI, Subtitle D).

Convention (CND Decisions 66/5, 66/6, and 66/7). Preceding these decisions, the Food and Drug Administration (FDA), on behalf of the Secretary of Health and Human Services and pursuant to 21 U.S.C. 811(d)(2), published two notices in the **Federal Register** with an opportunity to submit domestic information and opportunity to comment on this action (August 3, 2022, 87 FR 47428 and February 17, 2023, 88 FR 10344). In each instance, FDA noted that ADB–BUTINACA, α-PiHP, and 3–MMC were already controlled in schedule I of the Controlled Substances Act (CSA) as positional isomers of AB–PINACA, α-PHP, and mephedrone, respectively, and the February 2023 notice stated that no additional permanent controls for ADB–BUTINACA, α-PiHP, and 3–MMC under the CSA would be necessary to fulfill United States' obligations as a party to the 1971 Convention.

As discussed above in this final rule, ADB–BUTINACA—by virtue of being a positional isomer of AB–PINACA—has been controlled in schedule I of the CSA temporarily since January 30, 2015 (80 FR 5042), and permanently since October 16, 2017 (82 FR 47971). α-PiHP, a positional isomer of α-PHP, has been controlled in schedule I of the CSA temporarily since July 18, 2019 (84 FR 34291), and permanently since June 1, 2022 (87 FR 32996). 3–MMC, a positional isomer of mephedrone, has been controlled in schedule I of the CSA permanently since July 9, 2012 (Pub. L. 112–144, Title XI, Subtitle D). Therefore, all regulations and criminal sanctions applicable to schedule I substances have been and remain applicable to ADB–BUTINACA, α-PiHP, and 3–MMC. Drugs controlled in schedule I of the CSA satisfy and exceed the required domestic controls of Schedule II under Article 2 of the 1971 Convention.

Effect of Action

As discussed above, this rule does not affect the continuing status of ADB–BUTINACA, α-PiHP, and 3–MMC as schedule I controlled substances in any way. This action, as an administrative matter, merely establishes a separate, specific listing for ADB–BUTINACA, α-PiHP, and 3–MMC in schedule I of the CSA and assigns a DEA controlled substances code number (drug code) for these substances. This action will allow DEA to establish an aggregate production quota and grant individual manufacturing and procurement quotas to DEA-registered manufacturers of ADB–BUTINACA, α-PiHP, or 3–MMC, who had previously been granted individual quotas for such purposes under the drug codes for AB–PINACA, α-PHP, or mephedrone.

Regulatory Analyses

Administrative Procedure Act

An agency may find good cause to exempt a rule from certain provisions of the Administrative Procedure Act (APA) including notice of proposed rulemaking and the opportunity for public comment, if it is determined to be unnecessary, impracticable, or contrary to the public interest (5 U.S.C. 553). ADB–BUTINACA, α-PiHP, and 3–MMC are currently controlled in schedule I as positional isomers of AB–PINACA, α-PHP, and mephedrone, respectively.

Pursuant to 5 U.S.C. 553(b) (B), DEA finds that notice and comment rulemaking is unnecessary and that good cause exists to dispense with these procedures. The addition of a separate listing for ADB–BUTINACA, α-PiHP, and 3–MMC and their DEA controlled substances code numbers in the list of schedule I substances in 21 CFR 1308.11(d) makes no substantive difference in the status of these drugs as schedule I controlled substances, but instead is ''a minor or merely technical amendment in which the public is not particularly interested.'' *National Nutritional Foods Ass'n* v. *Kennedy,* 572 F.2d 377, 385 (2d Cir. 1978) (quoting S. Rep. No. 79–752, at 200 (1945)). *See also Utility Solid Waste Activities Group* v. *E.P.A.,* 236 F.3d 749, 755 (D.C. Cir. 2001) (the ''unnecessary'' prong ''is confined to those situations in which the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and public'') (internal quotations and citation omitted). This rule is a ''technical amendment'' to 21 CFR 1308.11(d) as it is ''insignificant in nature and impact, and inconsequential to the industry and public.'' Therefore, publishing a notice of proposed rulemaking and soliciting public comment are unnecessary.

In addition, because ADB–BUTINACA, α-PiHP, and 3–MMC are already subject to domestic control under schedule I as positional isomers and no additional requirements are being imposed through this action, DEA finds good cause exists to make this rule effective immediately upon publication in accordance with 5 U.S.C. 553(d)(3). DEA is concerned that delaying the effective date of this rule potentially could cause confusion regarding the regulatory status of ADB–BUTINACA, α-PiHP, and 3–MMC. ADB–BUTINACA, α-PiHP, and 3–MMC are currently controlled as schedule I controlled substances, and this level of control does not change with this rulemaking.

Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14094 (Modernizing Regulatory Review)

This regulation has been drafted and reviewed in accordance with the principles of Executive Orders (E.O.) 12866, 13563, and 14094. This rule is not a significant regulatory action under section 3(f) of E.O. 12866. ADB–BUTINACA, α-PiHP, and 3–MMC are already controlled substances in the United States under schedule I, as they are positional isomers of schedule I hallucinogens AB–PINACA, α-PHP, and mephedrone, respectively. In this final rule, DEA is merely making an administrative change by amending its regulations to separately list ADB–BUTINACA, α-PiHP, and 3–MMC in schedule I and to assign DEA controlled substances code numbers to these substances. A separate listing for ADB–BUTINACA, α-PiHP, and 3–MMC and their DEA controlled substances code numbers will not alter the status of these substances as a schedule I controlled substances. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications warranting the application of E.O. 13132. The rule does 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.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications warranting the application of E.O. 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA or other laws. As noted in the above section regarding the applicability of the APA, DEA determined that there was good cause to exempt this final rule from notice and comment. Consequently, the RFA does not apply.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1532, DEA has determined that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and Tribal Governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. However, pursuant to the CRA, DEA is submitting a copy of this rule to both Houses of Congress and to the Comptroller General.

Signing Authority

This document of the Drug Enforcement Administration was signed on December 7, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Scott Brinks,

Federal Register Liaison Officer, Drug Enforcement Administration.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. Amend § 1308.11 by adding new paragraphs (d)(102) to (104) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

*	*	*	*	*	*	*	
(102) *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-butyl-1*H*-indazole-3-carboxamide (other name: ADB–BUTINACA)							7027
(103) 4-methyl-1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one (other names: α-PiHP; *alpha*-PiHP)							7551
(104) 2-(methylamino)-1-(3-methylphenyl)propan-1-one (other names: 3–MMC; 3-methylmethcathinone)							1259
*	*	*	*	*	*	*	

* * * * *

[FR Doc. 2023–27292 Filed 12–12–23; 8:45 am]

BILLING CODE 4410–09–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0657; FRL–11567–01–OCSPP]

Dodine; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of dodine in or on Fruit, pome, group 11–10; Fruit, stone, group 12–12; Nut, tree, group 14–12; and Olive, with pit. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 13, 2023. Objections and requests for hearings must be received on or before February 12, 2024, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0657, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).

- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0657 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before February 12, 2024. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2021–0657, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerances

In the **Federal Register** of April 28, 2022 (87 FR 25178) (FRL–9410–12–OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E8935) by IR–4, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of dodine in or on the raw agricultural commodities: Fruit, pome, group 11–10 at 5 parts per million (ppm); Fruit, stone, group 12–12 at 5 ppm; Nut, tree, group 14–12 at 0.3 ppm; and Olive, with pit at 0.3 ppm.

The petition also requested to remove the following established dodine tolerances in or on: Apple at 5.0 ppm; Fruit, stone, crop group 12 at 5.0 ppm; Nuts, tree, crop group 14 at 0.3 ppm; and Pear at 5.0 ppm.

That document referenced a summary of the petition, which is available in the docket, *https://www.regulations.gov.* Two comments were received in response to the notice. EPA's response to these comments can be found in section IV.D.

Based upon review of the data supporting the petition and in accordance with its authority under FFDCA section 408(d)(4)(A)(i), EPA is modifying the level at which one of the tolerances is being established. For details, see Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Because of toxicological equivalency, the Agency must also consider any applicable contribution from the antimicrobial pesticide dodecylguanidine hydrochloride (DGH). There are no direct food uses established for DGH, but there are dietary exposures from uses on paper and paperboard and in drinking water from industrial uses.

A definitive target organ was not identified for dodine or DGH in the available toxicology data, with the most common effects being decreases in body weight and/or body weight gain. When allometric scaling is used to adjust to a human equivalent dosage, the dog was found to be the most sensitive species for this endpoint.

There was no evidence of increased qualitative or quantitative susceptibility in pups or fetuses as compared to adults based on rat and rabbit developmental studies and a rat multi-generation reproduction study. In rat and rabbit prenatal developmental studies, there was no toxicity identified in the fetuses up to the highest dose tested. In the 2-generation reproduction study, decreases in body weight and food consumption were seen in pups at the same dose at which maternal toxicity (decreases in body weight, body weight gain, and food consumption) was observed. In addition, there was no evidence of neurotoxicity across the database. Dodine is classified as ''Not Likely to be Carcinogenic to Humans''.

Specific information on the studies received and the nature of the adverse effects caused by dodine and DGH as well as the no-observed-adverse-effect-levels (NOAELs) and the lowest-

observed-adverse-effect-levels (LOAELs) from the toxicity studies can be found in Appendix A of the document titled ''Dodine. Risk Assessment for the Proposed Use on Olives; Crop Group Expansions to Fruit Pome Group 11–10; and Crop Group Conversions to Stone Fruit Group 12–12 and Tree Nut Group 14–12 and Updated Registration Review Human Health Draft Risk Assessment'' (hereafter, the Dodine Human Health Risk Assessment), in docket ID number EPA–HQ–OPP–2021–0657 at *https://www.regulations.gov.*

B. Toxicological Points of Departure/Levels of Concern

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

A summary of the Toxicological Points of Departure/Levels of Concern for dodine used for human health risk assessment can be found in Table 4.5.3.1 of the Dodine Human Health Risk Assessment, in docket ID number EPA–HQ–OPP–2021–0657 at *https://www.regulations.gov.*

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to dodine, EPA considered exposure under the petitioned-for tolerances as well as all existing tolerances for dodine in 40 CFR 180.172. While there are no direct food uses established for DGH, EPA considered indirect dietary exposure from use of DGH on paper and paperboard in contact with food. EPA assessed dietary exposures from dodine in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for dodine or DGH; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* Chronic aggregate dietary exposure and risk assessments were conducted using the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 4.02. This software uses 2005–2010 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). The chronic analysis incorporated mean field trial residues for most commodities and tolerance-level residues for the remaining commodities. Percent crop treated (PCT) data were used for some crops, and 100 PCT was assumed for all other crops. The analyses incorporated default processing factors for processed commodities where no processing study was conducted. For apple juice and olive oil, empirical processing factors of 0.1X were used.

Indirect dietary exposure has the potential to occur from the use of DGH as a material preservative in paper and paperboard intended for use in contact with food, with a retention rate of up to 0.045% by weight of the paper or paperboard. This use is considered protective of other indirect food uses, including paper slimicides, materials preservative of the outermost ply of multiwalled paper bags containing dry food, adhesives and polymers, and sapstain on fruit and vegetable containers.

iii. *Cancer.* Based on the data summarized in the Dodine Human Health Risk Assessment, EPA has concluded that dodine is not likely pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- *Condition a:* The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- *Condition b:* The exposure estimate does not underestimate exposure for any significant subpopulation group.
- *Condition c:* Data are available on pesticide use and food consumption in a particular area, and the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The annual average percent crop treated estimates used in the chronic dietary risk assessment are as follows: almonds: 2.5%; apples: 5%; cherries: 20%; nectarines: 1%; peaches: 1%; peanuts: 2.5%; pears: 2.5%; pecans: 20%; and walnuts: 1%. 100 PCT was assumed for all other crops.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and California Department of Pesticide Regulation (CalDPR) Pesticide Use Reporting (PUR) for the chemical/crop combination for the most recent 10 years. EPA uses an average PCT for chronic dietary risk analysis and a maximum PCT for acute dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than 1% or less than 2.5% as the average PCT value, respectively. In those cases, the Agency would use

1% or 2.5% as the average PCT value, respectively. The maximum PCT figure is the highest observed maximum value reported within the most recent 10 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%, except where the maximum PCT is less than 2.5%, in which case, the Agency uses 2.5% as the maximum PCT.

The Agency believes that Conditions a, b, and c discussed above have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which dodine may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for dodine in drinking water. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/models-pesticide-risk-assessment.*

A chronic surface water estimated drinking water concentration (EDWC) of 1.59 parts per billion (ppb) determined with the FQPA Index Reservoir Screening Tool (FIRST) was used for dietary assessment. Because dodine has a high partition coefficient, is relatively non-persistent in aerobic soils, and has a lack of transport in the field, leaching to groundwater is not expected to be a major route of dissipation.

Drinking water exposure to DGH has the potential to occur when drinking water intakes are downstream from cooling towers, paper mills, and/or other water systems using DGH as a slimicide. Drinking water exposure is expected to be minimal from other currently registered uses of DGH such as materials preservation of leather and textiles. The highest chronic EDWC from the modeled use patterns is 22 µg ai/L from once-through cooling towers using an application rate of 6.0 ppm DGH. This drinking water concentration is considered protective of the other uses.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). There are no current or proposed conventional or antimicrobial residential uses of dodine or DGH.

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to dodine and any other substances and dodine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this action, therefore, EPA has not assumed that dodine has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

EPA notes that dodine and DGH are salts of the same chemical. They dissociate similarly and are considered toxicologically equivalent, as opposed to being separate chemicals that share a common mechanism of toxicity.

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There is no evidence of susceptibility following *in utero* and/or postnatal exposure in the developmental toxicity studies in rats or rabbits, nor in the 2-generation rat reproduction study.

3. *Conclusion.* The FQPA safety factor is reduced to 1X for all exposure scenarios except for inhalation exposure. The Agency is retaining a 10X database uncertainty factor (UF_{DB}) to assess risk to dodine inhalation scenarios to account for the lack of an acceptable inhalation toxicity study.

i. Except for an acceptable inhalation toxicity study, the toxicology database for dodine and DGH is complete and adequate to assess potential risk to infants and children. The database contains the following toxicity studies: prenatal developmental studies (rats and rabbits); and a reproduction study in rats.

ii. Neurotoxicity studies are not available for dodine or DGH. Clinical signs (excessive salivation and hunched posture/hypoactivity) were observed in chronic studies of dodine in rats and mice but were not dose-related or statistically significant. Excessive salivation in dogs after dodine (capsule) exposure showed a treatment-related dose response; however, it was not consistent with a neurological adverse effect since it was seen prior to dosing and was a persistent finding throughout the study. It is possible that the excessive salivation was a result of the irritant properties of dodine. In addition, no evidence of neuropathology was observed in the available studies. The Hazard and Science Policy Council (HASPOC) recommended waiving the requirement for the acute and subchronic neurotoxicity studies, based on (1) the low acute oral toxicity of dodine (Toxicity Category III); (2) the lack of neurotoxicity in the dodine toxicity database; and (3) no neurotoxicity concerns for structurally related compounds to dodine.

iii. Based on the available dodine and DGH toxicity studies, there was no evidence of increased susceptibility (quantitative or qualitative) in pups or fetuses as compared to adults based on rat and rabbit developmental studies

and a rat multi-generation reproduction study. In rat and rabbit prenatal developmental studies, there was no toxicity identified in the fetuses up to the highest dose tested. In the 2-generation reproduction study, decreases in body weight and food consumption were seen in pups at the same dose at which maternal toxicity (decreases in body weight, body weight gain, and food consumption) was observed.

iv. The exposure databases are sufficient to determine the nature and magnitude of the residue in food and drinking water. The dodine residue chemistry database is complete. The exposure assessment for drinking water provides a conservative approach for estimating dodine and DGH concentrations from drinking water sources, and thus is unlikely to underestimate exposure. The food and drinking water dietary exposure analyses are unlikely to underestimate exposure as they incorporated conservative assumptions for dodine and DGH.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, dodine is not expected to pose an acute risk.

2. *Chronic risk.* The chronic dietary risk assessment includes only food and water exposure from dodine and DGH. Chronic dietary risks from dodine (food and drinking water) are below the Agency's level of concern of 100% of the cPAD; they are 6.1% of the cPAD for all infants less than 1 year old, the group with the highest exposure. Chronic dietary risks from DGH (food and water) are below the Agency's level of concern of 100% of the cPAD; they are 95% of the cPAD for children 1 to 2 years old, the group with the highest exposure.

There are no chronic non-occupational exposures, so the aggregate chronic risk assessment is equal to the chronic dietary exposure analysis of food and drinking water. The chronic aggregate assessment includes: (1) food only contributions from agricultural uses of dodine, including the proposed uses; (2) food only contributions from DGH in paper and paperboard intended for use in contact with food; and (3) drinking water only contributions from DGH in water from cooling tower uses, which is protective of drinking water exposures resulting from conventional agricultural uses of dodine. This aggregate assessment resulted in risk estimates that are below the Agency's level of concern of 100% of the cPAD; they are 98% of the cPAD for children 1 to 2 years old, the group with the highest exposure, which is considered protective for all other population subgroups.

3. *Short- and intermediate-term risk.* Short- and intermediate-term adverse effects were identified; however, dodine is not registered for any use patterns that would result in short- and/or intermediate-term residential exposure. Short- and intermediate-term risk is assessed based on short- and intermediate-term residential exposure plus chronic dietary exposure. Because there is no short-or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short- or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for dodine.

4. *Aggregate cancer risk for U.S. population.* There was equivocal evidence of carcinogenicity in rat and mouse carcinogenicity studies; however, an evaluation of the carcinogenic potential of dodine was performed which concluded that the weight of evidence indicates that dodine and DGH are ''Not Likely to be Carcinogenic to Humans.'' Therefore, dodine and DGH are not expected to pose a cancer risk to humans.

5. *Determination of safety.* Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to dodine residues. More detailed information on this action can be found in the Dodine Human Health Risk Assessment in docket ID EPA–HQ–OPP–2021–0657.

IV. Other Considerations

A. Analytical Enforcement Methodology

Method 45137, which is entitled ''Dodine: Analytical Method for Dodine in Fruit,'' is available for the enforcement of tolerances of dodine in/on plant commodities. This method is a Gas Chromatograph/Mass Selective Detection (GC/MSD) procedure based on extracting dodine from fruit by homogenization with methanol. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

Codex has established MRLs for residues of dodine in or on apple at 5 ppm; pear at 5 ppm; cherry at 3 ppm; nectarine at 5 ppm; and peach at 5 ppm. The U.S. tolerances are harmonized with the corresponding Codex MRLs except for cherry. The cherry field trial data show that residues from the domestic labeled use of dodine may exceed the 3 ppm Codex cherry MRL. Therefore, it is not possible to harmonize with the Codex MRL based on the U.S. application pattern.

C. Revisions to Tolerances

The Agency is establishing the tolerance level for ''olive, with pit'' at 0.4 ppm instead of the requested level of 0.3 ppm. Two of the 2011 olive trials from Greece were determined to be replicates, and this determination resulted in a higher calculated maximum residue limit (MRL) than the petitioner requested.

D. Response to Comments

Two comments were received in response to the Notice of Filing by the same commenter. The commenter stated in part that ''we need to stop all chemical use on vegetables'' and that ''toxic in your body kill you.'' Although the Agency recognizes that some individuals believe that pesticides should be banned on agricultural crops, the existing legal framework provided by section 408 of the FFDCA authorizes EPA to establish tolerances when it determines that the tolerances are safe. Upon consideration of the validity, completeness, and reliability of the available data as well as other factors the FFDCA requires EPA to consider, EPA has determined that the dodine tolerances are safe. The commenter has provided no information indicating that a safety determination cannot be supported.

V. Conclusion

Therefore, tolerances are established for residues of dodine in or on Fruit, pome, group 11–10 at 5 ppm; Fruit, stone, group 12–12 at 5 ppm; Nut, tree, group 14–12 at 0.3 ppm; and Olive, with pit at 0.4 ppm.

Additionally, the following existing tolerances are removed as unnecessary: Apple; Fruit, stone, crop group 12; Nut, tree, crop group 14; and Pear.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: December 7, 2023.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

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

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

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

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

■ 2. Revise § 180.172 to read as follows:

§ 180.172 Dodine; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide dodine, including its metabolites and degradates, in or on the commodities in table1 to this paragraph (a). Compliance with the tolerance levels specified in table1 is to be determined by measuring only dodine, *N*-dodecylguanidine acetate; in or on the following commodities.

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
Almond, hull	30.0
Apple, wet pomace	15.0
Banana	0.50
Fruit, pome, group 11–10	5
Fruit, stone, group 12–12	5
Nut, tree, group 14–12	0.3
Olive, with pit	0.4
Peanut	0.013
Strawberry	5.0

(b)–(d) [Reserved]

[FR Doc. 2023–27254 Filed 12–12–23; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 88, No. 238
Wednesday, December 13, 2023

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2023–2251; Notice No. 25–23–05–SC]

Special Conditions: Aerocon Engineering Company, Airbus Model A330–300 Series Airplane; Lower Deck Crew Rest Compartment Installation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Airbus Model A330–300 series airplane. This airplane as modified by Aerocon Engineering Company (Aerocon) will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is an installation of a lower deck crew rest compartment (LDCRC) under the passenger cabin floor in the cargo compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send comments on or before January 29, 2024.

ADDRESSES: Send comments identified by Docket No. FAA–2023–2251 using any of the following methods:

Federal eRegulations Portal: Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

Mail: Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

Hand Delivery or Courier: Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: Fax comments to Docket Operations at 202–493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Daniel Jacquet, Cabin Safety, AIR–624, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax (206) 231–3208; email *daniel.jacquet@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the proposed special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments and will consider comments filed late if it is possible to do so without incurring delay. The FAA may change these special conditions based on the comments received.

Privacy

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in title 14, Code of Federal Regulations (14 CFR) 11.35, the FAA will post all comments received without change to *www.regulations.gov,* including any personal information, you provide. The FAA will also post a report summarizing each substantive verbal contact received about these special conditions.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and the indicated comments will not be placed in the public docket of these special conditions. Send submissions containing CBI to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these special conditions.

Background

On July 5, 2022, Aerocon applied for a supplemental type certificate for the installation of a LDCRC in the Airbus Model A330–300 series airplane. The Airbus Model A330–300 series airplane is a twin-engine, transport-category airplane with a maximum takeoff weight of 533,518 pounds and maximum seating for 440 passengers.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Aerocon must show that the Airbus Model A330–300 series airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. A46NM or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A330–300 series airplane because of a novel or unusual design feature, special conditions are

prescribed under the provisions of § 21.16.

Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A330–300 series airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Airbus Model A330–300 series airplane will incorporate the following novel or unusual design feature:

Installation of a LDCRC under the passenger cabin floor in the cargo compartment.

Discussion

Section 25.819 applies to lower deck service compartments (including galleys) but is not directly applicable to LDCRC. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. Special conditions are required for the certification of the LDCRC to supplement part 25.

The LDCRC will be located under the passenger cabin floor in the cargo compartment of the Airbus A330–330 model series airplane. It will be removable from the cargo compartment. Occupancy of the LDCRC will be limited to a maximum of eight crew members, and it will only be occupied in flight, *i.e.,* not during taxi, takeoff, or landing. A smoke detection system, fire extinguishing system, oxygen system, and occupant amenities will be provided.

The LDCRC will be accessed from the main deck via a stair house. The floor within the stair house has an access hatch that leads to stairs, which occupants use to descend into the LDCRC. This hatch locks automatically in the open position when fully opened. In addition, there will be an emergency hatch, which opens directly into the main passenger cabin area. The LDCRC also has a maintenance access/ground loading door, which allows access to and from the cargo compartment. The intended use of this door is to allow cargo loading and maintenance personnel to enter the LDCRC from the cargo compartment when the airplane is on the ground, and not moving.

The proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these proposed special conditions are applicable to the Airbus Model A330–300 series airplane for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to the other model as well.

Conclusion

This action affects only certain novel or unusual design feature on one model A330–300 airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, and 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Airbus Model A330–300 series airplanes as modified by Aerocon Engineering Company.

(a) Occupancy of the LDCRC is limited to a maximum of eight. There must be an approved seat or berth able to withstand the maximum flight loads when occupied for each occupant permitted in the crew rest compartment.

(1) There must be appropriate placards displayed in a conspicuous place at each entrance to the LDCRC compartment to indicate:

(i) The maximum number of occupants allowed.

(ii) That occupancy is restricted to crewmembers that are trained in the evacuation procedures for the crew rest compartment.

(iii) That occupancy is prohibited during taxi, take-off, and landing.

(iv) That smoking is prohibited in the crew rest compartment.

(v) That hazardous quantity of flammable fluids, explosives, or other dangerous cargo is prohibited from the crew rest compartment.

(vi) That the crew rest area must be limited to the stowage of crew personal luggage and must not be used for the stowage of cargo or passenger baggage.

(2) There must be at least one ashtray located conspicuously on or near the entry side of any entrance, usable in-flight, to the crew rest compartment.

(3) There must be a means to prevent passengers from entering the compartment in the event of an emergency or when no flight attendant is present.

(4) There must be a means for any door installed between the crew rest compartment and passenger cabin to be capable of being quickly opened from inside the compartment, even when crowding occurs at each side of the door.

(5) For all doors installed in the evacuation routes, there must be a means to preclude anyone from being trapped inside the compartment. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening from the inside of the compartment at any time.

(b) There must be at least two emergency evacuation routes, which could be used by each occupant of the crew rest compartment to rapidly evacuate to the main cabin and be able to be closed from the main passenger cabin after evacuation. In addition—

(1) The routes must be located with one at each end of the compartment, or with two having sufficient separation within the compartment and between the routes to minimize the possibility of an event (either inside or outside of the crew rest compartment) rendering both routes inoperative.

(2) The routes must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure, or persons standing on top of or against the escape route. If an evacuation route utilizes an area where normal movement of passengers occurs, it must be demonstrated that passengers would not impede egress to the main deck. If a hatch is installed in an evacuation route, the point at which the evacuation route terminates in the passenger cabin should not be located where normal movement by passengers or crew occurs (main aisle, cross aisle, passageway or galley complex). If such a location cannot be avoided, special consideration must be taken to ensure that the hatch or door can be opened

when a person, the weight of a ninety-fifth percentile male, is standing on the hatch or door. The use of evacuation routes must not be dependent on any powered device. If there is low headroom at or near an evacuation route, provisions must be made to prevent or to protect occupants of the crew rest area from head injury.

(3) Emergency evacuation procedures, including the emergency evacuation of an incapacitated occupant from the crew rest compartment, must be established. All of these procedures must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

(4) There must be a limitation in the airplane flight manual or other suitable means requiring that crewmembers be trained in the use of evacuation routes.

(c) There must be a means for the evacuation of an incapacitated person (representative of a 95th percentile male) from the crew rest compartment to the passenger cabin floor.

The evacuation must be demonstrated for all evacuation routes. A flight attendant or other crewmember (a total of one assistant within the crew rest area) may provide assistance in the evacuation. Additional assistance may be provided by up to three persons in the main passenger compartment. For evacuation routes having stairways, the additional assistants may descend down to one half the elevation change from the main deck to the lower deck compartment, or to the first landing, whichever is higher.

(d) The following signs and placards must be provided in the crew rest compartment:

(1) At least one exit sign, located near each exit, meeting the requirements of § 25.812(b)(1)(i) at Amendment 25–58, except that a sign with reduced background area of no less than 5.3 square inches (excluding the letters) may be utilized, provided that it is installed such that the material surrounding the exit sign is light in color (*e.g.,* white, cream, light beige). If the material surrounding the exit sign is not light in color, a sign with a minimum of a one-inch wide background border around the letters would also be acceptable.

(2) An appropriate placard located near each exit defining the location and the operating instructions for each evacuation route.

(3) Placards must be readable from a distance of 30 inches under emergency lighting conditions.

(4) The exit handles and evacuation path operating instruction placards must be illuminated to at least 160 micro lamberts under emergency lighting conditions.

(e) There must be a means in the event of failure of the aircraft's main power system, or of the normal crew rest compartment lighting system, for emergency illumination to be automatically provided for the crew rest compartment.

(1) This emergency illumination must be independent of the main lighting system.

(2) The sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(3) The illumination level must be sufficient for the occupants of the crew rest compartment to locate and transfer to the main passenger cabin floor by means of each evacuation route.

(4) The illumination level must be sufficient with the privacy curtains in the closed position for each occupant of the crew rest to locate a deployed oxygen mask.

(f) There must be means for two-way voice communications between crewmembers on the flight deck and occupants of the crew rest compartment. There must also be public address (PA) system microphones at each flight attendant seat required to be near a floor level exit in the passenger cabin per § 25.785(h) at Amendment 25–51. The PA system must allow two-way voice communications between flight attendants and the occupants of the crew rest compartment, except that one microphone may serve more than one exit provided the proximity of the exits allows unassisted verbal communication between seated flight attendants.

(g) There must be a means for manual activation of an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flight deck and at each pair of required floor level emergency exits to alert occupants of the crew rest compartment of an emergency situation. Use of a public address or crew interphone system will be acceptable, provided an adequate means of differentiating between normal and emergency communications is incorporated. The system must be powered in flight, after the shutdown or failure of all engines and auxiliary power units (APU), or the disconnection or failure of all power sources dependent on their continued operation (*i.e.,* engine & APU), for a period of at least ten minutes.

(h) There must be a means, readily detectable by seated or standing occupants of the crew rest compartment, which indicates when seat belts should be fastened. In the event there are no seats, at least one means must be provided to cover anticipated turbulence (*e.g.,* sufficient handholds). Seat belt type restraints must be provided for berths and must be compatible for the sleeping attitude during cruise conditions. There must be a placard on each berth requiring that seat belts must be fastened when occupied. If compliance with any of the other requirements of these special conditions is predicated on specific head location, there must be a placard identifying the head position.

(i) In lieu of the requirements specified in § 25.1439(a) at Amendment 25–38 that pertain to isolated compartments and to provide a level of safety equivalent to that which is provided occupants of a small, isolated galley, the following equipment must be provided in the crew rest compartment:

(1) At least one approved hand-held fire extinguisher appropriate for the kinds of fires likely to occur.

(2) Two protective breathing equipment (PBE) devices approved to Technical Standard Order (TSO)–C116 or equivalent, suitable for firefighting, or one PBE for each hand-held fire extinguisher, whichever is greater.

(3) One flashlight.

Note: Additional PBEs and fire extinguishers in specific locations, (beyond the minimum numbers prescribed in special condition (i)) may be required as a result of any egress analysis accomplished to satisfy special condition (b)(1).

(j) A smoke or fire detection system (or systems) must be provided that monitors each occupiable area within the crew rest compartment, including those areas partitioned by curtains. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(1) A visual indication to the flight deck within one minute after the start of a fire;

(2) An aural warning in the crew rest compartment; and

(3) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

(k) The crew rest compartment must be designed such that fires within the compartment can be controlled without a crewmember having to enter the compartment, or the design of the access

provisions must allow crewmembers equipped for firefighting to have unrestricted access to the compartment. The time for a crewmember on the main deck to react to the fire alarm, to don the firefighting equipment, and to gain access must not exceed the time for the compartment to become smoke-filled, making it difficult to locate the fire source.

(l) There must be a means provided to exclude hazardous quantities of smoke or extinguishing agent originating in the crew rest compartment from entering any other compartment occupied by crewmembers or passengers. This means must include the time periods during the evacuation of the crew rest compartment and, if applicable, when accessing the crew rest compartment to manually fight a fire. Smoke entering any other compartment occupied by crewmembers or passengers when the access to the crew rest compartment is opened, during an emergency evacuation, must dissipate within five minutes after the access to the crew rest compartment is closed.

(1) Hazardous quantities of smoke may not enter any other compartment occupied by crewmembers or passengers during subsequent access to manually fight a fire in the crew rest compartment (the amount of smoke entrained by a firefighter exiting the crew rest compartment through the access is not considered hazardous).

(2) There must be a provision in the firefighting procedures to ensure that all door(s) and hatch(es) at the crew rest compartment outlets are closed after evacuation of the crew rest compartment and, during firefighting to minimize smoke and extinguishing agent from entering other occupiable compartments.

(3) During the 1-minute smoke detection time, penetration of a small quantity of smoke from the crew rest compartment into an occupied area is acceptable. Flight tests must be conducted to show compliance with this requirement.

(4) If a built-in fire extinguishing system is used in lieu of manual firefighting, then the fire extinguishing system must be designed so that no hazardous quantities of extinguishing agent will enter other compartments occupied by passengers or crew. The system must have adequate capacity to suppress any fire occurring in the crew rest compartment, considering the fire threat, volume of the compartment and the ventilation rate.

(m) There must be a supplemental oxygen system equivalent to that provided for main deck passengers for each seat and berth in the crew rest compartment. The system must provide an aural and visual warning to warn the occupants of the crew rest compartment to don oxygen masks in the event of decompression. The warning must activate before the cabin pressure altitude exceeds 15,000 feet. The aural warning must sound continuously for a minimum of five minutes or until a reset push button in the crew rest compartment is depressed. Procedures for crew rest occupants in the event of decompression must be established. These procedures must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

(n) The following requirements apply to crew rest compartments that are divided into several sections by the installation of curtains or partitions:

(1) To compensate for sleeping occupants, there must be an aural alert that can be heard in each section of the crew rest area compartment that accompanies automatic presentation of supplemental oxygen masks. A visual indicator that occupants must don an oxygen mask is required in each section where seats or berths are not installed. A minimum of two supplemental oxygen masks is required for each seat or berth. There must also be a means by which the oxygen masks can be manually deployed from the flight deck.

(2) A placard is required adjacent to each curtain that visually divides or separates, for privacy purposes, the crew rest area compartment into small sections. The placard must require that the curtain(s) remains open when the private section it creates is unoccupied.

(3) For each crew rest section created by the installation of a curtain, the following requirements of these special conditions must be met with the curtain open or closed:

(i) Emergency illumination (Special condition (e)).

(ii) Emergency alarm system (Special condition (g)).

(iii) Seat belt fasten signal or return to seat signal as applicable (Special condition (h)).

(iv) The smoke or fire detection system (Special condition (j)).

(4) Crew rest compartments visually divided to the extent that evacuation could be affected must have exit signs that direct occupants to the primary stairway exit. The exit signs must be provided in each separate section of the crew rest compartment and must meet the requirements of § 25.812(b)(1)(i) at Amendment 25–58. An exit sign with reduced background area as described in special condition (d)(1) may be used to meet this requirement.

(5) For sections within a crew rest compartment that are created by the installation of a partition with a door separating the sections, the following requirements of these special conditions must be met with the door open or closed:

(i) There must be a secondary evacuation route from each section to the main deck, or alternatively, it must be shown that any door between the sections has been designed to preclude anyone from being trapped inside the compartment. Removal of an incapacitated occupant within this area must be considered. A secondary evacuation route from a small room designed for only one occupant for short time duration, such as a changing area or lavatory, is not required. However, removal of an incapacitated occupant within this area must be considered.

(ii) Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

(iii) There may be no more than one door between any seat or berth and the primary stairway exit.

(iv) There must be exit signs in each section meeting the requirements of § 25.812(b)(1)(i) at Amendment 25–58 that direct occupants to the primary stairway exit. An exit sign with reduced background area as described in special condition (d).(1) may be used to meet this requirement.

(v) Special conditions (e) (emergency illumination), (g) (emergency alarm system), (h) (fasten seat belt signal or return to seat signal as applicable), and (j) (smoke or fire detection system) must be met with the door open or closed.

(vi) Special conditions (f) (two-way voice communication) and (i) (emergency firefighting and protective equipment) must be met independently for each separate section except for lavatories or other small areas that are not intended to be occupied for extended periods of time.

(o) Where a waste disposal receptacle is fitted, it must be equipped with a built-in fire extinguisher designed to discharge automatically upon occurrence of a fire in the receptacle.

(p) Materials (including finishes or decorative surfaces applied to the materials) must comply with the flammability requirements of § 25.853 at Amendment 25–66. Mattresses must comply with the flammability requirements of § 25.853(b) and (c) at Amendment 25–66.

(q) If a lavatory is installed, all lavatories within the crew rest are required to meet the same requirements as those for a lavatory installed on the

main deck except with regard to special condition (j) for smoke detection.

(r) When a crew rest compartment is installed or enclosed as a removable module in part of a cargo compartment or is located directly adjacent to a cargo compartment without an intervening cargo compartment wall, the following applies:

(1) Any wall of the module (container) forming part of the boundary of the reduced cargo compartment, subject to direct flame impingement from a fire in the cargo compartment and including any interface item between the module (container), and the airplane structure or systems, must meet the applicable requirements of § 25.855 at Amendment 25–60.

(2) Means must be provided so that the fire protection level of the cargo compartment meets the applicable requirements of §§ 25.855 at amendment 25–60, 25.857 at amendment 25–60 and 25.858 at amendment 25–54 when the module (container) is not installed.

(3) Use of each emergency evacuation route must not require occupants of the crew rest compartment to enter the cargo compartment in order to return to the passenger compartment.

(4) The aural warning in special condition (g) must sound in the crew rest compartment in the event of a fire in the cargo compartment.

(s) Means must be provided to prevent access into the Class C cargo compartment during all airplane operations and to ensure that the maintenance door is closed during all airplane flight operations.

(t) All enclosed stowage compartments within the crew rest that are not limited to stowage of emergency equipment or airplane-supplied equipment (*e.g.,* bedding) must meet the design criteria given in the table below. As indicated by the table below, this special condition does not address enclosed stowage compartments greater than 200 ft^3 in interior volume. The in-flight accessibility of very large, enclosed stowage compartments and the subsequent impact on the crewmember's ability to effectively reach any part of the compartment with the contents of a hand fire extinguisher will require additional fire protection considerations similar to those required for inaccessible compartments such as Class C cargo compartments.

STOWAGE COMPARTMENT INTERIOR VOLUMES

Fire protection features	Less than 25 ft^3	25 ft^3 to 57 ft^3	57 ft^3 to 200 ft^3
Materials of Construction [1]	Yes	Yes	Yes.
Detectors [2]	No	Yes	Yes.
Liner [3]	No	No	Yes.
Locating Device [4]	No	Yes	Yes.

[1] *Materials of Construction:* The material used to construct each enclosed stowage compartment must at least be fire resistant and must meet the flammability standards established for interior components per the requirements of § 25.853. For compartments less than 25 ft^3 in interior volume, the design must ensure the ability to contain a fire likely to occur within the compartment under normal use.

[2] *Detectors:* Enclosed stowage compartments equal to or exceeding 25 ft^3 in interior volume must be provided with a smoke or fire detection system to ensure that a fire can be detected within a one-minute detection time. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication in the flight deck within one minute after the start of a fire;

(b) An aural warning in the crew rest compartment; and

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

[3] *Liner:* If it can be shown that the material used to construct the stowage compartment meets the flammability requirements of a liner for a Class B cargo compartment, then no liner would be required for enclosed stowage compartments equal to or greater than 25 ft^3 in interior volume but less than 57 ft^3 in interior volume. For all enclosed stowage compartments equal to or greater than 57 ft^3 in interior volume but less than or equal to 200 ft^3, a liner must be provided that meets the requirements of § 25.855 at Amendment 25–60 for a class B cargo compartment.

[4] *Location Detector:* Crew rest areas which contain enclosed stowage compartments exceeding 25 ft^3 interior volume and which are located away from one central location such as the entry to the crew rest area or a common area within the crew rest area would require additional fire protection features and/or devices to assist the firefighter in determining the location of a fire.

Issued in in Kansas City, Missouri, on December 8, 2023.

Patrick R. Mullen,

Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA1156]

Schedules of Controlled Substances: Placement of 2,5-dimethoxy-4-iodoamphetamine (DOI) and 2,5-dimethoxy-4-chloroamphetamine (DOC) in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration proposes placing two phenethylamine hallucinogens, as identified in this proposed rule, in schedule I of the Controlled Substances Act. This action is being taken, in part, to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances for one of these substances 2,5-dimethoxy-4-chloroamphetamine. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess), or propose to handle these two specific controlled substances.

DATES: Comments must be submitted electronically or postmarked on or before January 12, 2024.

Interested persons may file a request for a hearing or waiver of hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.47 and/or 1316.49, as applicable. Requests for a

hearing, and waivers of an opportunity for a hearing or to participate in a hearing, must be received or postmarked on or before January 12, 2024.

To be considered by DEA as part of this rulemaking, comments and requests for a hearing must be submitted in response to this proposed rule within the timeframe specified above, regardless of whether the person previously submitted a comment or hearing request in response to the notice of proposed rulemaking that DEA published in the **Federal Register** on April 11, 2022 (87 FR 21069), and subsequently withdrew on August 29, 2022 (87 FR 52712), under docket number DEA824.

ADDRESSES: Interested persons may file written comments on this proposal in accordance with 21 CFR 1308.43(g). The electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period. To ensure proper handling of comments, please reference ''Docket No. DEA1156'' on all electronic and written correspondence, including any attachments.

- *Electronic comments:* DEA encourages commenters to submit all comments electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the on-line instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number. Submitted comments are not instantaneously available for public view on *regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.
- *Paper comments:* Paper comments that duplicate electronic submissions are not necessary and are discouraged. Should you wish to mail a paper comment in lieu of an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA FR Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.
- *Hearing requests:* All requests for a hearing and waivers of participation, together with a written statement of position on the matters of fact and law asserted in the hearing, must be filed with the DEA Administrator, who will make the determination of whether a hearing will be needed to address such matters of fact and law in the rulemaking. Such requests must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. For informational purposes, a courtesy copy of requests for hearing and waivers of participation should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–3249.

SUPPLEMENTARY INFORMATION: In this proposed rule, the Drug Enforcement Administration (DEA) proposes to schedule the following two controlled substances in schedule I of the Controlled Substances Act (CSA), including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- 2,5-dimethoxy-4-iodoamphetamine (DOI) and
- 2,5-dimethoxy-4-chloroamphetamine (DOC).

This proposed rule supersedes the April 11, 2022 notice of proposed rulemaking (NPRM) that DEA published in the **Federal Register** (87 FR 21069), to place DOI and DOC in schedule I of the CSA, which DEA withdrew on August 29, 2022 (87 FR 52712) in order to provide additional clarity on the process for submitting hearing requests. The scientific, medical, and other bases for the proposed placement of DOI and DOC in schedule I remain the same in this proposed rule as they were described in the April 2022 proposed rule, except for minor updates to certain data.

Posting of Public Comments

All comments received in response to this docket are considered part of the public record. DEA will make comments available, unless reasonable cause is given, for public inspection online at *https://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want DEA to make it publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

DEA will generally make available in publicly redacted form comments containing personal identifying information and confidential business information identified, as directed above. If a comment has so much confidential business information that DEA cannot effectively redact it, DEA may not make available publicly all or part of that comment. Comments posted to *https://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as confidential as directed above.

An electronic copy of this document and supplemental information to this proposed rule are available at *https://www.regulations.gov* for easy reference.

Request for Hearing or Appearance; Waiver

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551–559. 21 CFR 1308.41–1308.45; 21 CFR part 1316, subpart D. Interested persons may file requests for a hearing in conformity with the requirements of 21 CFR 1308.44(a) and 1316.47(a), and such requests must:

(1) state with particularity the interest of the person in the proceeding;

(2) state with particularity the objections or issues concerning which the person desires to be heard; and

(3) state briefly the position of the person with regarding to the objections or issues.

Any interested person may file a waiver of an opportunity for a hearing or to participate in a hearing in conformity with the requirements of 21 CFR 1308.44(c), together with a written statement of position on the matters of fact and law involved in any hearing. 21 CFR 1316.49.

All requests for a hearing and waivers of participation, together with a written statement of position on the matters of fact and law involved in such hearing, must be sent to DEA using the address information provided above. The decision whether a hearing will be needed to address such matters of fact and law in the rulemaking will be made by the Administrator. If a hearing is needed, DEA will publish a notice of hearing on the proposed rulemaking in the **Federal Register**. 21 CFR 1308.44(b), 1316.53. Further, once the Administrator determines a hearing is needed to address such matters of fact and law in rulemaking, she will then designate an Administrative Law Judge (ALJ) to preside over the hearing. The ALJ's functions shall commence upon designation, as provided in 21 CFR 1316.52.

In accordance with 21 U.S.C. 811 and 812, the purpose of a hearing would be to determine whether DOI and/or DOC meet the statutory criteria for placement in schedule I, as proposed in this rule.

Legal Authority

The CSA provides that proceedings for the issuance, amendment, or repeal of the scheduling of any drug or other substance may be initiated by the Attorney General on his own motion. 21 U.S.C. 811(a). This proposed action is supported by a recommendation from the then-Assistant Secretary for Health of the Department of Health and Human Services (HHS).

In addition, regarding the placement of DOC in the Controlled Substances Act (CSA), the United States is a party to the 1971 United Nations Convention on Psychotropic Substances (1971 Convention), February 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175, as amended. Procedures respecting changes in drug schedules under the 1971 Convention are governed domestically by 21 U.S.C. 811(d)(2)–(4). When the United States receives notification of a scheduling decision pursuant to Article 2 of the 1971 Convention indicating that a drug or other substance has been added to a schedule specified in the notification, the Secretary of HHS (Secretary),[1] after consultation with the Attorney General, shall first determine whether existing legal controls under subchapter I of the CSA and the Federal Food, Drug, and Cosmetic Act meet the requirements of the schedule specified in the notification with respect to the specific drug or substance.[2] In the event that the Secretary did not consult with the Attorney General, and the Attorney General did not issue a temporary order, as provided under 21 U.S.C. 811(d)(4), the procedures for permanent scheduling set forth in 21 U.S.C. 811(a) and (b) control. Pursuant to 21 U.S.C. 811(a)(1) and (2), the Attorney General (as delegated to the Administrator of DEA), by rule, and upon the recommendation of the Secretary, may add to such a schedule or transfer between such schedules any drug or other substance, if he finds that such drug or other substance has a potential for abuse, and makes with respect to such drug or other substance the findings prescribed by 21 U.S.C. 812(b) for the schedule in which such drug or other substance is to be placed.

Background

DOI and DOC belong to the phenethylamine class of drugs with hallucinogenic properties, similar to 2,5-dimethoxy-4-methamphetamine (DOM), a schedule I hallucinogen. DOI and DOC have no approved medical use in the United States.

On September 26, 2018, DEA, in accordance with the provisions of 21 U.S.C. 811(b), requested HHS provide a scientific and medical evaluation as well as a scheduling recommendation for DOI and DOC. Additionally, on May 7, 2020, the Secretary-General of the United Nations advised the Secretary of State of the United States that the Commission on Narcotic Drugs (CND), during its 63rd Session in March 2020, voted to place DOC in Schedule I of the 1971 Convention (CND Dec/63/4). As a signatory to this international treaty, the United States is required, by scheduling under the CSA, to place appropriate controls on DOC to meet the minimum requirements of the treaty.

Article 2, paragraph 7(a), of the 1971 Convention sets forth the minimum requirements that the United States must meet when a substance has been added to Schedule I of the 1971 Convention. The United States must adhere to specific export and import provisions that are provided in the 1971 Convention. This requirement is accomplished by the CSA with the export and import provisions established in 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312. Under Article 16, paragraph 4, of the 1971 Convention, the United States is required to provide annual statistical reports to the International Narcotics Control Board (INCB). Using INCB Form P, the United States shall provide the following information: (1) In regard to each substance in Schedule I and II of the 1971 Convention, quantities manufactured, exported to and imported from each country or region as well as stocks held by manufacturers; (2) in regard to each substance in Schedule III and IV of the 1971 Convention, quantities manufactured, as well as quantities exported and imported; (3) in regard to each substance in Schedule II and III of the 1971 Convention, quantities used in the manufacture of exempt preparations; and (4) in regard to each substance in Schedule II–IV of the 1971 Convention, quantities used for the manufacture of non-psychotropic substances or products. Lastly, under Article 2, paragraph 7(a)(vi) of the 1971 Convention, the United States must adopt measures in accordance with Article 22 to address violations of any statutes or regulations that are adopted pursuant to its obligations under the 1971 Convention. The United States complies with this provision as persons acting outside the legal framework established by the CSA are subject to administrative, civil, and/or criminal action.

Proposed Determination To Schedule DOI and DOC

Pursuant to 21 U.S.C. 811(b), DEA gathered the necessary data on DOI and DOC and on September 26, 2018, submitted it to the then-Assistant Secretary for Health of HHS with a request for a scientific and medical evaluation of available information and a scheduling recommendation for DOI and DOC. On September 28, 2020, HHS provided to DEA a scientific and medical evaluation entitled ''Basis for the Recommendation to Control 2,5-dimethoxy-4-iodoamphetamine (DOI) and 2,5-dimethoxy-4-chloroamphetamine (DOC) and their Salts in Schedule I of the Controlled Substances Act (CSA)'' and a scheduling recommendation. Following consideration of the eight factors and findings related to these substances' abuse potential, legitimate medical use,

[1] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), FDA acts as the lead agency within HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518 (March 8, 1985). The Secretary has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460 (July 1, 1993).

[2] 21 U.S.C. 811(d)(3).

and dependence liability, HHS recommended that DOI and DOC and their salts be controlled in schedule I of the CSA under 21 U.S.C. 812(b). In response, DEA reviewed the scientific and medical evaluation and scheduling recommendation provided by HHS and all other relevant data, and completed its own eight-factor review pursuant to 21 U.S.C. 811(c).

After a review of the available data, including the scientific and medical evaluation and scheduling recommendation provided by HHS, the Administrator published an NPRM in the **Federal Register** on April 11, 2022 (87 FR 21069), to place DOI and DOC in schedule I of the CSA. DEA withdrew that proposed rule on August 29, 2022 (87 FR 52712). This proposed rule supersedes the April 2022 proposed rule, to provide additional clarity on the process for submitting hearing requests. The bases for the proposed placement of DOI and DOC in schedule I remain the same in this proposed rule as they were described in the April 2022 proposed rule.

Included below is a brief summary of each factor as analyzed by HHS and DEA in their respective eight-factor analyses, and as considered by DEA in the April 2022 proposed rule and in this proposed scheduling determination. Please note that both DEA and HHS analyses are available in their entirety under ''Supporting Documents'' of the public docket for this proposed rule at *https://www.regulations.gov* under docket number ''DEA1156.''

1. The Drug's Actual or Relative Potential for Abuse

In addition to considering the information HHS provided in its scientific and medical evaluation document for DOI and DOC, DEA also considered all other relevant data regarding actual or relative potential for abuse of DOI and DOC. The term ''abuse'' is not defined in the CSA; however, the legislative history of the CSA suggests the following four prongs in determining whether a particular drug or substance has a potential for abuse: [3]

a. Individuals are taking the drug or other substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or to the community; or

b. There is a significant diversion of the drug or other substance from legitimate drug channels; or

c. Individuals are taking the drug or other substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs; or

d. The drug is so related in its action to a drug or other substance already listed as having a potential for abuse to make it likely that it will have the same potential for abuse as such substance, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.

DEA reviewed the scientific and medical evaluation provided by HHS and all other data relevant to the abuse potential of DOI and DOC. These data as presented below demonstrate that DOI and DOC have a high potential for abuse.

a. There is evidence that individuals are taking the drug or other substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or to the community.

Data show that DOI and DOC have been encountered by law enforcement in the United States (see Factor 5), indicating DOI and DOC availability for abuse. According to HHS, individuals are using DOI and DOC for their hallucinogenic effects and taking them in amounts sufficient to create a hazard to their health.

b. There is significant diversion of the drug or substance from legitimate drug channels.

HHS states that DOI and DOC are not Food and Drug Administration (FDA)-approved drugs for treatment in the United States and is unaware of any country in which their use is legal. DOI and DOC are available for purchase from legitimate chemical synthesis companies because they are used in scientific research. There is no evidence of diversion from these companies.

c. Individuals are taking the substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such substance.

DOI and DOC are not found in FDA-approved drug products and practitioners may neither legally prescribe nor dispense these substances. Therefore, individuals are taking DOI and DOC on their own initiative, rather than based on medical advice from practitioners licensed by law to administer drugs. This is consistent with the data from law enforcement seizures and case reports indicating that individuals are taking DOI and DOC on their own initiative rather than on the medical advice of licensed practitioners.

d. The drug is a new drug so related in its action to a drug or other substance already listed as having a potential for abuse to make it likely that the drug substance will have the same potential for abuse as such drugs, thus making it reasonable to assume that there may be significant diversion from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.

Chemically, DOI and DOC are analogs of the schedule I hallucinogen DOM. The effects and pharmacological action of DOI and DOC are similar to those of other schedule I hallucinogens, such as DOM and lysergic acid diethylamide (LSD), which have no accepted medical use and a high abuse potential.

In drug discrimination studies (an *in vivo* test to assess drug abuse liability of test drugs in comparison to known drugs of abuse), DOI and DOC produce full substitution for the discriminative stimulus effects of DOM, LSD, and *N,N*-dimethyltryptamine (DMT, schedule I). In humans, anecdotal reports suggest that DOI and DOC produce classic hallucinogenic effects that are similar to DOM, including visual and auditory hallucinations, fatigue, headache, gastrointestinal distress, insomnia and anxiety. HHS notes that use of DOC in combination with other drugs is associated with emergency department admissions and one death.

Due to the psychological and cognitive disturbances associated with DOI and DOC, as with other schedule I hallucinogens, it is reasonable to assume that DOI and DOC have substantial capability to be a hazard to the health of the user and to the safety of the community.

2. Scientific Evidence of the Drug's Pharmacological Effects, If Known

In vitro testing shows that DOI and DOC bind to and act as agonists at serotonin (5–HT) 2A (5–HT_{2A}) receptors. In rats, DOI administration induced an increase in wet dog shakes and back muscle contractions. These effects were attributed to 5–HT_{2A} receptor activation, since pretreatment with a 5–HT_{2A} receptor inverse agonist blocked the effect. Agonism of the 5–HT_{2A} receptor is the primary mechanism of action of typical hallucinogenic responses, suggesting that DOI and DOC have hallucinogenic effects. Additionally, animal testing data in rats show that DOI and DOC fully substitute for DOM, LSD, and DMT discriminative stimulus effects in drug discrimination tests.

[3] Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91–1444, 91st Cong., 2nd Sess. (1970) reprinted in 1970 U.S.C.C.A.N. 4566, 4603.

In humans, HHS reported that anecdotal reports of hallucinogenic experiences with DOI and DOC are available on online drug forums such as *www.erowid.org,* in which recreational drug users report on their experiences with all classes of substances. In these reports, DOI and DOC are reported to induce hallucinogenic effects, including prominent visual effects.

Additionally, a World Health Organization (WHO) critical review of DOC [4] mentions its hallucinogenic effects reported by those that self-experimented with DOC and notes the duration of action may last 12 to 24 hours. WHO notes that the long duration of effects is shared by other structurally related schedule I hallucinogens including DOI, 2,5-dimethoxy-4-bromoamphetamine (DOB), and DOM. DOI and DOC are commonly administered orally and/or sublingually when encountered in the form of blotters.

3. The State of Current Scientific Knowledge Regarding the Drug or Other Substance

DOI and DOC are centrally-acting hallucinogens and part of the phenethylamine hallucinogen family and share structural similarities with schedule I phenethylamine hallucinogens such as DOM. DOI (CAS 42203–78–1) has a molecular formula of $C_{11}H_{16}INO_2$ and a molecular weight of 321.16 g/mol. The hydrochloride salt of DOI has a melting point of 201 °C. DOC (CAS 123431–31–2) has a molecular formula of $C_{11}H_{16}ClNO_2$ and a molecular weight of 229.70 g/mol. The hydrochloride salt of DOC has a melting point of 193–194.5 °C. DOI and DOC are white, odorless, and crystalline solids.

4. Its History and Current Pattern of Abuse

The history and current pattern of abuse of DOI and DOC are described in law enforcement reports and anecdotal reports by drug abusers. In the United States, law enforcement entities initially encountered DOI and DOC in 2005, according to the National Forensic Laboratory Information System (NFLIS)-Drug [5] database. See Factor 5 for additional information. DOI and DOC are encountered in various forms (*e.g.,* powder, tablets, capsules, liquid, or on blotter paper).

Anecdotal reports on the internet indicate that individuals are using substances they identified as DOI and DOC for their hallucinogenic effects. Importantly, it is impossible to know if the street drugs sold to an individual as DOI or DOC are actually the substances they are marketed as in the absence of chemical analysis or evaluation of biological fluids following ingestion. However, in animal drug discrimination studies, DOI and DOC produced effects that are similar to the effects elicited by schedule I hallucinogens such as DOM, LSD, and DMT.

Regarding DOC, a July 2019 report from the European Monitoring Centre for Drugs and Drug Addiction included data from their toxicology portal, and indicated that 16 non-fatal intoxications associated with DOC had been reported internationally between 2008 and 2017. In 2019, the United Nations Office on Drugs and Crime reported three deaths associated with DOC (one each in 2015 and 2018; information about the third is unknown).

5. The Scope, Duration, and Significance of Abuse

Data from NFLIS-Drug indicate that DOI and DOC were found in samples starting in 2005, in the United States. Specifically, there were 40 NFLIS-Drug reports for DOI from 2005 through December 2022, and 790 NFLIS-Drug reports for DOC during the same period. DOI has been encountered in 15 states, whereas DOC has been encountered in 39 states. In response to abuse and safety concerns, DOI has been controlled in Florida.

Abuse of DOI and DOC has been characterized as causing acute public health and safety issues worldwide. In particular, WHO reports that DOC has been available in Europe since 2001. Based on available abuse data, public health risk, and drug trafficking data, the WHO recommended to the United Nations (UN) that DOC be controlled internationally. In March 2020, the UN Commission on Narcotic Drugs voted to place DOC into Schedule I of the 1971 Convention.

6. What, if Any, Risk There Is to the Public Health

DOI and DOC share similar mechanisms of action with and produce similar physiological and subjective effects (see Factor 2 for more information) as other schedule I hallucinogens, such as DOM, DMT, and LSD. Thus, DOI and DOC pose the same risks to public health as similar hallucinogens. Predominantly, the risks to public health are borne by users (*i.e.,* hallucinogenic effects, sensory distortion, impaired judgment, strange or dangerous behaviors), but they can affect the general public, as with driving under the influence. To date, there are no reports of distressing responses or death associated with DOI in medical literature. There have been three published reports, in 2008, 2014, and 2015, of adverse events associated with DOC including, but not limited to, seizures, agitation, tachycardia, hypertension, and death of one individual. Since DOI is structurally similar to DOC and produces similar effects to DOC, it is likely to produce serious adverse effects similar to DOC. Thus, serious adverse events that may include death represent a risk to the individual drug users and to public health.

7. Its Psychic or Physiological Dependence Liability

According to HHS, the physiological dependence liability of DOI and DOC in animals and humans is not reported in scientific and medical literature. Thus, it is not possible to determine whether DOI and DOC produce physiological dependence following acute or chronic administration.

According to HHS, DOI, DOC, and other related phenethylamine hallucinogens (such as the schedule I substance DOM) are highly abusable substances. Drug discrimination studies in animals indicate that DOI and DOC fully substitute to the discriminative stimulus effects of schedule I hallucinogens DOM, LSD, and DMT. HHS notes that hallucinogens are not usually associated with physical dependence, likely due to the rapid development of tolerance precluding daily administration. Hallucinogen abusers may develop psychological dependence as evidenced by the continued use of these substances despite knowledge of their potential toxic and adverse effects.

8. Whether the Substance Is an Immediate Precursor of a Substance Already Controlled Under the CSA

DOI and DOC are not immediate precursors of any controlled substance of the CSA as defined by 21 U.S.C. 802(23).

Conclusion

Based on consideration of the scientific and medical evaluation and accompanying recommendation of HHS, and on DEA's own eight-factor analysis, DEA finds that these facts and all relevant data constitute substantial evidence of potential for abuse of DOI

[4] World Health Organization (WHO). 2019a. Critical Review Report: DOC (4-Chloro-2,5-dimethoxyamfetamine) Expert Committee on Drug Dependence, Forty-second Meeting. Geneva.

[5] NFLIS-Drug is a national forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by state and local forensic laboratories in the United States. NFLIS-Drug data were queried on October 27, 2023.

and DOC. As such, DEA proposes to schedule DOI and DOC as controlled substances under the CSA.

Proposed Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule, per 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the then-Assistant Secretary for Health of HHS to place DOI and DOC in schedule I and review of all other available data, the Administrator of DEA, pursuant to 21 U.S.C. 812(b)(1), finds that:

(1) DOI and DOC have a high potential for abuse that is comparable to other schedule I substances, such as the phenethylamine hallucinogen DOM;

(2) DOI and DOC have no currently accepted medical use in treatment in the United States. FDA has not approved a marketing application for a drug product containing DOI or DOC for any therapeutic indication, and DEA and HHS know of no clinical studies or petitioners claiming an accepted medical use in the United States.[6]

(3) There is a lack of accepted safety for use of DOI and DOC under medical supervision. The use of DOC is associated with serious adverse consequences including deaths. Since DOI is structurally similar to DOC and produces effects similar to DOC, it is likely that DOI may produce serious adverse events similar to DOC. Because DOI and DOC have no approved medical use and have not been investigated as new drugs, their safety for use under medical supervision has not been determined.

Based on these findings, the Administrator of DEA concludes that DOI and DOC warrant control in schedule I of the CSA. More precisely, because of their hallucinogenic effects, and because they may produce hallucinogenic-like tolerance and dependence in humans, DEA proposes to place DOI and DOC, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical description, in 21 CFR 1308.11(d) (the hallucinogenic substances category of schedule I).

Requirements for Handling DOI and DOC

If this rule is finalized as proposed, DOI and DOC would be subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distributing, dispensing, importing, exporting, research, and conduct of instructional activities, including the following:

1. Registration. Any person who handles (manufactures, distributes, dispenses, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) would need to be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312.

2. Security. DOI and DOC would be subject to schedule I security requirements and would need to be handled and stored pursuant to 21 U.S.C. 821, 823, and in accordance with 21 CFR 1301.71–1301.76. Non-practitioners handling DOI and DOC also would need to comply with the screening requirements of 21 CFR 1301.90–1301.93.

3. Labeling and Packaging. All labels and packaging for commercial containers of DOI and DOC would need to comply with 21 U.S.C. 825, and be in accordance with 21 CFR part 1302.

4. Quota. Only registered manufacturers would be permitted to manufacture DOI and DOC in accordance with quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

5. Inventory. Every DEA registrant who possesses any quantity of DOI and DOC would need to have an initial inventory of all stocks of controlled substances (including DOI and DOC) on hand on the date the registrant first engages in the handling of controlled substances, pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

After the initial inventory, every DEA registrant would need to take inventory of all controlled substances (including DOI and DOC) on hand every two years, pursuant to 21 U.S.C. 827, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. Records and Reports. Every DEA registrant would need to maintain records and submit reports for DOI and DOC, pursuant to 21 U.S.C. 827 and 832(a), and in accordance with 21 CFR 1301.74(b) and (c) and parts 1304, 1312, and 1317

7. Order Forms. Every DEA registrant who distributes DOI and DOC would need to comply with the order form requirements, pursuant to 21 U.S.C. 828 and 21 CFR part 1305.

8. Importation and Exportation. All importation and exportation of DOI and DOC would need to be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

9. Liability. Any activity involving DOI and DOC not authorized by, or in violation of, the CSA or its implementing regulations would be unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866 and 13563, Regulatory Planning and Review, and Improving Regulation and Regulatory Review

In accordance with 21 U.S.C. 811(a), this proposed scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the procedures and criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget pursuant to section 3(d)(1) of Executive Order (E.O.) 12866 and the principles reaffirmed in E.O. 13563.

Executive Order 12988, Civil Justice Reform

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This proposed rulemaking does not have federalism implications warranting the application of E.O. 13132. The proposed rule does 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.

[6] Although there is no evidence suggesting that DOI and DOC have a currently accepted medical use in treatment in the United States, it bears noting that a drug cannot be found to have such medical use unless DEA concludes that it satisfies a five-part test. Specifically, with respect to a drug that has not been approved by FDA, to have a currently accepted medical use in treatment in the United States, all of the following must be demonstrated: i. the drug's chemistry must be known and reproducible; ii. there must be adequate safety studies; iii. there must be adequate and well-controlled studies proving efficacy; iv. the drug must be accepted by qualified experts; and v. the scientific evidence must be widely available. 57 FR 10499 (1992), *pet. for rev. denied, Alliance for Cannabis Therapeutics* v. *DEA,* 15 F.3d 1131, 1135 (D.C. Cir. 1994).

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications warranting the application of E.O. 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Paperwork Reduction Act

This proposed action does not impose a new collection of information requirement under the Paperwork Reduction Act, 44 U.S.C. 3501–3521.

Regulatory Flexibility Act

The Administrator of DEA, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612, has reviewed this proposed rule, and by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities.

DEA proposes placing the substances DOI and DOC (chemical names: 2,5-dimethoxy-4-iodoamphetamine [DOI] and 2,5-dimethoxy-4-chloroamphetamine [DOC]), including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, in schedule I of the CSA. This action is being taken, in part, to enable the United States to meet its obligations under the 1971 Convention for DOC. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess), or propose to handle DOI and DOC.

According to HHS, and also by DEA's findings in this proposed rule, DOI and DOC have a high potential for abuse, have no currently accepted medical use in treatment in the United States, and lack accepted safety for use under medical supervision. There appear to be no legitimate sources for DOI and DOC as marketed drugs in the United States, but DEA notes that these substances are available for purchase from legitimate suppliers for scientific research. There is no evidence of significant diversion of DOI and DOC from legitimate suppliers. As such, the proposed rule, if finalized, is not expected to result in a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

On the basis of information contained in the ''Regulatory Flexibility Act'' section above, DEA has determined pursuant to the Unfunded Mandates Reform Act (UMRA) of 1995 (2 U.S.C. 1501 *et seq.*) that this proposed action would not result in any Federal mandate that may result ''in the expenditure by State, local, and Tribal Governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year * * *.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Signing Authority

This document of the Drug Enforcement Administration was signed on December 7, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Scott Brinks,

Federal Register Liaison Officer, Drug Enforcement Administration.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is proposed to be amended to read as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11, as proposed to be amended at 88 FR 22388 (April 13, 2023), add paragraphs (d)(104) and (d)(105) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

* * * * * * *

(104) 2,5-dimethoxy-4-iodoamphetamine (Other name: DOI) 7447
(105) 2,5-dimethoxy-4-chloroamphetamine (Other name: DOC) 7448

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[FR Doc. 2023–27289 Filed 12–12–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Parts 250 and 290

[Docket ID: BSEE–2023–0014 EEEE500000 245E1700D2 ET1SF0000.EAQ000]

RIN: 1014–AA57

Bonding Requirements When Filing an Appeal of a Bureau of Safety and Environmental Enforcement Civil Penalty

AGENCY: Bureau of Safety and Environmental Enforcement (BSEE), Interior.

ACTION: Proposed rule.

SUMMARY: The Department of the Interior (Interior) is proposing to amend regulations administered by the Bureau of Safety and Environmental Enforcement (BSEE) regarding the bonding requirements for entities filing an appeal of a BSEE decision that assesses a civil penalty. The proposed regulations would clarify that entities appealing a BSEE civil penalty decision to the Interior Board of Land Appeals (IBLA) must have a bond covering the civil penalty assessment amount for the IBLA to have jurisdiction over the appeal.

DATES: Submit comments on the proposed rule to BSEE by February 12, 2024. BSEE may not fully consider comments received after this date.

ADDRESSES: You may submit comments on the proposed rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1014–AA57 as an identifier in your message.

- *Federal eRulemaking Portal: https://www.regulations.gov.* In the entry titled Enter Keyword or ID, enter BSEE–2023–0014 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking. BSEE may post all comments submitted.
- Mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Attention: Regulations and Standards Branch; 45600 Woodland Road, Sterling, Virginia 20166. Please reference ''Bonding Requirements When Filing an Appeal of a Bureau of Safety and Environmental Enforcement Civil Penalty, 1014–AA57'' in your comments and include your name and return address.

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. In order for BSEE to withhold from disclosure your personal identifying information, you must identify any information contained in your comment submittal that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequence(s) of the disclosure of information, such as embarrassment, injury, or other harm. 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.

FOR FURTHER INFORMATION CONTACT: For technical questions, contact Janine Marie Tobias at *Janine.Tobias@bsee.gov* or (202) 208–4657. For procedural questions, contact Kirk Malstrom at (703) 787–1751 or by email at *regs@bsee.gov.*

SUPPLEMENTARY INFORMATION:

Executive Summary

Pursuant to the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1350), BSEE has the delegated authority to assess civil penalties to certain entities engaged in oil and gas exploration, development, and production operations on the Outer Continental Shelf (OCS) following certain violations by those entities of a statutory provision, regulation, order, or lease term. The Department's implementing regulations for this authority are located at 30 CFR part 250, subpart N—Outer Continental Shelf Civil Penalties (§§ 250.1400–250.1409). Additional relevant regulations regarding the procedures for appealing civil penalty assessments are at 30 CFR part 290, subpart A-Bureau of Safety and Environmental Enforcement Appeal Procedures (§§ 290.1–290.8).

BSEE recently commenced a review of its civil penalty assessment appeal processes at 30 CFR part 250, subpart N and 30 CFR part 290, subpart A. BSEE's review was initiated following the IBLA's July 7, 2022, order in *Petro Ventures, Inc.* (IBLA No. 2020–48) analyzing the effect of the civil penalty appeal bonding requirements in 30 CFR 250.1409. This regulation, at paragraph (b), requires that an entity filing an appeal of a civil penalty assessment must either ''[s]ubmit a surety bond in the amount of the penalty'' or request that ''your lease-specific/area-wide bond on file be used as the bond for the penalty amount.'' When Interior proposed what is now 30 CFR 250.1409 in 1999, it explained that the civil penalty appeal bonding requirement was ''designed to ensure that funds will be available to cover the final civil penalty assessment if the appeal is denied, and to discourage any appeals filed for the sole purpose of delaying payment of that assessment.'' 64 FR 1930, 1966 (January 12, 1999). BSEE and its predecessors have consistently intended and understood this bonding requirement to operate as a condition precedent to an entity's right to pursue an appeal, and most entities pursuing civil penalty appeals have a similar understanding. The IBLA, however, concluded in *Petro Ventures, Inc.* that while 30 CFR 250.1409 requires that the appealing entity have bonding covering the appealed civil penalty amount, the regulation is not phrased in such a way as to make it a jurisdictional precondition or to support dismissal of the appeal if the bonding requirement is not met.

Accordingly, Interior is proposing revisions to 30 CFR 250.1409, *What are my appeal rights?,* and 30 CFR 290.4, *How do I file an appeal?,* to effectuate the original intent of the bonding requirement by ensuring that bonding is a jurisdictional precondition for maintaining an appeal of a BSEE civil penalty assessment at the IBLA.

Section-by-Section Discussion of Proposed Changes

What are my appeal rights? (§ 250.1409)

BSEE proposes to change the introductory sentence of § 250.1409(b) from ''If you file an appeal, you must either:'' to ''In order to file an appeal, you must perform one of the following actions within the 60-day appeal period to have your appeal heard:''. BSEE also proposes to move existing § 250.1409(d) to a new § 250.1409(e). The new proposed § 250.1409(d) would state: ''Satisfying the bonding requirement in paragraph (b) of this section is a jurisdictional precondition for a civil penalty appeal. If you have timely filed a request with BOEM pursuant to paragraph (b)(2) of this section to use your lease-specific/area-wide bond on file as the bond for the penalty amount, the IBLA's jurisdiction over the appeal is preserved while BOEM's decision on your request is pending. Should BOEM deny your request or require additional security pursuant to paragraph (c) of

this section, you have 30 days to satisfy paragraph (b)(1) of this section or post the required additional security, as applicable, and jurisdiction is preserved during that 30-day period. If you fail to satisfy these bonding requirements, the IBLA will lose jurisdiction and must dismiss your appeal.'' Together, these proposed provisions would effectuate the intended functions of BSEE's bonding requirements for filing and maintaining a civil penalty appeal at the IBLA. BSEE requires bonding covering the civil penalty amount for all civil penalty appeals to ensure that funds will be available to cover the civil penalty amount if the assessment is upheld and to discourage appeals filed for the sole purpose of delaying payment of that assessment.

Lastly, BSEE proposes to modify the existing § 250.1409(d), which would become the new § 250.1409(e), by changing the introductory sentence from ''If you do not either pay the penalty or file a timely appeal, BSEE will take one or more of the following actions:'' to ''If you do not either pay the penalty or fully satisfy the appeal requirements, the Department may take one or more of the following actions:''. In paragraph (e)(1), BSEE proposes to delete ''We will'' and start the sentence with ''Collect.'' In paragraph (e)(2), BSEE proposes to delete ''We may'' and start the sentence with ''Initiate.'' In paragraph (e)(3), BSEE proposes to delete ''We may'' and start the sentence with ''Bar.'' BSEE proposes these edits because different entities within Interior may take the listed actions and to improve the grammatical structure of the overall provision.

How do I file an appeal? (§ 290.4)

BSEE proposes to add a new paragraph (c) to § 290.4. Existing § 290.4 sets forth the items that BSEE must receive within 60 days after a party receives the appealed decision for the appeal to be considered properly filed. The proposed paragraph (c) would add to that list: ''If you are appealing a civil penalty assessment, either notification of payment of the penalty or documentation demonstrating satisfaction of the requirements in 30 CFR 250.1409(b).'' As with the other appeal filing requirements in the section, it would also expressly state that the appellant ''cannot extend the 60-day period for satisfying this requirement, except as specifically provided in 30 CFR 250.1409(d).'' BSEE is proposing these additions to ensure awareness of, and consistency with, the requirements in the proposed § 250.1409; to ensure that appealing entities timely provide BSEE with documentation demonstrating compliance with § 250.1409; and to further emphasize the nature of the bonding requirement as a jurisdictional precondition to maintenance of an appeal.

Procedural Matters

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' that will ''describe the impact of the proposed rule on small entities.'' (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

BSEE estimates that at least 80 entities (lessees, grant holders, and operators) would be subject to this proposed rule, of which approximately 60 percent are small according to the U.S. Small Business Administration size standards based on each firm's North American Industry Classification System code, number of employees, and annual revenues. Therefore, BSEE has determined that this proposed rule would apply to a substantial number of small entities.

However, BSEE has determined that the impact on entities affected by the proposed rule would not be significant. The provisions would only align the language of the regulations with BSEE's and the regulated industry's longstanding understanding of the effects of the existing requirement. Existing regulations have long required satisfaction of appeal bonding requirements for appeals of civil penalty assessments, and the proposed revisions would only clarify the procedural effects of noncompliance with that requirement. They would not add any cost burdens to entities that would be subject to the proposed rule. Accordingly, the Department hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. BSEE invites comments from members of the public who believe there would be a significant impact on companies subject to the proposed rule.

Congressional Review Act (5 U.S.C. 801–808)

The Congressional Review Act (CRA) defines a rule as major if it meets any of three criteria. The three criteria are:

A. Does the rule have an annual effect on the economy of $100 million or more?

B. Will the rule cause a major increase in the cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions?

C. Does the rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises?

This proposed rule is not a major rule under the CRA. This rule would neither generate an annual economic effect of $100 million or more; nor cause major price increases for consumers, businesses, or governments, or geographic regions; nor degrade competition, employment, investment, productivity, innovation, or the ability of U.S. businesses to compete against foreign businesses. Its effects would be purely administrative, legal, and procedural.

Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.)

This proposed rule would not impose an unfunded mandate on state, local, or Tribal governments or the private sector of more than $189 million per year. The proposed rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347)

This proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because, as a regulation of an administrative, legal, and procedural nature, this proposed rule is covered by a categorical exclusion (*see* 43 CFR 46.210(i)). BSEE also determined that the proposed rule

would not implicate any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. Therefore, a detailed statement under NEPA is not required.

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

E.O. 12866, *Regulatory Planning and Review,* as amended by E.O. 14094, provides that OMB's Office of Information and Regulatory Affairs (OIRA) will review all significant regulatory actions. A significant regulatory action is one that is likely to result in a rule that:

A. Has an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product); or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

B. Creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency;

C. Materially alters the budgetary impacts of entitlements, grants, user fees, loan programs, or the rights and obligations of recipients thereof; or

D. Raises legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in E.O. 12866.

OIRA has concluded that this proposed rule is not a significant action under E.O. 12866. The provisions would only align the language of the regulations with BSEE's and the regulated industry's longstanding understanding of the effects of the existing requirements and would not add any cost burdens to entities that would be subject to the proposed rule, yielding only procedural effects. Accordingly, BSEE does not anticipate that this proposed rule would have an annual economic impact of $200 million or more or would have a material adverse effect on the economy, a sector of the economy, productivity, competition, jobs, public health or safety, the environment, or State, local, or Tribal governments or communities. This proposed rule also would not raise novel legal or policy issues.

E.O. 13563, *Improving Regulation and Regulatory Review,* reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 further emphasizes 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.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this proposed rule does not have significant takings implications. The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this proposed rule does not have federalism implications. This proposed rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not affect that role. A federalism assessment is not required.

Civil Justice Reform (E.O. 12988)

This proposed rule complies with the requirements of E.O. 12988. Specifically, this proposed rule:

A. Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

B. Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

BSEE strives to strengthen its government-to-government relationships with Tribal Nations and Alaska Natives through a commitment to consultation with Tribes and recognition of their right to self-governance and Tribal sovereignty. We are also respectful of our responsibilities for consultation with Alaska Native Claims Settlement Act Corporations. BSEE has reviewed this proposed rule pursuant to the criteria in E.O. 13175, Consultation and Coordination with Indian Tribal Governments (dated November 6, 2000), Interior's Policy on Consultation with Indian Tribes and Policy on Consultation with Alaska Native Claims Settlement Act Corporations (512 Departmental Manual 4, dated November 30, 2022, and 512 Departmental Manual 6, dated November 30, 2022, respectively), and Interior's Procedures for Consultation with Indian Tribes and Procedures for Consultation with Alaska Native Claims Settlement Act Corporations (512 Departmental Manual 5, dated November 30, 2022, and 512 Departmental Manual 7, dated November 30, 2022, respectively) and has determined that this rule would not have substantial direct effects on Tribal Nations or Alaska Natives, on the relationship between the Federal government and Tribal Nations or Alaska Natives, or on the distribution of power and responsibilities between the federal government and Tribal Nations or Alaska Natives.

Effects on the Nation's Energy Supply (E.O. 13211)

This proposed rule is not a significant energy action under the definition in E.O. 13211. This proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. A Statement of Energy Effects is not required.

Effects on Environmental Justice for Minority and Low-Income Populations (E.O. 12898)

E.O. 12898 requires Federal agencies to make achieving environmental justice part of their mission by identifying and addressing disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations. BSEE has determined that this proposed rule would not have a disproportionately high or adverse human health or environmental effect on native, minority, or low-income communities because its provisions are administrative and procedural in nature and do not affect public safety, environmental protection, or OCS operational requirements.

Clarity of This Regulation

We are required by E.O. 12866, E.O. 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:

A. Be logically organized;

B. Use the active voice to address readers directly;

C. Use clear language rather than jargon;

D. Be divided into short sections and sentences; and

E. Use lists and tables whenever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. 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 you find unclear, which sections or sentences are too long, or the sections where you feel lists or tables would be useful.

List of Subjects

30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral resources, Oil and gas exploration, Penalties, Pipelines, Continental Shelf—mineral resources, Continental Shelf—rights-of-way, Reporting and recordkeeping requirements, Sulfur.

30 CFR Part 290

Administrative practice and procedure.

Steven H. Feldgus,

Deputy Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Department of the Interior is proposing to revise 30 CFR parts 250 and 290 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 30 U.S.C. 1751, 31 U.S.C. 9701, 33 U.S.C. 1321(j)(1)(C), 43 U.S.C. 1334.

Subpart N—Outer Continental Shelf Civil Penalties

■ 2. Amend § 250.1409 by:
■ a. Revising paragraph (b) introductory text;
■ b. Redesignating paragraph (d) as paragraph (e);
■ c. Adding new paragraph (d); and
■ d. Revising paragraph (e).

The revisions and additions read as follows:

§ 250.1409 What are my appeal rights?

* * * * *

(b) In order to file an appeal, you must perform one of the following actions within the 60-day appeal period to have your appeal heard:

* * * * *

(d) Satisfying the bonding requirement in paragraph (b) of this section is a jurisdictional precondition for a civil penalty appeal. If you have timely filed a request with BOEM pursuant to paragraph (b)(2) of this section to use your lease-specific/area-wide bond on file as the bond for the penalty amount, the IBLA's jurisdiction over the appeal is preserved while BOEM's decision on your request is pending. Should BOEM deny your request or require additional security pursuant to paragraph (c) of this section, you have 30 days to satisfy paragraph (b)(1) of this section or post the required additional security, as applicable, and jurisdiction is preserved during that 30-day period. If you fail to satisfy these bonding requirements, the IBLA will lose jurisdiction and must dismiss your appeal.

(e) If you do not either pay the penalty or fully satisfy the appeal requirements, the Department may take one or more of the following actions:

(1) Collect the amount you were assessed, plus interest, late payment charges, and other fees as provided by law, from the date you received the Reviewing Officer's final decision until the date we receive payment;

(2) Initiate additional enforcement, including, if appropriate, cancellation of the lease, right-of-way, license, permit, or approval, or the forfeiture of a bond under this part; or

(3) Bar you from doing further business with the Federal Government according to Executive Orders 12549 and 12689, and section 2455 of the Federal Acquisition Streamlining Act of 1994, 31 U.S.C. 6101. The Department of the Interior's regulations implementing these authorities are found at 43 CFR part 12, subpart D.

PART 290—APPEAL PROCEDURES

■ 3. The authority citation for part 290 continues to read as follows:

Authority: 5 U.S.C. 305; 43 U.S.C. 1334.

Subpart A—Bureau of Safety and Environmental Enforcement Appeal Procedures

■ 4. Amend § 290.4 by:
■ a. Removing the text ''and'' at the end of paragraph (a);
■ b. Removing the text ''.'' at the end of the sentence and adding the text ''; and'' at the end of the paragraph (b) introductory text; and
■ c. Adding paragraph (c).

The revisions and additions read as follows:

§ 290.4 How do I file an appeal?

* * * * *

(c) If you are appealing a civil penalty assessment, either notification of payment of the penalty or documentation demonstrating satisfaction of the requirements in 30 CFR 250.1409(b). You cannot extend the 60-day period for satisfying this requirement, except as specifically provided in 30 CFR 250.1409(d).

[FR Doc. 2023–27079 Filed 12–12–23; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 117

[Docket ID: DoD–2023–OS–0061]

RIN 0790–AL52

National Industrial Security Program Operating Manual (NISPOM); Amendment

AGENCY: Office of the Under Secretary of Defense for Intelligence & Security, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing amendments to the National Industrial Security Program Operating Manual (NISPOM) based on public comments received on a final rule published on December 21, 2020. The proposed amendments address implementation guidance and costs for the Security Executive Agent Directive (SEAD) 3, clarifications on procedures for the protection and reproduction of classified information, controlled unclassified information (CUI), National Interest Determination (NID) requirements for cleared contractors operating under a Special Security Agreement for Foreign Ownership, Control or Influence, and eligibility determinations for personnel security clearance processes and requirements.

DATES: Comments must be received on or before February 12, 2024.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Identifier Number (RIN) and title, by any of the following methods:

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

• *Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and

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

FOR FURTHER INFORMATION CONTACT: Allyson Renzella, 703–697–9209.

SUPPLEMENTARY INFORMATION:

Background

The NISPOM establishes requirements for the protection of classified information disclosed to or developed by contractors, licensees, grantees, or certificate holders to prevent unauthorized disclosure. The National Industrial Security Program (NISP) is established by Executive Order (E.O.) 12829 ''National Industrial Security Program (NISP)'' (available at *https://www.archives.gov/files/isoo/policy-documents/eo-12829-with-eo-13691-amendments.pdf*) provides a single integrated, cohesive industrial security program to protect classified information to preserve our Nation's economic and technological interests. Under the NISP, the USG establishes requirements for the protection of classified information to be safeguarded in a manner equivalent to its protection within the executive branch of USG, where practicable. For industry, those requirements are included in the NISPOM. When bound by contract, license, or grant, industry must comply with the NISPOM and any Cognizant Security Agency (CSA)-specific supplementary guidance for unique CSA mission requirements. As the Executive Agent of the NISP, the Secretary of Defense is responsible for overall implementation of the program. The Department of Defense (DoD) issues and maintains the NISPOM with the concurrence of the other four NISP CSAs and in consultation with other affected Federal agencies.

DoD codified the NISPOM in a final rule on December 21, 2020 (85 FR 83300–83364) *National Industrial Security Program Operating Manual (NISPOM)* to add 32 CFR part 117 to the Code of Federal Regulations (CFR). The rule was effective on February 24, 2021. In addition to adding the NISPOM to the CFR, the final rule incorporated requirements of Security Executive Agent Directive (SEAD) 3, *Reporting Requirements for Personnel with Access to Classified Information or Who Hold a Sensitive Position.* SEAD 3 requires reporting by all contractor cleared personnel who have been granted eligibility for access to classified information. The final rule provided a single nation-wide implementation plan to include SEAD 3 reporting by all contractor cleared personnel to report specific activities that may adversely impact their continued national security eligibility, such as reporting of foreign travel and foreign contacts. NISP CSAs are required to conduct an analysis of such reported activities to determine whether they pose a potential threat to national security and take appropriate action. Finally, the rule also implemented the provisions of Section 842 of Public Law 155–232, which removed the requirement for a covered National Technology and Industrial Base (NTIB) entity operating under a special security agreement pursuant to the NISP to obtain a national interest determination as a condition for access to proscribed information. The 60-day public comment period ended on February 19, 2021.

On August 19, 2021, DoD published a technical amendment to the December final rule (at 86 FR 46597–46599) to extend until August 24, 2022, the implementation date for those contractors under DoD security cognizance to report and obtain pre-approval of unofficial foreign travel to the DoD. The technical amendment was effective on August 19, 2021 and was done to allow DoD to make modifications to its information technology (IT) systems. The technical amendment addressed comments from regulated parties on the burdensome nature of submitting individual foreign travel reports for those contractors under DoD security cognizance. The technical amendment allowed DoD more time to make the necessary changes to the IT system for multiple foreign travel reports in a single submission.

This proposed rule addresses the comments received on the final rule published in December 2020 and further amends the 32 CFR 117 to make the following changes as discussed below.

Discussion of Comments and Changes

The December 21, 2020 final rule received nine sets of public comments from five individuals who provided 11 comments, two companies that provided 41 comments, an industry representative organization that provided 28 comments, and a law firm that provided four comments, for a total of 84 comments.

Clarification on Procedures

The vast majority of the comments related to a request for clarification on procedures for those contractors under DoD security cognizance. Many of the comments did not result in a change to the rule because they related to procedures that a NISP CSA would provide to supplement unique CSA mission requirements. For contractors under DoD security cognizance, DoD provides unique CSA mission guidance via industrial security letters (ISLs) when applicable. ISLs are published on the Defense Counterintelligence and Security Agency (DCSA) website (*https://www.dcsa.mil/*) and will address the comments received and re-issue previous NISPOM ISLs, as needed. Previous ISLs were tied to the content of the NISPOM when it was a DoD manual. Some of the guidance contained in prior ISLs has been incorporated into the rule and is no longer needed. Those ISLs that are still needed in order to provide further guidance to those contractors under DoD security cognizance will be re-issued in accordance with the rule.

Comments Related to SEAD 3 Implementation

Many comments were received on § 117.8, relating to implementation of SEAD 3, *Reporting Requirements for Personnel with Access to Classified Information or Who Hold a Sensitive Position,* published by the Office of the Director of National Intelligence. Commenters were concerned with the lack of guidance on how information systems will be used to report foreign travel and when foreign travel reporting should be accomplished by contractors. Also, commenters requested more details as to who approves foreign travel requests: the contractor security staff, the government customer, or CSA. DoD also received comments from regulated parties stating it would be burdensome for contractors under DoD security cognizance to submit individual foreign travel reports. Regulated parties recommended DoD modify its information technology (IT) system so a contractor may submit multiple or batched foreign travel reports in a single submission. As discussed earlier, to allow time for the completion of modifications to DoD's IT system, DoD published an amendment on August 19, 2021, to extend until August 24, 2022, the implementation date for contractors under DoD security cognizance to report and obtain pre-approval of unofficial foreign travel to DoD. The IT system was modified prior to the August 2022 implementation date and can now receive multiple foreign travel reports at a time.

Additionally, one commenter opined the cost to contractors to implement SEAD 3 was underestimated—both in

the time it will take to report and the number of reports that will be generated. We agree with this assessment and the corrected numbers can be found in the cost analysis section of the preamble. Further, commenters asked how the CSA will analyze the reported data and if the analysis will be shared with the contractor or the cleared employee going on foreign travel. For those contractors under DoD cognizance, guidance was provided via an ISL (*https://www.dcsa.mil/Portals/128/Documents/CTP/tools/ISL2021-02_SEAD-3.pdf*) to provide supplementary procedures and inform industry how compliance with SEAD 3 will be accomplished for unique DoD mission needs.

Controlled Unclassified Information

DoD received seven comments on CUI as it relates to the paragraphs on security reviews (§ 117.7), training (§ 117.12), and safeguarding CUI (§ 117.15). DoD did not make any changes to the rule as compliance with CUI is outside the scope of the NISP. For the purposes of this rule, if a contractor has a classified contract that also includes provisions for CUI, then, under certain circumstances, CUI assessments may be conducted by the CSA in conjunction with NISP USG reviews. The contractor must follow the requirements as stated in their contract concerning the safeguarding of CUI.

Security Reviews

DoD received several comments on § 117.7, to include that a facility security officer (FSO) should be a U.S. citizen with no exceptions; and the text was updated accordingly in 117.7(b). The text clarifies that the only exception for U.S. citizenship may apply to the Senior Management Official or Insider Threat Program Senior Official if the entity has a limited entity eligibility determination due to foreign ownership, control, or influence. Two commenters observed that § 117.7(h)(1)(i) did not include the frequency of security review cycles. DoD is accepting this change and has modified § 117.7(h)(1)(i) to reflect security reviews will only occur once every 12 months unless special circumstances exist, to include addressing security vulnerabilities found during a previous security review. Another commenter expressed concern the final rule allowed a CSA to conduct unannounced reviews at its discretion without any specific guidelines. Based on this comment, DoD has proposed to update § 117.7(h)(1)(ii)(A) to clarify unannounced security reviews will be conducted only if there is a possibility of the imminent loss or compromise of classified information.

Eligibility Determinations

DoD received several comments on eligibility determinations in § 117.10, to include a request for clarification on the system of record for personnel security clearances, clarification of requirements for current investigations, reinvestigation, and continuous evaluation requirements, definition of what is considered a break in access and break in employment, and the process for requesting and granting an extension if a temporary eligibility determination goes beyond a year. DoD is not proposing any changes based on these comments as clarification to contractors under DoD cognizance will be provided when applicable via ISLs.

National Interest Determination (NID) Requirements

DoD received comments on the changes to the NID requirements for a covered National Technology and Industrial Base (NTIB) entity based on section 842 of Public Law 115–232 included in § 117.11. Commenters asked for clarification on which specific entities fall under section 842 of Public Law 115–232 and recommended that NIDs be eliminated completely. The final NISPOM rule reflects language taken directly from section 842 of Public Law 115–232, which includes eliminating a NID requirement for U.S.-cleared companies owned by Australia, Canada, and the United Kingdom. DoD is not making any changes based on these comments as DoD is unable to eliminate NIDs, since the provisions for NID requirements are driven by 32 CFR part 2004, *National Industrial Security Program,* and not this rule. There has been no change to the NID requirements in 32 CFR part 2004 outside of section 842 Public Law 115–232.

Safeguarding

Eight comments were received on safeguarding, § 117.15, to include four on open storage areas and another four on intrusion detection systems (IDS). Commenters also requested more guidance on open storage area requirements included in the previous NISPOM DoD Manual, to include procedures for leaving an open storage area unattended during business hours, whether self-approval authority can still be delegated to FSOs by a CSA, procedures to ensure the structural integrity of the space, and whether open bin and open shelf storage is still permitted. DoD is proposing updated text in § 117.15(a) and (c) to address several of these comments (*e.g.,* procedures for leaving an open storage area unattended during business hours and delegation of approval authority to FSOs if agreed to by the CSA, respectively) and as a result added a definition for ''pedestrian door locks'' from the added text on security checks. DoD is also proposing updated text in paragraph 117.15(d) to provide more clarity on required investigative response to alarms for IDS. More guidance on safeguarding for those contractors under DoD cognizance will be provided via forthcoming ISLs, as appropriate. DoD is also proposing additional text to § 117.15(e) regarding information management systems to more accurately reflect the terminology for classified information systems, and as a result added the term ''authorization to operate'' to the definitions section in § 117.3. Finally, DoD is proposing additional text to § 117.15(e)(6) to provide more clarity on the requirements for the reproduction of classified information, to include accountability, control, and marking requirements of the reproduced classified information, and procedures for waste products resulting from the reproduction.

A commenter questioned the accuracy of the text in § 117.17(a)(3) which stated that if an entity eligibility determination could not be completed in time to qualify the prospective subcontractor for participation in a procurement action, that the CSA will continue the entity eligibility determination processing for future contract consideration. After review of this text, DoD has concluded this text provides guidance to CSAs, rather than contractors and is proposing it for deletion.

Joint Personnel Adjudication System

Finally, the reference to the Joint Personnel Adjudication System is proposed for deletion from the list of approved information collections as part of the Paperwork Reduction Act section because it has been discontinued and replaced by the Defense Information System for Security. The text in § 117.5(d) has also been proposed for updating to reflect only the Defense Information System for Security is used for the initiation, investigation, and adjudication of information relevant to DoD security clearances and employment suitability determinations.

Expected Impact of the Proposed Rule and Changes Being Proposed Based on Public Comment

The proposed rule changes seek to provide clarification on safeguarding terminology and correct identified paragraph numbering errors, as well as

address comments from regulated parties seeking more detail or guidance on existing requirements from the final rule published December 21, 2020. The proposed changes are mostly insignificant in that by themselves, these proposed changes create no additional requirements to current NISP policy. For example, a paragraph on subcontracting was removed because it was deemed to be guidance for the government, rather than contractors (*i.e.,* the regulated parties). Also, the references to the Joint Personnel Adjudication System as the system of record for personnel security clearance processing were removed and replaced with the current system of record, Defense Information System for Security. These changes create no additional burden or cost to contractors; but rather seek to provide updated, accurate information. The proposed changes also seek to clarify terminology in relation to safeguarding requirements, which were initially incorporated into the final rule published December 21, 2020 to be in line with 32 CFR part 2001. These changes are not expected to result in any changes to cost estimates or burden on the regulated parties, but rather provide a more consistent, uniform means to comply with existing NISP requirements across the federal government.

Costs

As stated under the Discussion of Comments and Changes section, DoD received one comment that the cost for implementing SEAD 3 was underestimated in the original rule. DoD agrees with the commenter and the cost estimates have been updated accordingly.

We are including here the summary of information on the baseline cost from the original rule for reference. DCSA began the cost analysis for the baseline costs for fiscal year 2017 by randomly selecting active NISP contractor facilities that have existing DoD approval for classified storage at their own physical locations and having those facilities submit security costs. The randomly selected contractor facilities also have an active facility security clearance and a permanent Commercial and Government Entity (CAGE) Code. In addition to the randomly selected cleared facilities having approved classified storage, DCSA categorizes these contractor facilities for the survey based on the size, scope, and complexity of each contractor's security program.

The general methodology used to estimate security costs incurred by contractor cleared facilities with approved storage of classified information is based on the costs incurred by respondent contractors for the protection of classified information. The methodology captures the most significant portion of industry's costs, which is labor. Security labor in the survey is defined as personnel whose positions exist to support operations and staff in the implementation of government security requirements for the protection of classified information. Guards who are required as supplemental controls are included in security labor. The respondent contractors are requested to compile their cleared facility's current annual security labor cost in burdened, current year dollars with the most recent data being from the 2017 survey. The labor cost, when identified as an estimated percent of each contractor's total security costs, enables the respondent contractors to calculate their total security costs.

Information collected is compiled to create an aggregate estimated cost of NISP classification-related activities. Only the aggregate data is reported. The full enterprise industrial security total baseline cost in the December 21, 2020, rule was estimated to not exceed $1.486 billion for fiscal year 2017. Based on the data collected from the survey, we can be 95% confident the true 2017 total NISP security cost for contractor facilities with approved classified storage is less than $1.486 billion.

Public Cost Analysis of the Changes to the Baseline From This Rule

1. *Cost Analysis.* Throughout, labor rates are adjusted upward by 100% to account for overhead and benefits. The following areas, 1.a and 1.b, were re-evaluated for cost based on the public comment.

a. Train all cleared employees on requirements to submit foreign travel reports. We determined that the estimate of cleared contractor personnel who would be required to be trained should also include TOP SECRET cleared employees rather than just SECRET cleared employees as indicated in the original rule. The FSO at each entity (small or large) must ensure that its cleared employees are trained on the requirements. Such training by the FSO is estimated to take one hour in 2021 and a half an hour in each of the following years up to the 20th year. Using the published Office of Personnel Management GS salary schedule for FY20, the estimated labor rate for an FSO of a small business entity firm is the equivalent of a GS11 step 5 and for an FSO of a large business entity is the equivalent of a GS13, step 5. These assumptions imply total costs of $0.99 million in 2021 as year one; and, $0.49 million each year from year two through the 20th year. These estimates have not changed from the original baseline.

b. We determined that the estimate of cleared contractor personnel who would be required to submit foreign travel reports should also include TOP SECRET cleared employees rather than just SECRET cleared employees as indicated in the original rule. As a result, the estimated cost has increased from $16.81 to $19.25 million. The following provides details on the estimated increase. All cleared employees, rather than only SECRET cleared employees, must submit foreign travel reports, and receive any pre-travel threat briefings or post travel briefings from the FSO based on the threat according to this rule, SEAD 3, and CSA-provided guidance for unique mission requirements. It is estimated that the number of foreign travel reports submitted annually will increase from 483,681 as estimated in the original rule to 813,054 to comply with the amendment. That estimate is based on analysis of calendar year 2019 unofficial foreign travel reported by DoD civilians and military in the DoD Aircraft and Personnel Automated Clearance System (APACS), a web-based tool for the creation, submission, and approval of aircraft diplomatic clearances and personnel travel clearances (*i.e.,* Country, Theater, and Special Area, as applicable with individual DoD Foreign Clearance Guide (FCG), *https://www.fcg.pentagon.mil* country pages) designed to aid USG travelers on official government and unofficial (*e.g.,* leave) travel. For calendar year 2019, there were 126,131 travelers and 113,214 travel requests submitted into APACS. APACS requirements are published on the DoD FCG, *https://www.fcg.pentagon.mil.* Thus, an annual estimate of .89 expected foreign travel trips by traveler (113,214 divided by 126,131). In the small business analysis, there was a total of 18,242 cleared employees in the 658 small entities sampled and 63,598 cleared employees in the remaining 356 non-small businesses. Of the total cleared employees in the small business analysis (as reported in the National Industrial Security System), approximately 22.3% were at small entities, and 77.7% were at non-small businesses. Known number of new travelers expected to be affected by this proposed rule will increase from the initial estimate of 543,462 to 905,818 cleared contractor personnel, an increase of 362,356 to include TOP

SECRET cleared contractor personnel under DoD security cognizance and the estimated trips at .89 per traveler is (905,818 × .89 = 813,054 estimated trips). Assuming the ratio for those employees reporting foreign travel into APACS is the same as cleared employees would report, of the estimated 813,054 foreign trips by cleared employees, it can be estimated that approximately 181,262 (22.3% of 813,054) will be taken by contractors at small entities, and 631,792 (77.7% of 813,054) by contractors at non-small businesses. It is estimated that it will take a half an hour for a cleared employee to report foreign travel in 2021 and in each of the following years up to year 20 to report foreign travel and receive any pre-travel or post-travel briefings. The estimated average labor rate for a cleared employee to report foreign travel is the equivalent of a GS11 step 5. These assumptions imply costs increasing from $16.81 to $19.25 million in each year one through 20.

2. *Projected Public Costs.* Based on the re-evaluation of the cost of training cleared employees on foreign travel reporting and submissions, the estimated public costs are present value costs of $267.4 million, which includes the additional foreign travel reporting cost.

3. *Updated Baseline Cost.* With this increase for the foreign travel reporting, DoD's updated enterprise industrial security baseline cost is estimated not to exceed $1.753 billion ($1.486 billion plus $267.4 million).

Regulatory Analysis

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. It has been determined that this rule is a significant regulatory action. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB) under the requirements of these Executive Orders.

Congressional Review Act

This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

The Under Secretary of Defense for Intelligence and Security, pursuant to a delegation of authority from the Secretary of Defense, certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small business entities in accordance with the Regulatory Flexibility Act (5 U.S.C. 601) requirements since a contractor cleared legal entity may, in entering into contracts requiring access to classified information, negotiate for security costs determined to be properly chargeable by a Government Contracting Activity.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This proposed rule involves collections previously approved by OMB under the following control numbers.

- OMB Control Number: 0704–0194, DD Form 441, Department of Defense Security Agreement
- OMB Control Number: 0704–0571, National Industrial Security System
- OMB Control Number: 0704–0567, DoD Contract Security Classification Specification
- OMB Control Number: 0704–0573, Defense Information System for Security (DISS)
- OMB Control Number: 0704–0579, Certificate Pertaining to Foreign Interests, SF 328
- OMB Control Number: 3150–0047, 10 CFR part 95, Facility Security Clearance and Safeguarding of National Security Information and Restricted Data
- OMB Control Number: 1910–1800, Security

DoD believes the total burden hours associated with these collections are not expected to change based on the amendments proposed in this rule. Information on the current version of these collections, including all supporting materials, can be obtained at *https://www.reginfo.gov/public/do/PRAMain* and typing in the OMB control number.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Executive Order 13132, ''Federalism''

E.O. 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule will not have a substantial effect on State and local governments.

Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments''

Executive Order 13175 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on one or more Indian tribes, preempts tribal law, or affects the distribution of power and responsibilities between the federal government and Indian tribes. This rule will not have a substantial effect on Indian tribal governments.

List of Subjects in 32 CFR Part 117

Classified information; Government contracts; USG contracts, National Industrial Security Program (NISP); Prime contractor, Subcontractor.

Accordingly, the Department of Defense proposes to amend 32 CFR part 117 as follows:

PART 117—NATIONAL INDUSTRIAL SECURITY PROGRAM OPERATING MANUAL (NISPOM)

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 32 CFR part 2004; E.O. 10865; E.O. 12333; E.O. 12829; E.O. 12866; E.O. 12968; E.O. 13526; E.O. 13563; E.O. 13587; E.O. 13691; Public Law 108–458; Title 42 U.S.C. 2011 *et seq.;* Title 50 U.S.C. Chapter 44; Title 50 U.S.C. 3501 *et seq.*

■ 2. Amend § 117.3 in paragraph (b) by adding in alphabetical order the definitions of ''Authorization to operate'' and ''Pedestrian door locks'' to read as follows:

§ 117.3 Acronyms and definitions.

* * * * *

(b) * * *

Authorization to operate means an approval granted by an authorizing official for a system to process classified information.

* * * * *

Pedestrian door locks means a series of GSA-approved (FF–L–2890C) preassembled locks designed, tested, and approved for security, fire safety, life safety, and accessibility when installed on doors located in the occupants anticipated path of travel to a means of egress to evacuate the facility in a fire emergency.

* * * * *

■ 3. Amend § 117.5 by revising paragraph (d) to read as follows:

§ 117.5 Information collections.

* * * * *

(d) *DoD collection.* ''DoD Security Agreement,'' is assigned OMB Control Number: 0704–0194. ''National Industrial Security System,'' a CSA information collection, is assigned OMB Control Number: 0704–0571, and is a DoD information collection used to conduct its monitoring and oversight of contractors. Department of Defense ''Contract Security Classification Specification,'' (available at: *https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0254.pdf* and *https://www.dcsa.mil/is/nccs/),* is assigned OMB Control Number: 0704–0567 and used by both DoD and agencies which have an industrial security agreement with DoD. ''Defense Information System for Security,'' is assigned OMB Control Number: 0704–0573. Defense Information System for Security is a DoD automated system for personnel security, providing a common, comprehensive medium to record, document, and identify personnel security actions within DoD including submitting adverse information, verification of security clearance status, requesting investigations, and supporting continuous evaluation activities. It requires personal data collection to facilitate the initiation, investigation and adjudication of information relevant to DoD security clearances and employment suitability determinations for active duty military, civilian employees and contractors seeking such credentials.

* * * * *

■ 4. Amend § 117.7 by:

■ a. Revising paragraph (b) introductory text;

■ b. In paragraph (f) introductory text, removing the words ''official reviews'' and adding in their place the words ''security reviews'';

■ c. In paragraph (f)(2), adding the words ''for review'' after the word ''Providing''; and

■ d. Revising paragraphs (h)(1)(i) and (h)(1)(ii)(A).

The revisions read as follows:

§ 117.7 Procedures.

* * * * *

(b) *Contractor Security Officials.* Contractors will appoint security officials who are U.S. citizens, unless the provisions of § 117.11(e)(1)(iii) apply for the SMO and ITPSO.

* * * * *

(h) * * *

(1) * * *

(i) *Review cycle.* The CSA will determine the scope and frequency of security reviews, which may be increased or decreased consistent with risk management principles. Security reviews may be conducted not more often than once every 12 months unless special circumstances exist, to include addressing security vulnerabilities found during a previous security review.

(ii) * * *

(A) The CSA will generally provide notice to the contractor of a forthcoming review, but may also conduct unannounced reviews at its discretion, *e.g.,* if there is possible imminent loss or compromise of classified information. The CSA security review may subject contractor employees and all areas and receptacles under the control of the contractor to examination.

* * * * *

■ 5. Amend § 117.8 by revising paragraphs (a)(2)(ii), (c)(7)(iii)(B), and (c)(14) to read as follows:

§ 117.8 Reporting requirements.

(a) * * *

(2) * * *

(ii) Provide requested information to enable the CSA to ascertain whether classified information is adequately protected in accordance with this rule.

* * * * *

(c) * * *

(7) * * *

(iii) * * *

(B) Whether they have been excluded from access to classified information in accordance with § 117.7(c)(2).

* * * * *

(14) *Reporting by subcontractor.* Subcontractors will also notify their prime contractors if they make any reports to their CSA that affect the status of the entity eligibility determination (*e.g.,* FCL), may indicate an employee poses as an insider threat, affect the proper safeguarding of classified information, or indicate classified information has been lost or compromised.

* * * * *

■ 6. Amend § 117.9 by:

■ a. Revising paragraph (f); and

■ b. Redesignating paragraphs (h)(i) and (h)(ii) as paragraphs (h)(1) and (h)(2).

The revision reads as follows:

§ 117.9 Entity eligibility determination for access to classified information.

* * * * *

(f) *Exclusion procedures.* If a CSA determines that certain KMP can be excluded from access to classified information, the contractor will follow the procedures in accordance with § 117.7(c)(2).

* * * * *

■ 7. Amend § 117.11 by:

■ a. In paragraph (d)(2)(iii)(B)(*4*), removing the words ''SCI, RD, or COMSEC'' and adding in their place the words ''proscribed information''; and

■ b. Revising paragraph (h)(4).

The revision reads as follows:

§ 117.11 Foreign Ownership, Control, or Influence (FOCI).

* * * * *

(h) * * *

(4) *Facilities location plan.* When a contractor is potentially collocated with or in close proximity to its foreign parent or an affiliate, the contractor will provide a facilities location plan that identifies the physical locations of the contractor and its foreign parent(s) or affiliate(s) respectively. The facilities location plan will assist the CSA in determining if the contractor is collocated or if the close proximity can be allowed under the FOCI mitigation plan. A U.S. entity generally cannot be collocated with the foreign parent or affiliate, *i.e.,* at the same address or in the same location.

* * * * *

§ 117.12 [Amended]

■ 8. Amend § 117.12 in paragraph (k) by removing the words ''every 12 months'' and adding in their place the words ''at least annually''.

■ 9. Amend § 117.15 by:

■ a. Revising paragraph (a) introductory text;

■ b. Redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4);

■ c. Adding new paragraph (a)(2);

■ d. In the newly redesignated paragraph (a)(3), revising the heading;

■ e. In the newly redesignated paragraph (a)(4), redesignating paragraphs (ii), (iii), and (iv) as paragraphs (iii), (iv), and (v);

■ f. In the newly redesignated paragraph (a)(4), adding a new paragraph (ii);

■ g. In the newly redesignated paragraph (a)(4)(iv)(B), adding the word ''effects'' after the word ''personal'';
■ h. Revising paragraph (c) introductory text;
■ i. Revising paragraph (d)(3)(i)(A);
■ j. Revising paragraph (e)(1)(ii) and paragraph (e)(2) introductory text;
■ k. Adding a new paragraph (e)(2)(viii); and
■ l. Revising paragraph (e)(6).

The revisions and additions read as follows:

§ 117.15 Safeguarding classified information.

(a) *General safeguarding.* Contractors will be responsible for safeguarding classified information in their custody or under their control, with approval for such storage of classified information by the applicable CSA. Individuals are responsible for safeguarding classified information entrusted to them. Contractors will provide the extent of protection to classified information in accordance with the provisions of this rule.

* * * * *

(2) *Restricted areas.* When it is necessary to control access to classified material and an open storage area is not available, a restricted area may be established. A restricted area will normally become necessary when it is impractical or impossible to protect classified material because of its size, quantity, or other unusual characteristic. The restricted area shall have a clearly defined perimeter, but physical barriers are not required. Personnel within the area shall be responsible for challenging all persons who may lack appropriate need-to-know for the information within the restricted area. All classified material will be secured during non-working hours in approved repositories, in accordance with the provisions of this rule, or secured using other methods approved by the CSA.

(3) *Security checks.* * * *

(4) * * *

(ii) During working hours when an open storage area is unattended, admittance to the area must be controlled by locked entrances and exits secured by GSA-approved pedestrian door locking hardware (FF–L–2890C), ''Federal Specification Lock Extension,'' or CSA approved deadbolts or emergency exit hardware on any secondary doors.

* * * * *

(c) *Storage.* Contractors will store classified information and material in General Services Administration (GSA)-approved security containers, vaults built to Federal Standard 832, or an open storage area constructed in accordance with 32 CFR 2001.53. The CSA may grant self-approval to the FSO for open storage area approvals, provided the FSO meets specified qualification criteria as determined by the CSA. In the instance that an open storage area has a false ceiling or raised floor, contractors shall develop and implement procedures to ensure their structural integrity in accordance with CSA provided guidance. Nothing in 32 CFR part 2001, should be construed to contradict or inhibit compliance with local laws or building codes, but the contractor will notify the applicable CSA if there are any conflicting issues that would inhibit compliance. Contractors will store classified material in accordance with the specific sections of 32 CFR 2001.43:

* * * * *

(d) * * *

(3) * * *

(i) * * *

(A) If after a thorough inspection of the facility perimeter with no damage to the facility visible, the alarm system resets and remains in the secure condition, then entrance into the area is not required and an initial response team may consist of uncleared personnel.

* * * * *

(e) * * *

(1) * * *

(ii) An information management system to protect and control the classified information in their possession regardless of media, to include information processed and stored on information systems with an authorization to operate by an applicable CSA, otherwise referred to as an authorized information system.

(2) *Top secret information.* Unless otherwise directed by the applicable CSA, the contractor will establish the following additional controls:

* * * * *

(viii) When TOP SECRET information and material is generated or stored on authorized information systems, contractors will establish controls for TOP SECRET information and material to validate procedures are in place to address accountability, need to know, and retention, *e.g.,* demonstrating that TOP SECRET material stored in an electronic format on an authorized information system does not need to be individually numbered in series. These controls are in addition to the information management system and must be applied, unless otherwise directed by the applicable CSA, regardless of the media of the TOP SECRET information, to include information processed and stored on authorized information systems.

* * * * *

(6) *Reproduction of classified information.* Contractors will reproduce paper copies, electronic files, and other material containing classified information only when necessary for accomplishing operational needs or for complying with contractual requirements. Use of technology that prevents, discourages, or detects unauthorized reproduction of classified information is encouraged.

(i) Unless restricted by the GCA on behalf of the originating agency, TOP SECRET, SECRET, and CONFIDENTIAL information may be reproduced, including by emailing, scanning, and copying, to the extent operational needs require on authorized systems and equipment approved at the level of the classified material and in support of a contractual requirement.

(ii) Contractors shall establish procedures that facilitate oversight and control of the reproduction of classified information and the use of equipment for such reproduction, including controls that ensure:

(A) Reproduction is kept to a minimum consistent with contractual requirements.

(B) Contractor personnel reproducing classified information are knowledgeable of the procedures for classified reproduction and aware of the risks involved with the specific reproduction equipment being used and the appropriate countermeasures they are required to take.

(C) Reproduction limitations the GCA places on documents and special controls applicable to special categories of information are fully and carefully observed.

(D) Reproduced material is placed under the same accountability and control requirements as applied to the original material. Extracts of documents will be marked according to content and may be treated as working papers if appropriate.

(E) Reproduced material is conspicuously identified as classified at the applicable level and copies of classified material are reviewed after the reproduction process to ensure that the required markings exist.

(F) Waste products generated during reproduction are protected and destroyed as required.

* * * * *

■ 9. Amend § 117.17 by:
■ a. Revising paragraphs (a)(3) introductory text;
■ b. Removing paragraphs (a)(3)(i) through (iii); and

■ c. Redesignating paragraphs (a)(3)(iv) introductory text and (a)(3)(iv)(A) and (B) as paragraphs (a)(4) introductory text and (a)(4)(i) and (ii).

The revisions read as follows:

§ 117.17 Subcontracting.

(a) * * *

(1) * * *

(2) * * *

(3) *Lead time for entity eligibility determination when awarding to an uncleared subcontractor.* Requesting contractors will allow sufficient lead time in connection with the award of a classified subcontract to enable an uncleared bidder to be processed for the necessary entity eligibility determination.

* * * * *

§ 117.19 [Amended]

■ 10. Amend § 117.19 in paragraph (b)(5)(iv) by adding the words ''(*e.g.,* a security aspects letter)'' at the end of the paragraph.

Dated: December 6, 2023.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–27171 Filed 12–12–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2023–0903]

RIN 1625–AA08

Special Local Regulations; Sector Ohio Valley Annual and Recurring Special Local Regulations

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes amending and updating its special local regulations for recurring marine parades, regattas, and other events that take place in the Coast Guard Sector Ohio Valley area of responsibility (AOR). This proposed rulemaking would update the current list of recurring special local regulations with revisions, additions, and removals of events that no longer take place in the Sector Ohio Valley AOR. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before January 12, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0903 using the Federal Decision-Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION**. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Bryan Crane, Sector Ohio Valley, U.S. Coast Guard; telephone (502) 779–5334, email *SECOHV-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

The Captain of the Port Sector Ohio Valley (COTP) proposes to update the current list of recurring special local regulations for events occurring within the Sector Ohio Valley area of responsibility within the Coast Guard's Eighth District. The list of events we seek to update is in Title 33 of the Code of Federal Regulations (CFR) section 100.801, Table 1 to § 100.801.

The Coast Guard will consider comments submitted on this proposed rule in determining if any additional revisions are needed to this regulatory section. Additionally, the public would be informed of these recurring events through local means and planned by the local communities.

The current list of annual and recurring special local regulations occurring in Sector Ohio Valley's AOR is published in 33 CFR 100.801, Table 1 titled ''Ohio Valley Annual and Reoccurring Marine Events.'' The most recent list was published on April 4, 2023 (87 FR 6026).

The Coast Guard's authority for establishing a special local regulation is contained in 46 U.S.C. 70041(a). The Coast Guard proposes to amend and update the special local regulations in 33 CFR 100.801, Table 1, to include the most up to date list of recurring special local regulations for events held on or around the navigable waters within Sector Ohio Valley's AOR. These events would include marine parades, boat races, swim events, and other marine related events. The current list under 33 CFR 100.801, Table 1, requires amendment to provide new information on existing special local regulations, add new special local regulations expected to recur annually or biannually, and to remove special local regulations that no longer occur. Issuing individual regulations for each new special local regulation, amendment, or removal of an existing special local regulation creates unnecessary administrative costs and burdens. This single proposed rulemaking will considerably reduce administrative overhead. It also provide the public with notice through publication in the **Federal Register** of all recurring special local regulations in the AOR.

III. Discussion of Proposed Rule

Part 100 of 33 CFR contains regulations describing regattas and marine parades conducted on U.S. navigable waters in order to ensure the safety of life in the regulated areas. Section 100.801 provides the regulations applicable to events taking place in the Eighth Coast Guard District and also provides a table listing each event and special local regulations. This section requires amendment from time to time to properly reflect the recurring special local regulations. This proposed rule would update section 100.801, Table 1 titled ''Ohio Valley Annual and Reoccurring Marine Events.''

This proposed rule would add 4 new recurring special local regulations to Table 1 of section 100.801 for Sector Ohio Valley, as follows:

Date	Event/sponsor	Sector Ohio Valley location (city, state)	Regulated area
2 Days—Saturday and Sunday before Memorial Day.	Powerboat Nationals—Point Marion	Point Marion, PA	Monongahela River, Miles 89–91 (Pennsylvania).
1 Day—One Weekend in June	Race on the Oyo	Racine, OH to Point Pleasant, WV.	Ohio River (Mile 242–265) Ohio.

Date	Event/sponsor	Sector Ohio Valley location (city, state)	Regulated area
1 Day—Last Weekend in June or First Weekend in July.	Charleston Sternwheel Regatta	Charleston, WV	Kanawha River (Mile 58–59) West Virginia.
1 Day in August	Team Rocket Tri Club/Swim Hobbs Island.	Huntsville, AL	Tennessee River, Mile 332.3–338.0.

These new recurring special local regulations would be reflected in the table in the general date order in which they will occur. The current recurring special local regulations would be reordered, as shown in the proposed regulatory text below.

Additionally, this proposed rule would amend 27 recurring special local regulations in Table 1 of section 100.801 for Sector Ohio Valley, as follows. The revisions provide more accurate descriptions of the events, dates, locations, and areas.

Date	Event/sponsor	Sector Ohio Valley location (city, state)	Regulated area
3 Days—A Weekend in March	Oak Ridge Rowing Association/Cardinal Invitational.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
1 Day—A weekend in March	Vanderbilt Rowing/Vanderbilt Invite ..	Nashville, TN	Cumberland River, Mile 188.0–192.7 (Tennessee).
2 Days—A Weekend in March	Oak Ridge Rowing Association/ Atomic City Turn and Burn.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
3 Days—A weekend in April	Oak Ridge Rowing Association/SIRA Regatta.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
3 Days—A weekend in April	Oak Ridge Rowing Association/Dogwood Junior Regatta.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
3 Days in May	Oak Ridge Rowing Association/College Championship.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
4 Days in May	Oak Ridge Rowing Association/ ACRA Championship.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
3 Days—A weekend in May	Vanderbilt Rowing/ACRA Henley	Nashville, TN	Cumberland River, Mile 188.0–194.0 (Tennessee).
3 Days—A weekend in May	Oak Ridge Association/SRAA Championship.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
1 Day—A weekend in May	World Triathlon Corporation/ IRONMAN 70.3.	Chattanooga, TN	Tennessee River, Mile 462.7–467.5 (Tennessee).
1 Day in May	Chickamauga Dam Swim	Chattanooga, TN	Tennessee River, Mile 470.0–473.0 (Tennessee).
1 Day in May	Outdoor Chattanooga/Nooga Loop ...	Chattanooga, TN	Tennessee River, Mile 452.0–458.0 (Tennessee).
1 Day—A weekend in June	Team Magic/Chattanooga Waterfront Triathlon.	Chattanooga, TN	Tennessee River, Mile 462.5–466.0 (Tennessee).
1 Day—One of the First Two Weekends in August.	Adventure Crew/Ohio River Paddlefest.	Cincinnati, Ohio	Ohio River, Mile 464.5–477 (Ohio and Kentucky).
1 Day in August	Three Rivers Regatta	Knoxville, TN	Tennessee River, Mile 642.0–653.0 (Tennessee).
1 Day—Last Sunday in August or Second Sunday in September.	Adventure Crew/Great Ohio River Swim.	Cincinnati, Ohio	Ohio River, Mile 468.8–471.2 (Ohio and Kentucky).
3 Days in September	Music City Grand Prix	Nashville, TN	Cumberland River, Mil 190.0–191.0 (Tennessee).
1 Day in August	Team Rocket Tri-Club/Rocketman Triathlon.	Huntsville, AL	Tennessee River, Mile 332.2–335.5 (Alabama).
2 Days in August	Ironman Triathlon	Louisville, KY	Ohio River, Mile 600.5–605.5 (Kentucky).
1 Day in August	Tennessee Clean Water Network/ Downtown Dragon Boat Races.	Knoxville, TN	Tennessee River, Mile 646.3–648.7 (Tennessee).
1 Day in September	City of Clarksville/Riverfest	Clarksville, TN	Cumberland River, Mile 125.0–126.0 (Tennessee).
1 Day in September	Knoxville Open Water Swimmers/ Bridges to Bluffs.	Knoxville, TN	Tennessee River, Mile 641.0–648.0 (Tennessee).
1 Day in September	World Triathlon Corporation/ IRONMAN Chattanooga.	Chattanooga, TN	Tennessee River, Mile 462.7–467.5 (Tennessee).
1 Day in October	Outdoor Chattanooga/Swim the Suck	Chattanooga, TN	Tennessee River, Mile 443.0–455.0 (Tennessee).
1 Day in October	Lookout Rowing Club/Chattanooga Head Race.	Chattanooga, TN	Tennessee River, Mile 463.0–468.0 (Tennessee).
2 Days in October	Oak Ridge Rowing Association/Secret City Head Race.	Oak Ridge, TN	Clinch River, Mile 46.0–54.0 (Tennessee).
3 Days—A weekend in November	Head of the Hooch Regatta	Chattanooga, TN	Tennessee River, Mile 463.0–468.0 (Tennessee).

Lastly, this proposed rule would remove 2 recurring special local regulations in Table 1 of section 100.801 for Sector Ohio Valley. The events will no longer occur as described. Changes are as follows:

Date	Event/sponsor	Sector Ohio Valley location (city, state)	Regulated area
1 Day—One of the first two weekends in July City of Bellevue, KY/Bellevue Beach Park Concert Fireworks Bellevue, KY Ohio River, Miles 468.2–469.2 (Kentucky & Ohio).	City of Bellevue, KY/Bellevue Beach Park Concert Fireworks.	Bellevue, KY	Ohio River, Miles 468.2–469.2 (Kentucky & Ohio).
1 Day—First week in August	Gliers Goetta Fest LLC	Newport, KY	Ohio River, Miles 469.0–471.0.

The effect of this proposed rule would be to restrict general navigation during these events. Vessels intending to transit the designated waterways during effective periods of the special local regulations would only be allowed to transit the area when the COTP or designated representative, has deemed it would be safe to do so or at the completion of the event.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

The Coast Guard expects the economic impact of this proposed rule to be minimal, therefore a full regulatory evaluation is unnecessary. This proposed rule would establish special local regulations limiting access to certain areas described in 33 CFR 100.801, Table 1. The effect of this proposed rulemaking would not be significant because these special local regulations are limited in scope and duration. Additionally, the public would be given advance notification through local forms of notice, the **Federal Register**, or Notices of Enforcement. Thus, the public would be able to plan their operations and activities around enforcement times of the special local regulations. Broadcast Notices to Mariners, Local Notices to Mariners, and Safety Marine Information Broadcasts would also inform the community of these special local regulations. Vessel traffic would be permitted to request permission from the COTP or a designated representative to enter the restricted areas.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the regulated area may be small entities, for reasons stated in section IV.A. above, this proposed rule would not have a significant economic impact on any owner or operator because they are limited in scope and will be in effect for short periods of time.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. Normally such actions are categorically excluded from further review under paragraph L[61] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. of the Instruction because it involves establishment of special local regulations related to marine event permits for marine parades, regattas, and other marine events. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0903 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

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

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

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. In § 100.801, revise and republish Table 1 to § 100.801 to read as follows:

§ 100.801 Annual Marine Events in the Eighth Coast Guard District.

* * * * *

TABLE 1 TO § 100.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING MARINE EVENTS

Date	Event/sponsor	Ohio Valley location	Regulated area
1. 3 Days—a weekend in March	Oak Ridge Rowing Association/Cardinal Invitational.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
2. 1 Day in March	Oak Ridge Rowing Association/US Rowing U19 ID Camp.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
3. 1 Day a weekend in March	Vanderbilt Rowing/Vanderbilt Invite	Nashville, TN	Cumberland River, Mile 188.0–192.7 (Tennessee).
4. 2 Days—a weekend in March	Oak Ridge Rowing Association/ Atomic City Turn and Burn.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
5. 3 Days—One weekend in April	Big 10 Invitational Regatta	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
6. 1 Day—One weekend in April	Lindamood Cup	Marietta, OH	Muskingum River, Mile 0.5–1.5 (Ohio).
7. 3 Days—a weekend in April	Oak Ridge Rowing Association/SIRA Regatta.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
8. 2 Days—Third or fourth Friday and Saturday in April.	Thunder Over Louisville	Louisville, KY	Ohio River, Mile 597.0–604.0 (Kentucky).
9. 1 Day—During the last week of April or first week of May.	Great Steamboat Race	Louisville, KY	Ohio River, Mile 595.0–605.3 (Kentucky).
10. 3 Days—a weekend in April	Oak Ridge Rowing Association/Dogwood Junior Regatta.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
11. 3 Days in May	Oak Ridge Rowing Association/AAC Championship.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
12. 4 Days in May	Oak Ridge Rowing Association/ ACRA Championship.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).

TABLE 1 TO § 100.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING MARINE EVENTS—Continued

Date	Event/sponsor	Ohio Valley location	Regulated area
13. 3 Days in May	US Rowing Southeast Youth Championship Regatta.	Oak Ridge, TN	Clinch River, Mile 48.5–52 (Tennessee).
14. 3 Days—a weekend in May	Vanderbilt Rowing/ACRA Henley	Nashville, TN	Cumberland River, Mile 188.0–194.0 (Tennessee).
15. 3 Days—a weekend in May	Oak Ridge Rowing Association/ SRAA Championships.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
16. 3 Days—A weekend in May or June.	Oak Ridge Rowing Association/Dogwood Masters.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
17. 1 Day—a weekend in May	World Triathlon Corporation/ IRONMAN 70.3.	Chattanooga, TN	Tennessee River, Mile 462.7–467.5 (Tennessee).
18. 2 Days—Saturday and Sunday before Memorial Day.	Powerboat Nationals—Point Marion	Point Marion, PA	Monongahela River, Miles 89.0–91.0 (Pennsylvania).
19. 1 Day—During the last weekend in May or on Memorial Day.	Mayor's Hike, Bike and Paddle	Louisville, KY	Ohio River, Mile 601.0–604.5 (Kentucky).
20. 1 Day in May	Chickamauga Dam Swim	Chattanooga, TN	Tennessee River, Mile 470.0–473.0 (Tennessee).
21. 2 Days—Last weekend in May or first weekend in June.	Visit Knoxville/Racing on the Tennessee.	Knoxville, TN	Tennessee River, Mile 647.0–648.0 (Tennessee).
22. 1 Day in May	Outdoor Chattanooga/Nooga Loop	Chattanooga, TN	Tennessee River, Mile 452.0–458.0 (Tennessee).
23. 2 Days—First weekend of June	Thunder on the Bay/KDBA	Pisgah Bay, KY	Tennessee River, Mile 30.0 (Kentucky).
24. 1 Day—First weekend in June	Visit Knoxville/Knoxville Powerboat Classic.	Knoxville, TN	Tennessee River, Mile 646.4–649.0 (Tennessee).
25. 3 Days—One of the last three weekends in June.	Lawrenceburg Regatta/Whiskey City Regatta.	Lawrenceburg, IN	Ohio River, Mile 491.0–497.0 (Indiana).
26. 3 Days—One of the last three weekends in June.	Hadi Shrine/Evansville Shriners Festival.	Evansville, IN	Ohio River, Mile 790.0–796.0 (Indiana).
27. 3 Days—Third weekend in June	TM Thunder LLC/Thunder on the Cumberland.	Nashville, TN	Cumberland River, Mile 189.6–192.3 (Tennessee).
28. 1 Day—Third or fourth weekend in June.	Greater Morgantown Convention and Visitors Bureau/Mountaineer Triathlon.	Morgantown, WV	Monongahela River, Mile 101.0–102.0 (West Virginia).
29. 1 Day—A weekend in June	Team Magic/Chattanooga Waterfront Triathlon.	Chattanooga, TN	Tennessee River, Mile 462.5–466.0 (Tennessee).
30. 1 Day—One weekend in June	Race on the Oyo	Racine, OH, to Point Pleasant, WV.	Ohio River Mile 242.0–265.0 (Ohio).
31. 3 Days in June	Lake Guntersville Hydrofest	Guntersville, AL	Tennessee River 355.5–365.5 (Alabama).
32. 1 Day in June	Music City Triathlon	Nashville, TN	Cumberland River, Mile 189.7–192.3 (Tennessee).
33. 1 Day—Last Weekend in June or first weekend in July.	Charleston Sternwheel Regatta	Charleston, WV	Kanawha River Mile 58.0–59.0 (West Virginia).
34. 3 Days—The last weekend in June or one of the first two weekends in July.	Madison Regatta	Madison, IN	Ohio River, Mile 554.0–561.0 (Indiana).
35. 1 Day in July	Three Rivers Regatta	Knoxville, TN	Tennessee River, Mile 642–653 (Tennessee).
36. 1 Day in July	Tri-Louisville	Louisville, KY	Ohio River, Mile 600.5–604.0 (Kentucky).
37. 1 Day in July	PADL	Cannelton, IN	Ohio River, Miles 719.0–727.0 (Kentucky).
38. 1 Day—First week in July	Cincinnati Parks—Sawyer Point/Cincinnati Parks Board.	Cincinnati, OH	Ohio River, Miles 469–470 (Ohio).
39. 1 Day—First week in July	City of New Richmond, Riverdays/ VFW.	New Richmond, OH	Ohio River, Mile 449.5–450.5 (Ohio).
40. 1 Day—During the first week of July.	Evansville Freedom Celebration/4th of July Freedom Celebration.	Evansville, IN	Ohio River, Mile 790.0–797.0 (Indiana).
41. First weekend in July	Eddyville Creek Marina/Thunder Over Eddy Bay.	Eddyville, KY	Cumberland River, Mile 46.0–47.0 (Kentucky).
42. 2 Days—One of the first two weekends in July.	Thunder on the Bay/KDBA	Pisgah Bay, KY	Tennessee River, Mile 30.0 (Kentucky).
43. 1 Day—Second weekend in July	Bradley Dean/Renaissance Man Triathlon.	Florence, AL	Tennessee River, Mile 254.0–258.0 (Alabama).
44. 2 Days—Second weekend in July.	New Martinsville Vintage Regatta	New Martinsville, WV	Ohio River Mile 127.5–128.5 (West Virginia).
45. 1 Day—Third or fourth Sunday of July.	Tucson Racing/Cincinnati Triathlon	Cincinnati, OH	Ohio River, Mile 468.3–471.2 (Ohio).
46. 2 Days—One of the last three weekends in July.	Dare to Care/KFC Mayor's Cup Paddle Sports Races/Voyageur Canoe World Championships.	Louisville, KY	Ohio River, Mile 600.0–605.0 (Kentucky).

TABLE 1 TO § 100.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING MARINE EVENTS—Continued

Date	Event/sponsor	Ohio Valley location	Regulated area
47. 2 Days—Last two weeks in July or first three weeks of August.	Friends of the Riverfront Inc./Pittsburgh Triathlon and Adventure Races.	Pittsburgh, PA	Allegheny River, Mile 0.0–1.5 (Pennsylvania).
48. 1 Day—Last weekend in July	Maysville Paddlefest	Maysville, KY	Ohio River, Mile 408–409 (Kentucky).
49. 2 Days—One weekend in July	Marietta Riverfront Roar Regatta	Marietta, OH	Ohio River, Mile 171.6–172.6 (Ohio).
50. 1 Day in August	Three Rivers Regatta	Knoxville, TN	Tennessee River 642.0–653.0 (Tennessee).
51. 1 Day in August	K-Town On The River	Knoxville, TN	Tennessee River 648–650 (Tennessee).
52. 1 Day—first Sunday in August	Above the Fold Events/Riverbluff Triathlon.	Ashland City, TN	Cumberland River, Mile 157.0–159.5 (Tennessee).
53. 3 Days—First week of August	EQT Pittsburgh Three Rivers Regatta.	Pittsburgh, PA	Allegheny River mile 0.0–1.0, Ohio River mile 0.0–0.8, Monongahela River mile 0.5 (Pennsylvania).
54. 2 Days—First weekend of August	Thunder on the Bay/KDBA	Pisgah Bay, KY	Tennessee River, Mile 30.0 (Kentucky).
55. 1 Day—in August	Riverbluff Triathlon	Ashland City, TN	Cumberland River, Mile 157.0–159.0 (Tennessee).
56. 1 Day—In August	Team Rocket Tri Club/Swim Hobbs Island.	Huntsville, AL	Tennessee River, Mile 332.3–338.0.
57. 1 Day—In August	Team Rocket Tri-Club/Rocketman Triathlon.	Huntsville, AL	Tennessee River, Mile 332.2–335.5 (Alabama).
58. 1 Day—One of the first two weekends in August.	Adventure Crew/Ohio River Paddlefest.	Cincinnati, OH	Ohio River, Mile 464.5–477 (Ohio and Kentucky).
59. 2 Days—Third full weekend (Saturday and Sunday) in August.	Ohio County Tourism/Rising Sun Boat Races.	Rising Sun, IN	Ohio River, Mile 504.0–508.0 (Indiana and Kentucky).
60. 3 Days—Second or Third weekend in August.	Kittanning Riverbration Boat Races	Kittanning, PA	Allegheny River mile 42.0–46.0 (Pennsylvania).
61. 3 Days—One of the last two weekends in August.	Thunder on the Green	Livermore, KY	Green River, Mile 69.0–72.5 (Kentucky).
62. 1 Day in August	Tennessee Clean Water Network/ Downtown Dragon Boat Races.	Knoxville, TN	Tennessee River, Mile 646.3–648.7 (Tennessee).
63. 2 Days—One weekend in August	Powerboat Nationals—Ravenswood Regatta.	Ravenswood, WV	Ohio River, Mile 220.5–221.5 (West Virginia).
64. 2 Days—One weekend in August	Powerboat Nationals—Parkersburg Regatta/Parkersburg Homecoming.	Parkersburg, WV	Ohio River Mile 183.5–285.5 (West Virginia).
65. 2 Days in August	Ironman Triathlon	Louisville, KY	Ohio River, Mile 600.5–605.5 (Kentucky).
66. 3 Days—One weekend in August	Grand Prix of Louisville	Louisville, KY	Ohio River, Mile 601.0–605.0 (Kentucky).
67. 3 Days—One weekend in August	Evansville HydroFest	Evansville, IN	Ohio River, Mile 790.5–794.0 (Indiana).
68. 3 Days—One weekend in the month of August.	Owensboro HydroFair	Owensboro, KY	Ohio River, Mile 794.0–760.0 (Kentucky).
69. 1 Day—First or second weekend of September.	SUP3Rivers The Southside Outside	Pittsburgh, PA	Monongahela River mile 0.0–3.09 Allegheny River mile 0.0–0.6 (Pennsylvania).
70. 1 Day—First weekend in September or on Labor Day.	Mayor's Hike, Bike and Paddle	Louisville, KY	Ohio River, Mile 601.0–610.0 (Kentucky).
71. 2 Days—Sunday before Labor Day and Labor Day.	Cincinnati Bell, WEBN, and Proctor and Gamble/Riverfest.	Cincinnati, OH	Ohio River, Mile 463.0–477.0 (Kentucky and Ohio) and Licking River Mile 0.0–3.0 (Kentucky).
72. 2 Days—Labor Day weekend	Wheeling Vintage Race Boat Association Ohio/Wheeling Vintage Regatta.	Wheeling, WV	Ohio River, Mile 90.4–91.5 (West Virginia).
73. 3 Days—The weekend of Labor Day.	Portsmouth River Days	Portsmouth, OH	Ohio River, Mile 355.5–356.8 (Ohio).
74. 2 Days—One of the first three weekends in September.	Louisville Dragon Boat Festival	Louisville, KY	Ohio River, Mile 602.0–604.5 (Kentucky).
75. 2 Days—One of the first three weekends in September.	State Dock/Cumberland Poker Run	Jamestown, KY	Lake Cumberland (Kentucky).
76. 3 Days—One of the first three weekends in September.	Fleur de Lis Regatta	Louisville, KY	Ohio River, Mile 594.0.0–598.0 (Kentucky).
77. 1 Day in September	City of Clarksville/Riverfest	Clarksville, TN	Cumberland River, Mile 125.0–126.0 (Tennessee).
78. 3 Days in September	Music City Grand Prix	Nashville, TN	Cumberland River 190–191 (Tennessee).
79. 1 Day—One Sunday in September.	Ohio River Sternwheel Festival Committee Sternwheel race reenactment.	Marietta, OH	Ohio River, Mile 170.5–172.5 (Ohio).

TABLE 1 TO § 100.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING MARINE EVENTS—Continued

Date	Event/sponsor	Ohio Valley location	Regulated area
80. 1 Day—One weekend in September.	Parkesburg Paddle Fest	Parkersburg, WV	Ohio River, Mile 184.3–188 (West Virginia).
81. 2 Days—One of the last three weekends in September.	Madison Vintage Thunder	Madison, IN	Ohio River, Mile 556.5–559.5 (Indiana).
82. 1 Day—Third Sunday in September.	Team Rocket Tri Club/Swim Hobbs Island.	Huntsville, AL	Tennessee River, Mile 332.3–338.0 (Alabama).
83. 1 Day in September	Knoxville Open Water Swimmers/Bridges to Bluffs.	Knoxville, TN	Tennessee River, Mile 641.0–648.0 (Tennessee).
84. 1 Day—Last Sunday in August or Second Sunday in September.	Adventure Crew/Great Ohio River Swim.	Cincinnati, OH	Ohio River, Mile 468.8–471.2 (Ohio and Kentucky).
85. 1 Day—One of the last two weekends in September.	Ohio River Open Water Swim	Prospect, KY	Ohio River, Mile 587.0–591.0 (Kentucky).
86. 2 Days—One of the last three weekends in September or the first weekend in October.	Captain Quarters Regatta	Louisville, KY	Ohio River, Mile 594.0–598.0 (Kentucky).
87. 3 Days—One of the last three weekends in September or one of the first two weekends in October.	Owensboro Air Show	Owensboro, KY	Ohio River, Mile 754.0–760.0 (Kentucky).
88. 1 Day in September	World Triathlon Corporation/IRONMAN Chattanooga.	Chattanooga, TN	Tennessee River, Mile 462.7–467.5 (Tennessee).
89. 3 Days—Last weekend of September and/or first weekend in October.	New Martinsville Records and Regatta Challenge Committee.	New Martinsville, WV	Ohio River, Mile 128–129 (West Virginia).
90. 2 Days—First weekend of October.	Three Rivers Rowing Association/Head of the Ohio Regatta.	Pittsburgh, PA	Allegheny River mile 0.0–5.0 (Pennsylvania).
91. 1 Day in October	Chattajack	Chattanooga, TN	Tennessee River, Miles 462.7–465.5 (Tennessee).
92. 1 Day in October	Cumberland River Compact/Cumberland River Dragon Boat Festival.	Nashville, TN	Cumberland River, Mile 189.7–192.1 (Tennessee).
93. 1 Day in October	Outdoor Chattanooga/Swim the Suck	Chattanooga, TN	Tennessee River, Miles 443–455 (Tennessee).
94. 1 Day in October	Lookout Rowing Club/Chattanooga Head Race.	Chattanooga, TN	Tennessee River, Mile 463.0–468.0 (Tennessee).
95. 1 Day in October	Shoals Scholar Dollar	Florence, AL	Tennessee River 255–257 (Alabama).
96. 2 Days in October	Music City Head Race	Nashville, TN	Cumberland River 190–195 (Tennessee).
97. 2 Days—First or second week of October.	Head of the Ohio Rowing Race	Pittsburgh, PA	Allegheny River, Mile 0.0–3.0 (Pennsylvania).
98. 2 Days—in October	Oak Ridge Rowing Association/Secret City Head Race Regatta.	Oak Ridge, TN	Clinch River, Mile 46.0–54.0 (Tennessee).
99. 3 Days—a weekend in November.	Head of the Hooch Regatta	Chattanooga, TN	Tennessee River, Mile 463.0–468.0 (Tennessee).
100. 1 Day—Second weekend in December.	Charleston Lighted Boat Parade	Charleston, WV	Kanawha River, Mile 54.3–60.3 (West Virginia).

Dated: December 6, 2023.

H.R. Mattern,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2023–27306 Filed 12–12–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2023–0912]

RIN 1625–AA09

Drawbridge Operation Regulation; Saginaw River, Bay City, MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily modify the operating schedule that governs the Independence Bridge, mile 3.88, over the Saginaw River to allow contractors to rehabilitate the bridge. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must reach the Coast Guard on or before February 12, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0912 using Federal Decision-Making Portal at *https://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Lee D. Soule, Bridge Management Specialist, Ninth

Coast Guard District; telephone 216–902–6085, email *Lee.D.Soule@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
IGLD International Great Lakes Datum of 1985
LWD Low Water Datum based on IGLD85
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Saginaw River is a 22.4-mile-long river in that is a popular recreational and an important shipping route for mid-Michigan and the Great Lakes in general. The Independence Bridge, mile 3.88, is one of sixteen bridges that cross the Saginaw River in the Bay City Metropolitan Area. Out of the sixteen bridges only four are bascule bridges, two are owned by the State of Michigan and two have been recently leased by the city of Bay City to United Bridge Partners, a private company that intends to rehabilitate the two bridges and charge vehicles tolls to cross the bridges.

The proposal to lease the bridges and charge tolls has created the need for several public meetings and has flooded the local area news media with stories concerning the progress of the rehabilitation and administration regarding the Independence Bridge.

United Bridge Partners has established a physical customer service office within Bay City and a twenty-four-hour call line residents and mariners can call to receive information concerning the bridge operations and proposed construction schedule. United Bridge Partner, the City of Bay City, along with their chosen contractor held a public meeting on August 15, 2023, along with many media interviews prior to the public meeting. Most of the questions from the public were regarding the pass ability of vehicles and tolls associated with the new bridge ownership rather than the impacts the maintenance would have on the marine community.

On November 13, 2023, representatives from Congressman Dan Kildee, Senator Gary Peters, Congressman John Moolenaar, and Senator Debbie Stabenow's offices along with the U.S. Coast Guard and nineteen area stakeholders had a meeting to discuss the proposed rehabilitation project's effects on vessel traffic. The thirty people in attendance proposed the conditions in this proposed rule.

The Independence Bridge, mile 3.88, is a double leaf bascule bridge that crosses the Saginaw River and provides a horizontal clearance of 150 feet and a vertical clearance of 22 feet above LWD in the closed position and an unlimited clearance in the open position. The bridge allows vehicles and pedestrians to cross the river near the north end of the City of Bay City. The Independence Bridge, mile 3.88, is regulated under 33 CFR 117.647 and is allowed to open twice hourly in the summer and from January 1 through March 31 will open if a 12-hour advance notice is provided.

The reason for this proposed rule will be to allow the bridge to be secured to masted navigation from December 1 through March 31 and then through the summer require a 2-hour advance notice for openings to accommodate the rehabilitation of the bridge.

Granit Construction, the official contractor for the bridge owner has made this request for a temporary change in the bridge schedule to allow for the rehabilitation of structural, electrical, and mechanical components of the bridge during the winter when accumulation of ice makes navigating the river difficult.

III. Discussion of Proposed Rule

The Independence Bridge, mile 3.88, is near the mouth of the river and there are no alternative routes for vessels. The December 1 to March 31 dates have been identified by local stake holders and dock owners as the best time to secure the bridge to masted navigation for the rehabilitation project. Because the new bridge owner intends to charge tolls on the bridge that once was free to cross has caused several people to be concerned about any bridge project in the area.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive orders.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice and that the repair winter work will be done at a time of year when vessel traffic is at its lowest.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of chapter 3, table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this proposed rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0912 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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

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

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; DHS Delegation No. 00170.1, Revision No. 01.3.

■ 2. [From the date of publication in the **Federal Register**], through 11:59 p.m. on March 31, 2025, § 117.647(e) is temporarily added to read as follows:

§ 117.647 Saginaw River.

* * * * *

(e) The draw of the Independence Bridge, mile 3.88, over the Saginaw River, will require a 2-hour advance notice of arrival to be given to move barges away from the draw to allow vessels to pass through the bridge from April 24, 2024, through November 30, 2024, and the bridge need not open for the passage of vessels from December 1, 2024, through March 31, 2025.

Jonathan Hickey,

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

[FR Doc. 2023–27385 Filed 12–12–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0367; FRL–11573–01–R4]

Air Plan Approval; Alabama; Birmingham Limited Maintenance Plan for the 2006 24-Hour $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State implementation plan (SIP) revision submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), via a letter dated February 2, 2021. The SIP revision includes the 2006 24-hour fine particulate matter ($PM_{2.5}$) national

ambient air quality standards (NAAQS) Limited Maintenance Plan (LMP) for the Birmingham, Alabama maintenance area (Birmingham Area or Area). The Birmingham 2006 24-hour $PM_{2.5}$ maintenance area is comprised of Jefferson County, Shelby County, and a portion of Walker County. EPA is proposing to approve the Birmingham Area LMP because it provides for the maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS within the Birmingham Area through the end of the second 10-year portion of the maintenance period in 2034. The effect of this action would be to incorporate into the Alabama SIP certain commitments related to maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in the Birmingham Area, making them federally enforceable. EPA is also starting the adequacy process, consistent with requirements in the transportation conformity rule, for this LMP.

DATES: Comments must be received on or before January 12, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2021–0367 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Dianna Myers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9207. Ms. Myers can also be reached via electronic mail at *myers.dianna@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Summary of EPA's Action

In accordance with the Clean Air Act (CAA or Act), EPA is proposing to approve the Birmingham Area LMP for the 2006 24-hour $PM_{2.5}$ NAAQS, adopted by ADEM on February 2, 2021, and submitted by ADEM as a revision to the Alabama SIP under a cover letter with the same date.[1] The Birmingham Area LMP is designed to maintain the 2006 24-hour $PM_{2.5}$ NAAQS within the Birmingham Area through the end of the second 10-year portion of the maintenance period beyond redesignation. EPA is proposing to approve the plan because it meets all applicable requirements under CAA sections 110 and 175A. As a general matter, the Birmingham Area LMP relies on the same control measures and similar contingency measures to maintain the 2006 24-hour $PM_{2.5}$ NAAQS during the second 10-year portion of the maintenance period as the maintenance plan submitted by ADEM for the first 10-year period, which is not a limited maintenance plan.

II. Background

Fine particulate matter, particulate matter with an aerodynamic diameter of 2.5 microns or less, can be emitted directly into the atmosphere as a solid or liquid particle (''primary $PM_{2.5}$'' or ''direct $PM_{2.5}$'') or can be formed in the atmosphere as a result of various chemical reactions among precursor pollutants such as nitrogen oxides (NO_X), sulfur oxides, volatile organic compounds (VOC), and ammonia (NH_3) (''secondary $PM_{2.5}$'').[2] Epidemiological studies have shown statistically significant correlations between elevated levels of $PM_{2.5}$ and premature mortality. Other important health effects associated with $PM_{2.5}$ exposure include aggravation of respiratory and cardiovascular disease, changes in lung function, and increased respiratory complications, contributing to premature mortality and increased hospital admissions and emergency room visits. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children.[3]

On July 18, 1997, EPA promulgated the first air quality standards for $PM_{2.5}$. *See* 62 FR 38652. EPA promulgated a 24-hour standard of 65 μg/m^3, based on a 3-year average of the 98th percentile of 24-hour concentrations.[4] On October 17, 2006, EPA revised the 24-hour NAAQS to 35 μg/m^3, based again on the 3-year average of the 98th percentile of 24-hour concentrations. *See* 71 FR 61144.[5] Under EPA regulations at 40 CFR part 50, the primary and secondary 2006 24-hour $PM_{2.5}$ NAAQS are attained when the 3-year average of the 98th percentile of 24-hour concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 35 μg/m^3 at all relevant monitoring sites in the subject area over a 3-year period.

Following promulgation of a new revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On November 13, 2009, EPA promulgated designations for the 2006 24-hour $PM_{2.5}$ NAAQS, designating the Birmingham Area, which includes Jefferson County, Shelby County, and a portion of Walker County, as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS based upon air quality data for calendar years 2006 through 2008. *See* 74 FR 58688. Under the CAA, States are also required to adopt and submit SIPs to implement, maintain, and enforce the NAAQS in designated nonattainment areas and throughout the State.

A State may submit a request to redesignate a nonattainment area that is attaining the NAAQS, and, if the area has met the required criteria described in section 107(d)(3)(E) of the CAA, EPA may approve the redesignation to

[1] EPA notes the Agency received the submittal on February 17, 2021.

[2] *See* 78 FR 3086 at 3090, 3121 (January 15, 2013).

[3] *See id.;* ''Fact Sheet Final Revisions to the National Ambient Air Quality Standards for Particle Pollution (Particulate Matter),'' September 21, 2006, accessible at: *https://www.epa.gov/sites/production/files/2016-04/documents/20060921_standards_factsheet.pdf;* 71 FR 61144, 61145 (October 17, 2006).

[4] In the same rulemaking, EPA promulgated an annual standard at a level of 15.0 micrograms per cubic meter (μg/m^3), based on a 3-year average of annual mean $PM_{2.5}$ concentrations. *See* 62 FR 38652.

[5] On January 15, 2013, and December 18, 2020, EPA retained the 24-hour primary and secondary $PM_{2.5}$ NAAQS at the 2006 level of 35 μg/m^3. *See* 78 FR 3086 and 85 FR 82684.

attainment for the area.[6] One of the criteria for redesignation is to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the NAAQS for the period extending 10 years after redesignation, and it must contain such additional measures as necessary to ensure maintenance and such contingency provisions as necessary to assure that violations of the NAAQS will be promptly corrected. Eight years after the effective date of redesignation, the State must also submit a second maintenance plan to ensure ongoing maintenance of the NAAQS for an additional ten years pursuant to CAA section 175A(b) (*i.e.,* ensuring maintenance for 20 years after redesignation).

In 2009, the Birmingham Area was designated as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS. On June 17, 2010, ADEM submitted to EPA a request to redesignate the Birmingham Area to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS. This submittal included a plan to provide for maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in the Birmingham Area through 2024 as a revision to the Alabama SIP. On September 20, 2010, EPA issued a clean data determination under the Agency's Clean Data Policy based upon complete, quality assured, quality controlled, and certified ambient air monitoring data for the years 2007–2009 showing that the Birmingham Area had monitored attainment of the 2006 24-hour $PM_{2.5}$ NAAQS. *See* 75 FR 57186. Subsequently, on January 25, 2013, EPA approved the Birmingham Area's maintenance plan and the State's request to redesignate the Birmingham Area to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS. *See* 78 FR 5306.

EPA has published long-standing guidance for States on developing maintenance plans.[7] The Calcagni Memo provides that States may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that projected future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (*i.e.,* attainment year inventory). *See* Calcagni Memo at 9. EPA clarified in subsequent guidance memos that certain areas could meet the CAA section 175A requirement to provide for maintenance by showing that the area was unlikely to violate the NAAQS in the future, using information such as the area's design value[8] being significantly below the standard and the area having a historically stable design value.[9] EPA refers to a maintenance plan containing this streamlined demonstration as an LMP, and in guidance, EPA has discussed certain criteria that it intends to evaluate, including consistency with EPA regulations along with other information as is relevant, in determining if this option is appropriate for an area.

EPA has interpreted CAA section 175A as permitting the LMP option because section 175A of the Act does not define how areas may provide for maintenance, and in EPA's experience implementing the various NAAQS, areas that qualify for an LMP and have approved LMPs have rarely, if ever, experienced subsequent violations of the NAAQS. As noted in EPA's LMP guidance, States seeking an LMP must still submit the other maintenance plan elements outlined in the Calcagni Memo, including: an attainment emissions inventory, provisions for the continued operation of the ambient air quality monitoring network, verification of continued attainment, and a contingency plan in the event of a future violation of the NAAQS. Moreover, a State seeking an LMP as its section 175A maintenance plan must submit it as a revision to its SIP, with all attendant notice and comment procedures. While the LMP guidance memoranda were originally written with respect to certain NAAQS,[10] EPA has extended the LMP interpretation of section 175A to certain other NAAQS and pollutants not specifically covered by the previous guidance memos.[11]

At the time ADEM was developing its February 2, 2021, SIP revision, EPA had not developed specific LMP guidance for $PM_{2.5}$, and ADEM consulted with the Agency in extending the rationale from the 2001 PM_{10} LMP Guidance, which was written for particulate matter with an aerodynamic diameter of 10 microns or less (PM_{10}), to the $PM_{2.5}$ maintenance plan.[12] Accordingly, ADEM prepared its second maintenance plan submission in accordance with the 2001 PM_{10} LMP Guidance. Since the time of the February 2, 2021, submittal, EPA has released LMP guidance for $PM_{2.5}$. Specifically, on October 27, 2022, EPA published clarifying guidance that focuses on the distinctions that are relevant specifically for $PM_{2.5}$ LMPs for Moderate $PM_{2.5}$ Nonattainment and $PM_{2.5}$ Maintenance Areas.[13] The 2022 $PM_{2.5}$ LMP Guidance applies the 2001 Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas guidance for $PM_{2.5}$ LMP submissions, except for the specific topics where the 2001 guidance is superseded. Therefore, EPA has evaluated the February 2, 2021, submittal in light of the criteria discussed in the 2022 $PM_{2.5}$ LMP Guidance, as well as the relevant statutory and regulatory requirements.

EPA is proposing to approve the Birmingham Area LMP because the State has made a showing, consistent with EPA's current $PM_{2.5}$ LMP guidance, that the Birmingham Area's $PM_{2.5}$ concentrations are well below the 2006 24-hour $PM_{2.5}$ NAAQS and have been historically stable, and that it has met the other maintenance plan requirements. EPA's evaluation of the Birmingham Area LMP is presented in Section IV of this notice of proposed rulemaking (NPRM).

[6] Section 107(d)(3)(E) of the CAA sets out the requirements for redesignating a nonattainment area to attainment. They include attainment of the NAAQS, full approval of the applicable SIP pursuant to CAA section 110(k), determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

[7] *See* Memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' September 4, 1992 (Calcagni Memo). A copy of this guidance is available in the docket for this proposed rulemaking.

[8] The 24-hour $PM_{2.5}$ design value for a monitoring site is the 3-year average of the annual 98th-percentile 24-hour average $PM_{2.5}$ concentrations. The design value for a $PM_{2.5}$ nonattainment area is the highest design value of any monitoring site in the area.

[9] *See* ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas,'' from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas,'' from Joseph Paisie, OAQPS, dated October 6, 1995; ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas,'' from Lydia Wegman, OAQPS, dated August 9, 2001 (2001 PM_{10} LMP Guidance); and Guidance on the Limited Maintenance Plan Option for Moderate $PM_{2.5}$ Nonattainment Areas and $PM_{2.5}$ Maintenance Areas (2022 $PM_{2.5}$ LMP Guidance). Copies of these guidance memoranda can be found in the docket for this proposed rulemaking.

[10] Prior memos addressed unclassifiable areas under the 1-hour ozone NAAQS, nonattainment areas for the PM_{10} (particulate matter with an aerodynamic diameter less than 10 microns) NAAQS, and nonattainment areas for the carbon monoxide (CO) NAAQS.

[11] *See, e.g.,* 79 FR 41900 (July 18, 2014) (approval of second ten-year LMP for Grant County 1971 sulfur dioxide (SO_2) maintenance area).

[12] As discussed further below, ADEM prepared its second maintenance plan submission following the 2001 PM_{10} LMP Guidance.

[13] A copy is available in the docket for this proposed action and also available via *https://www.epa.gov/system/files/documents/2023-03/PM%202.5%20Limited%20Maintenance%20Plan%20Guidance.pdf.*

III. Alabama's SIP Submittal

Under CAA section 175A(b), States must submit a revision to the first maintenance plan eight years after redesignation to provide for maintenance of the NAAQS for ten additional years following the end of the first 10-year period. Accordingly, on February 2, 2021, Alabama submitted a second maintenance plan for the Birmingham Area that shows that the Area is expected to remain in attainment of the 2006 24-hour $PM_{2.5}$ NAAQS through 2034, *i.e.,* through the end of the full 20-year maintenance period.

In recognition of the continuing record of air quality monitoring data showing ambient 24-hour $PM_{2.5}$ concentrations in the Birmingham Area well below the 2006 24-hour $PM_{2.5}$ NAAQS, ADEM chose the LMP option for the development of a second 2006 24-hour $PM_{2.5}$ NAAQS maintenance plan. On February 2, 2021, ADEM adopted the second 10-year maintenance plan for the 2006 24-hour $PM_{2.5}$ NAAQS and submitted the Birmingham Area LMP to EPA as a revision to the Alabama SIP.

The February 2, 2021, submittal includes the LMP, air quality data and other information demonstrating qualification for the LMP, emissions inventory information, and appendices, as well as certification of adoption of the plan by ADEM. Appendices to the plan include a copy of the 2001 PM_{10} LMP Guidance, supplemental information on ADEM's mobile source emissions analysis, emissions inventory development data, and qualifying calculations in accordance with the 2001 PM_{10} LMP Guidance. The submittal also includes documentation of notice, hearing, and public participation prior to adoption of the plan by ADEM on February 2, 2021. The Birmingham Area LMP relies on the same emission reduction strategy and other already-implemented measures as the Area's first 10-year maintenance plan, which provides for the maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS through 2024. Specifically, the Birmingham Area LMP relies on the following measures: the continuation of programs such as the local Jefferson County and Shelby County burn bans, prioritizing funding for diesel emissions reduction projects within the Birmingham Area, continued implementation of Federal measures (for example, Tier 3 Motor Vehicle Emission and Fuel Standards,[14] and interstate transport rules [15]), and emission reductions achieved and documented for the first CAA section 175A maintenance plan.[16] Since Alabama submitted its maintenance plan for the first 10-year portion of the maintenance period, other changes that have decreased $PM_{2.5}$ and precursor emissions in the Area have taken place, as noted in the February 2, 2021, submittal. Examples include the permanent shutdown of Units 1–5 at the Tennessee Valley Authority's Colbert Plant, the permanent shutdown of Alabama Power Company's Plant Gorgas, the installation of a baghouse with an electrostatic precipitator at Alabama Power Company's Plant Gaston, and the conversion of the coal-fired units to natural gas at Alabama Power Company's Greene County Steam Plant.[17]

IV. EPA's Evaluation of Alabama's SIP Submittal

EPA has reviewed the Birmingham Area LMP, which is designed to maintain the 2006 24-hour $PM_{2.5}$ NAAQS within the Birmingham Area through the end of the 20-year period beyond redesignation, as required under CAA section 175A(b). The following is a summary of EPA's interpretation of the section 175A requirements [18] and EPA's evaluation of how each requirement is met.

A. Attainment Emissions Inventory

For maintenance plans, a State should develop a comprehensive, accurate inventory of actual emissions for an attainment year to identify the level of emissions which is sufficient to maintain the NAAQS. A State should develop this inventory consistent with EPA's most recent guidance on emissions inventory development. For the 24-hour $PM_{2.5}$ NAAQS, the inventory should be based on representative daily emissions of direct $PM_{2.5}$ and precursor emissions, including SO_2, NO_X, VOC, and NH_3. The Birmingham Area LMP includes a $PM_{2.5}$ attainment inventory for the Birmingham Area with emissions from 2017. Table 1 presents a summary of the inventory for 2017 contained in the LMP for $PM_{2.5}$ and precursor emissions.

TABLE 1—2017 SO_2, NO_X, $PM_{2.5}$, VOC, AND NH_3 EMISSIONS FOR THE BIRMINGHAM AREA

[Tons/day]

	Point source	Non-point source	On-road mobile source	Nonroad mobile source	Event	Total
SO_2	52.95	0.5	0.27	0.02	0.14	53.88
NO_X	73.06	10.02	27.96	9.44	0.32	120.8
$PM_{2.5}$	9.0	13.94	0.80	1.07	1.17	25.98
VOC	9.4	171.17	12.91	7.75	2.99	204.22
NH_3	0.40	1.77	0.95	0.02	0.16	3.30

The Attainment Emissions Inventory section of the Birmingham Area LMP describes the methods, models, and assumptions used to develop the attainment inventory. As described in the Attainment Emissions Inventory section of the LMP, ADEM relied on the 2017 National Emissions Inventory (NEI) for point source, non-point (or area source), and event emissions (which typically consist of activities such as wildfires), except as described below.[19]

Nonroad mobile source emissions were, in part, estimated using the latest version of the EPA's motor vehicle emissions model, MOVES3 (which provides the ability to estimate nonroad emissions from agricultural, commercial, mining, industrial, and

[14] *See* 79 FR 23414 (April 28, 2014). The February 17, 2021, submittal lists this as ''Tier IV,'' which is an error, as only Tier 3 standards have been set for on-road mobile source emissions standards. EPA understands this to be in reference to the latest emissions standards, referred to as ''Tier 3.''

[15] *See, e.g.,* 63 FR 57355 (October 27, 1998).

[16] *See also* 78 FR 5306 (January 25, 2013), 76 FR 70091 (November 10, 2011), and the submittal at docket ID EPA–R04–OAR–2011–0043.

[17] *See also* EPA docket EPA–HQ–OAR–2017–0003 and item EPA–HQ–OAR–2017–0003–0213 supporting EPA's air quality designations for the 2010 1-hour SO_2 NAAQS.

[18] *See* Calcagni Memo.

[19] Documentation and data for the 2017 NEI can be accessed via the following website: *https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data.*

recreational equipment, and commercial and residential lawn and garden equipment, among others). Locomotives, aircraft, and marine nonroad sources are not included in MOVES, and ADEM relied on EPA-generated emissions for these sectors.[20] ADEM estimated on-road mobile source emissions using MOVES3 and local data such as vehicle type, activity, and vehicle speeds from the Birmingham metropolitan planning organization (MPO) to estimate vehicular emissions for 2017. ADEM's estimates for vehicles reflect emissions inventories and ancillary data files used for emissions modeling, as well as the meteorological, initial condition, and boundary condition files needed to run the air quality model.

Based on EPA's review of the methods, models, and assumptions used by Alabama to develop the inventory, as well as EPA's review of the 2017 daily emissions data, EPA proposes to find that the Birmingham Area LMP includes a comprehensive, accurate inventory of actual $PM_{2.5}$ and precursor emissions in attainment year 2017 and proposes to conclude that this is acceptable for the purposes of a maintenance plan under CAA section 175A(b).

B. Maintenance Demonstration

The maintenance demonstration requirement is considered to be satisfied in an LMP if the State can provide sufficient weight of evidence indicating that air quality in the area is well below the level of the NAAQS, that past air quality trends have been shown to be stable, and that the probability of the area experiencing a violation during the second 10-year maintenance period is low.[21] These criteria are evaluated below with regard to the Birmingham Area. As noted in Section II of this NPRM, EPA has evaluated ADEM's submittal and, considering the submittal's contents and EPA's conclusions based thereon, finds the LMP to be consistent with EPA's current LMP guidance for $PM_{2.5}$ Maintenance Areas. Although ADEM developed the Birmingham Area LMP in accordance with the 2001 PM_{10} LMP Guidance, the LMP is nonetheless consistent with the portions of the 2022 $PM_{2.5}$ LMP Guidance that superseded the 2001 PM_{10} LMP Guidance.

1. Evaluation of $PM_{2.5}$ Air Quality Levels

To attain the 2006 24-hour $PM_{2.5}$ NAAQS, the three-year average of the 98th percentile 24-hour average $PM_{2.5}$ concentrations (design value) at each monitor within an area must not exceed 35 $\mu g/m^3$. Table 2 includes the Area-wide monitor design values for the 2006 24-hour $PM_{2.5}$ NAAQS from EPA's Air Quality System (AQS) for the period 2015–2019, which covers the overall period from 2013–2019.[22]

TABLE 2—2015–2019 DESIGN VALUES (DV) ($\mu g/m^3$) FOR THE 2006 24-HOUR $PM_{2.5}$ NAAQS AT MONITORING SITES IN THE BIRMINGHAM AREA [a b c]

AQS site ID	Location	2013–2015	2014–2016	2015–2017	2016–2018	2017–2019
01–073–0023	North Birmingham	23	23	22	21	[d] 20
01–073–1005	McAdory	[e] 20	[e] 18	18	17	18
01–073–1010	Leeds	20	19	17	18	18
01–073–2003	Wylam	20	19	18	18	17

[a] The Metropolitan Statistical Area (MSA) is required to have a minimum of three $PM_{2.5}$ monitoring sites. The MSA still maintains five regulatory $PM_{2.5}$ monitoring sites, offering adequate coverage of the MSA.

[b] Some of the data in this table is different than that transmitted in the February 2, 2021, submittal. EPA queried AQS to substitute the data for the 2014–2016 design values for the Leeds, McAdory, and Wylam sites and understands these differences to be the result of typographical errors.

[c] There is one additional monitor in Jefferson County recording $PM_{2.5}$ data. The Arkadelphia/Near Road site in AQS with ID 01–073–2059, identified as the West Birmingham monitor in the February 2, 2021, SIP revision, began recording data to AQS in calendar year 2014, so 2014–2016 comprises the first period with three full years of data to calculate a DV. However, until Quarter 3 of 2020, data collected were incomplete because the Federal reference method monitor was operating on a 1-in-6-day sampling frequency rather than a 1-in-3-day sampling frequency as required by 40 CFR 58.12(d). The incomplete data means that resulting calculated DVs are invalid. Accordingly, those data are not presented here or included in further analysis.

[d] The 2017–2019 DV for the North Birmingham site differs from the DV submitted in the February 2, 2021, SIP revision because the updated value presented in Table 2 reflects EPA-approved exclusion of data from one monitor at the site and utilization of data recorded at a collocated monitor for NAAQS-comparison purposes.

[e] These data are incomplete due to the need to relocate the monitor in the first quarter of 2014, and the resulting DVs for 2013–2015 and 2014–2016 are invalid.

From the available data in Table 2, the representative complete DV for the Birmingham Area was the North Birmingham monitor DV for each three-year period. The highest complete DV in this time period is 23 $\mu g/m^3$, which is 66% of the 24-hour NAAQS. The most recent official DVs are for 2020–2022 and are as follows: North Birmingham, 17 $\mu g/m^3$; McAdory, 17 $\mu g/m^3$; Leeds, 18 $\mu g/m^3$; and Wylam, 18 $\mu g/m^3$. These most recent data are slightly lower than those presented in Table 2 and continue to show the general downward trend.[23]

[20] EPA developed emissions for these sectors based on AP–42 emissions factors, and information supplied by the Eastern Regional Technical Advisory Committee for locomotives and Federal Aviation Administration's Aviation Environmental Design Tool. *See* 2017 National Emissions Inventory: January 2021 Updated Release, Technical Support Document available via the following website: *https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-technical-support-document-tsd.*

[21] *See* 2022 $PM_{2.5}$ LMP Guidance; *see also* 2001 p.m.$_{10}$ LMP Guidance; ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas'' from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; and ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, OAQPS, dated October 6, 1995.

[22] 40 CFR 58.11(e) requires agencies to assess data from Class III $PM_{2.5}$ Federal equivalent methods (FEMs) operating in their network alongside collocated Federal reference methods (FRMs) in accordance with table C–4 to subpart C of 40 CFR part 53. The Jefferson County Department of Health (JCDH) submitted a demonstration on November 28, 2022, showing that the FEM operating at AQS site 01–073–0023 did not meet these performance criteria and therefore should not be used for comparison to the NAAQS. EPA approved this demonstration on February 2, 2023. As stated in EPA's approval (which is included in the docket for this proposed rulemaking), JCDH included its demonstration and EPA's approval thereof in the 2023 network plan that was posted for public comment. See the docket for this proposed rulemaking for more information.

[23] For more information on the air quality data, see additional information in the document titled ''Technical Support Document for EPA's Notice of Proposed Rulemaking: Air Plan Approval; Alabama; Birmingham Limited Maintenance Plan for the 2006 24-Hour $PM_{2.5}$ NAAQS'' (Birmingham TSD) with the file name ''AL–124 TSD_Alabama Limited Maintenance Plan for 2006 $PM_{2.5}$.pdf'' in the docket for this proposed rulemaking.

To qualify for the LMP option pursuant to EPA's 2022 $PM_{2.5}$ LMP Guidance, a State must analyze the design value (DV) trends to determine a critical design value (CDV), which is typically calculated based on the five-year average of the most recent DVs for the area and the statistical variation of the average DV. If each site in the maintenance area has an average design value (ADV) that is less than the CDV, it would demonstrate that the area has $PM_{2.5}$ concentrations that will likely remain below the level of the standard in the future.

The ADVs are used to determine the CDV for the area. See Table 3 for relevant equations.

Table 3 – Eligibility Calculations Used to Redetermine Qualification for the LMP

Standard Deviation (σ)	$\sigma = \sqrt{\frac{\sum (x_i\text{-ADV})^2}{n-1}}$
Coefficient of Variation (CV)*	$CV = \sigma/ADV$
Critical Design Value (CDV)*	$CDV = NAAQS/(1+(t_c * CV))$

ADV = Average of 3-year design values.
DV = Design value.
NAAQS = Applicable standard (35 μg/m³).
t_c = Critical t-value (based on the one-tail student's t-distribution, at a significance level of 0.10).
x_i = A given three-year period design value for the area.
n = The total number of design values evaluated, which in this case is five.
**See 2022 Guidance on the Limited Maintenance Plan Option for Moderate $PM_{2.5}$ Nonattainment Areas and $PM_{2.5}$ Maintenance Areas (p. 7).*

EPA notes that ADEM made use of a different calculation of the standard deviation than that shown in Table 3, which affects the calculations of the CV and the CDV. Specifically, ADEM made use of a population standard deviation, which treats the seven-year period and five resultant DVs as the entire set of available data needed to assess the stability of the DVs over time. The 2001 PM_{10} LMP Guidance, which ADEM followed when it developed the LMP, did not specify the approach for determining the standard deviation of DV data analyzed. However, the seven-year period and five resultant DVs used to assess the stability of the DVs over time are a subset, or sample, of all of the available historical data. Therefore, EPA considers the sample standard deviation, presented in Table 3, to be the most appropriate approach for determining the variability in the data.[24]

ADEM calculated the CDV across the entire area to be 33.3 μg/m³ for the Birmingham Area, and the ADV across the Area to be 22.2 μg/m³. ADEM determined the CDV and ADV based on the controlling, or highest, DV across all monitoring sites in the Birmingham Area for each three-year period. EPA clarified in the 2022 $PM_{2.5}$ LMP Guidance that the CDV approach is specifically intended to be conducted for each monitoring site in an area. Therefore, EPA has included the CDV and ADV calculations across each site in Table 4.

TABLE 4—STATISTICAL ANALYSIS OF 2015–2019 DVS AT MONITORING SITES IN THE BIRMINGHAM AREA

AQS site ID	Location	ADV (μg/m³)	Σ	CV	CDV (μg/m³)	CDV–ADV (μg/m³)
01–073–0023	North Birmingham	21.8	1.30	0.060	32.1	10.3
01–073–1005	McAdory	18.2	1.10	0.060	32.0	13.8
01–073–1010	Leeds	18.4	1.14	0.062	32.0	13.6
01–073–2003	Wylam	18.4	1.14	0.062	32.0	13.6

EPA has calculated the CDVs over this time and across the Area, with the highest CDV being 32.1 μg/m³ at the North Birmingham site and the lowest being 32.0 μg/m³ at the other sites. The ADVs across the Birmingham Area in Table 4 are far below the CDVs, with the lowest margin between these values shown as 10.3 μg/m³, so the Area qualifies for the LMP based on this portion of the analysis.

The most recent DVs for 2018–2020, 2019–2021, and 2020–2022, available through EPA's AQS, do not alter the conclusions of the analysis conducted based on the 2015–2019 DVs. The available margins between the updated CDV and ADV for the 2018–2022 DVs covering the seven-year period from 2016–2022 for each site are as follows: North Birmingham, 11.8 μg/m³; McAdory, 15.9 μg/m³; Leeds, 15 μg/m³; and Wylam, 15.9 μg/m³. These most recent margins between the calculated CDVs and ADVs are greater than those presented in Table 4, meaning the data at the monitoring sites more easily meet the criteria in the 2022 $PM_{2.5}$ LMP Guidance.[25]

The 2022 $PM_{2.5}$ LMP Guidance describes circumstances in which an LMP may be appropriate for a first and/or second 10-year maintenance plan.

[24] See the February 2, 2021, submittal and the Birmingham TSD for more information on ADEM's calculations.

[25] See the Birmingham TSD for additional information.

For example, the 2022 $PM_{2.5}$ LMP Guidance discusses how an LMP might be especially appropriate for second maintenance plans, considering that the given area will have demonstrated attainment of the applicable $PM_{2.5}$ NAAQS for at least eight years. With respect to second maintenance plans, the 2022 $PM_{2.5}$ LMP Guidance indicates that the LMP submission should address the area's $PM_{2.5}$ air quality trends and historical and projected vehicle miles traveled (VMT) to meet the regulatory requirements at 40 CFR 93.109(e). The LMP would need to include documentation supporting the demonstration that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth for a NAAQS violation to occur, per 40 CFR 93.109(e). The 2022 $PM_{2.5}$ LMP Guidance goes on to note that if re-entrained road dust emissions have been found to be significant for $PM_{2.5}$ transportation conformity purposes under 40 CFR 93.102(b)(3), then the LMP should include an additional motor vehicle emissions analysis.

As a result of neither the EPA Regional Administrator nor the ADEM director having made a finding that re-entrained road dust emissions within the Birmingham Area were a significant contributor to the $PM_{2.5}$ nonattainment problem, this LMP and ADEM's first 10-year maintenance plan did not include emissions of re-entrained road dust as significant for transportation conformity analyses under 40 CFR 93.102(b)(3). Therefore, it was not necessary to perform additional on-road emissions analysis. The Birmingham Area MPO provided local VMT data, and ADEM included these VMT data, which show only a 12 percent projected VMT growth from the base year of 2017 to the final year of the plan in 2034, in the submittal. Additionally, EPA considered the regional emissions analysis results from the most recent transportation conformity determination adopted by the Birmingham MPO,[26] shown in Table 5, to include on-road emissions in the year 2024 of 0.57 and 16.48 tons per day of $PM_{2.5}$ and NO_X, respectively.

TABLE 5—BIRMINGHAM MPO 2006 ON-ROAD EMISSIONS IN TONS/DAY (tpd)

Analysis year	On-road emissions	
	$PM_{2.5}$	NO_X
2024	0.57	16.48
2034	0.38	9.14
2044	0.37	8.41
2050	0.38	8.61

The $PM_{2.5}$ on-road emissions are 47 percent below the 2024 budget of 1.21 tpd. The $PM_{2.5}$ on-road emissions continue to decline steadily from years 2034 to 2050 to 31 percent of the budget. The NO_X on-road emissions are 34 percent below the 2024 budget of 48.41 tpd and continue to decline steadily from years 2034 to 2050 to 18 percent of the budget. Because the on-road emissions show an overall downward trend for $PM_{2.5}$ and NO_X, it would be unreasonable to expect that the Area would experience enough motor vehicle emissions growth for a $PM_{2.5}$ NAAQS violation to occur as shown by the ADV and CDV calculations above. For the preceding reasons, the low projected growth in VMT over the 17-year period, and the downward trend in $PM_{2.5}$ and NO_X on-road vehicle emissions compared to the budget, the mobile source emissions are not expected to adversely impact the Area's ability to continue to maintain compliance with the 2006 24-hour $PM_{2.5}$ NAAQS.

Therefore, the Birmingham Area is eligible for the LMP option, and the more detailed mobile source analysis that is found in the PM_{10} LMP Guidance is not required.[27] EPA proposes to find that the long record of monitored $PM_{2.5}$ concentrations that attain the NAAQS, ADEM's air quality statistical analysis and EPA's updated analysis, together with the continuation of existing emissions control programs, adequately provide for the maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in Birmingham through the second 10-year maintenance period and beyond.

2. Stability of $PM_{2.5}$ Levels

As discussed above, the Birmingham Area has maintained air quality well below the 2006 24-hour $PM_{2.5}$ NAAQS during the first maintenance period. Additionally, the DV data shown within Table 2 illustrate that 24-hour $PM_{2.5}$ levels have been relatively stable over this timeframe, with a modest downward trend. For example, the data within Table 2 indicate that the highest year-over-year change in complete DVs at any given monitor between 2015–2019 was 2 $\mu g/m^3$, which represented a 10 percent change. See, *e.g.,* the change at the Leeds monitor (AQS 01–073–1010) from 2014–2016 to 2015–2017. Furthermore, the overall trend in DVs for the Birmingham Area between 2015 and 2019 shows a decrease of 13 percent at the highest-reading monitor with valid DVs, North Birmingham 01–073–0023, with overall decreases in DVs at each individual monitoring site in the Birmingham Area. Considering the 2020, 2021, and 2022 DVs, which were finalized after ADEM's February 2, 2021, submittal, the trend between 2015–2022 shows a decrease of 26.1 percent at the North Birmingham monitor, 01–073–0023. This downward trend in $PM_{2.5}$ levels, coupled with the relatively small, year-over-year variation in $PM_{2.5}$ DVs, makes it reasonable to conclude that the Birmingham Area will not exceed the 2006 24-hour $PM_{2.5}$ NAAQS during the second 10-year maintenance period.

C. Monitoring Network and Verification of Continued Attainment

EPA periodically reviews the $PM_{2.5}$ monitoring network that the Jefferson County Department of Health (JCDH) operates and maintains in accordance with 40 CFR part 58. This network plan, which is submitted annually to EPA, is consistent with the most recent ambient air quality monitoring network assessment. The annual network plans developed by ADEM and JCDH follow a public notification and review process. EPA has reviewed and approved the 2023 Ambient Air Monitoring Network Plan for JCDH.[28] [29]

To verify the attainment status of the area over the maintenance period, the maintenance plan should contain provisions for continued operation of an appropriate, EPA-approved monitoring network in accordance with 40 CFR part 58. As noted above, JCDH's Network Plan for Birmingham, covering the $PM_{2.5}$ network, has been approved by EPA in accordance with 40 CFR part 58, and the State has committed to continue operating all required $PM_{2.5}$ monitors in the Area in accordance with part 58. EPA therefore proposes to find that the monitoring network is adequate to

[26] A copy of the August 9, 2023, conformity determination is included in the docket for more information.

[27] ADEM completed additional motor vehicle emissions analysis based on the 2001 PM_{10} LMP Guidance. This analysis is not required for the Birmingham Area under the 2022 $PM_{2.5}$ LMP Guidance, and EPA is not relying on it here. See the February 2, 2021, SIP revision for more details on this analysis.

[28] ADEM does not monitor $PM_{2.5}$ in the Birmingham MSA.

[29] The letter approving this network plan, except for the SO_2 network, is available in the docket for this rulemaking.

verify continued attainment of the 2006 24-hour $PM_{2.5}$ NAAQS in the Birmingham Area.

D. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. The purpose of such contingency provisions is to prevent future violations of the NAAQS or to promptly remedy any NAAQS violations that might occur during the maintenance period. The State should identify specific triggers which will be used to determine when the contingency measures need to be implemented.

The LMP contains a commitment from Alabama to adopt, within 18 months of certification of a violating DV[30] of the 2006 24-hour $PM_{2.5}$ NAAQS in the Birmingham Area, one or more control measures as needed to reattain the NAAQS.[31] If a certified violation occurs, Alabama will assess the violation and consider planned local and regional emission reductions and consider additional control measures as needed to attain the NAAQS.

EPA proposes to find that the contingency provisions in Alabama's second maintenance plan for the 2006 24-hour $PM_{2.5}$ NAAQS meet the requirements of CAA section 175A(d).[32]

E. Conclusion

EPA proposes to approve the Birmingham LMP for the 2006 24-hour $PM_{2.5}$ NAAQS, which includes updates of the various elements (including attainment inventory, assurance of adequate monitoring and verification of continued attainment, and contingency provisions) of the initial EPA-approved maintenance plan for the 2006 24-hour $PM_{2.5}$ NAAQS. EPA also finds that the Birmingham Area qualifies for the LMP option and adequately provides for maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS through 2034, *i.e.,* beyond the 20 years following redesignation of the Area to attainment, and thereby satisfies the requirements for such a plan under CAA section 175A(b). EPA is therefore proposing to approve Alabama's February 2, 2021, submission of the Birmingham Area 2006 24-hour $PM_{2.5}$ NAAQS LMP as a revision to the Alabama SIP.

V. Transportation Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. *See* CAA 176(c)(1)(A) and (B). EPA's transportation conformity rule at 40 CFR part 93, subpart A, requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicle emissions budget (budget) contained in the control strategy SIP revision or maintenance plan. *See* 40 CFR 93.101, 93.118, and 93.124. A motor vehicle emissions budget is defined as ''that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.'' *See* 40 CFR 93.101.

Under the transportation conformity rule, LMP areas may demonstrate conformity without a regional emissions analysis. *See* 40 CFR 93.109(e). For LMPs, which do not include budgets, EPA also reviews whether the LMP makes the demonstration that it would be unreasonable to expect so much motor vehicle emissions growth that the area would violate the NAAQS. *See* 40 CFR 93.109(e). As discussed in the Section IV above, the low VMT growth from 2017 to 2034, the downward trend in $PM_{2.5}$ and NO_X on-road vehicle emissions documented in the Birmingham MPO's recent conformity determination, and the emission results from the MPO's conformity determination compared to the 2024 budgets collectively demonstrate that it is unreasonable to expect so much motor vehicle emissions growth that the area would violate the NAAQS.[33]

EPA's substantive criteria for determining the adequacy of certain SIP submissions, including maintenance plans, are set out in 40 CFR 93.118(e)(4). The process for determining adequacy is outlined in 40 CFR 93.118(f). EPA intends to make its determination regarding the adequacy of the Birmingham Area LMP for transportation conformity purposes in the near future by completing the adequacy process together with any final decision on this proposed rulemaking.

Today's proposal notifies the public that EPA has received this LMP, which EPA will review for adequacy, and begins the public comment period. EPA invites the public to comment on the adequacy of the LMP as well as other aspects of the action EPA is proposing in this notice. Comments submitted as part of the adequacy process must be submitted by the close of the comment period on this NPRM.

If EPA approves this LMP or makes an adequacy finding for this LMP, after 2024, the motor vehicle emissions in the Birmingham Area may be treated as essentially not constraining for the second 10-year maintenance period because EPA would have concluded that it is unreasonable to expect that the area will experience so much motor vehicle emissions growth during this period of time that a violation of the $PM_{2.5}$ NAAQS would result. When determining conformity of transportation plans and TIPs after the year 2024, MPOs would not have to do a regional emissions analysis. Birmingham has approved budgets from the first 10-year maintenance plan for the year 2024, and if a transportation conformity determination is needed and 2024 is in the timeframe of the determination, the MPO would have to perform a regional emissions analysis and compare the results to the 2024 budgets. All actions for transportation plans and transportation improvement programs that would require a transportation conformity determination for the Birmingham 2006 24-hour $PM_{2.5}$ maintenance area under EPA's transportation conformity rule provisions are considered to have already satisfied the regional emissions analysis and ''budget test'' requirements in 40 CFR 93.118. *See* 40 CFR 93.109(e) and 69 FR 40004 (July 1, 2004).

However, because LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs, and projects. As stated in 40 CFR 93.109(e), ''A conformity determination that meets other applicable criteria in Table 1 of

[30] A certified air quality design value would be quality assured and quality controlled.

[31] ADEM also states that in the event that any given year's 98th percentile 24-hour concentrations is 36 $\mu g/m^3$ or higher at any monitor in the Area the State will evaluate existing control measures to determine whether any further emission reductions should be implemented at that time.

[32] See the Contingency Plan section of the LMP for further information regarding the contingency plan, including measures that ADEM will consider for adoption if a certified violation occurs.

[33] On January 25, 2013, EPA approved the 2024 motor vehicle emissions budgets associated with the first 10-year maintenance plan for the Birmingham Area for the 2006 24-hour $PM_{2.5}$ NAAQS. *See* 78 FR 5306.

paragraph (b) of this section is still required.'' Specifically, consultation (40 CFR 93.112) is required for all transportation conformity determinations. Conformity determinations for RTPs and TIPs still will have to demonstrate that they are fiscally constrained (40 CFR 93.108) and provide for timely implementation of Transportation Control Measures from the applicable implementation plan (40 CFR 93.113). Any conformity determinations made for transportation projects must demonstrate that there is a currently conforming transportation plan and TIP (40 CFR 93.114) and that the project is from that conforming plan and TIP (40 CFR 93.115), meet the hot-spot requirements for projects (40 CFR 93.116), and ensure that the project complies with any PM control measures in the SIP (40 CFR 93.117).

Additionally, conformity of transportation plans and TIPs, plan and TIP amendments, and transportation projects must be demonstrated in accordance with the timing requirements specified in 40 CFR 93.104; for RTPs and TIPs, this is no less frequently than every four years.

VI. General Conformity

The conformity requirement under CAA section 176(c) ensures that Federal activities implemented by Federal agencies will not interfere with a State's ability to attain and maintain the NAAQS. Under CAA 176(c)(1), the requirement prohibits Federal agencies from approving, permitting, licensing, or funding activities that do not conform to the purpose of the applicable SIP for the control and prevention of air pollution. *See* CAA section 176(c)(1)(A). Under CAA section 176(c)(1)(B), conformity to an implementation plan means that Federal activities will not cause or contribute to any new violations of the NAAQS, increase the frequency or severity of any existing NAAQS violation, or delay timely attainment or any required interim emissions reductions or other milestones contained in the applicable SIP.

The general conformity program implements CAA section 176(c)(4)(A), and the criteria and procedures for determining conformity of general Federal activities to the applicable SIP are established under 40 CFR part 93, subpart B, sections 93.150 through 93.165. General conformity requirements apply to Federal activities that (1) would cause emissions of relevant criteria or precursor pollutants to originate within nonattainment areas or areas that have been redesignated to attainment with an approved CAA section 175A maintenance plan (*i.e.,* maintenance areas), as given under 40 CFR 93.153(b), and (2) are not Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) transportation projects as defined in 40 CFR 93.101 under the transportation conformity requirements. *See* 40 CFR 93.153(a).

The general conformity regulations do not provide special flexibility to account for when EPA establishes a LMP for a maintenance area. EPA notes that the PM_{10} LMP Guidance (2001) stated that Federal actions subject to the general conformity regulations could be considered to satisfy the ''budget test'' because the budgets are essentially considered to be unlimited (*i.e.,* unconstrained). However, unlike the transportation conformity regulations, the concept of unconstrained emissions budgets has no meaning under the general conformity regulations. There is no provision in the general conformity regulations for a LMP claiming unconstrained emissions budgets and no exception to applying the limitations of the *de minimis* threshold rates to an action's emissions that could trigger the requirement for a general conformity determination. The concept of an unconstrained budget cannot be relied upon by a Federal agency to make a general conformity determination. Thus, for general Federal actions proposed for maintenance areas with LMPs, such as this proposed rulemaking, the criteria and procedures outlined in subpart B shall apply in the same way as for any non-LMP maintenance area.

VII. Proposed Action

Under sections 110(k) and 175A of the CAA and for the reasons set forth above, EPA is proposing to approve the Birmingham Area LMP for the 2006 24-hour $PM_{2.5}$ NAAQS, submitted by ADEM on February 2, 2021, as a revision to the Alabama SIP. EPA is proposing to approve the Birmingham Area LMP because it includes an acceptable update of the various elements of the 2006 24-hour $PM_{2.5}$ NAAQS maintenance plan approved by EPA for the first 10-year period (including emissions inventory, assurance of adequate monitoring and verification of continued attainment, and contingency provisions), and retains the relevant provisions of the SIP.

EPA also finds that the Birmingham Area qualifies for the LMP option. We propose to approve the LMP because the Birmingham Area LMP adequately provides for maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS over the second 10-year maintenance period, through 2034, and thereby satisfies the requirements for such a plan under CAA section 175A(b).

VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

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

Executive Order 12898 (Federal Actions To Address Environmental

Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

ADEM did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Due to the nature of the action being proposed here, this proposed action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental Protection, Air Pollution Control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate Matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 7, 2023.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

[FR Doc. 2023–27297 Filed 12–12–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R10–OAR–2023–0224; FRL–10859–01–R10]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Spokane Regional Clean Air Agency; Control of Emissions From Existing Large Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove a Clean Air Act (CAA) State Plan submitted by the Spokane Regional Clean Air Agency (SRCAA). This State Plan establishes emission limits for existing large municipal waste combustors (MWC) and provides for the implementation and enforcement of these limits. SRCAA submitted this State Plan to fulfill its requirements under the CAA in response to the EPA's promulgation of Emissions Guidelines and Compliance Times for Large MWC Constructed on or before September 20, 1994 (Emission Guidelines). The EPA is partially approving the State Plan because it meets the requirements of the Emission Guidelines for existing large MWC known to operate in Spokane County, Washington. The EPA is partially disapproving the State Plan because it omits requirements for fluidized bed combustors and air curtain incinerators, which are required elements of a State Plan.

DATES: Written comments must be received on or before January 12, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2023–0224 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Bryan Holtrop (he/him), U.S. EPA, Region 10. He can be reached by phone at (206) 553–4473 or by email at *holtrop.bryan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111(d) of the CAA requires the EPA to establish a procedure for a state to submit a plan to the EPA that establishes standards of performance for any air pollutant: (1) for which air quality criteria have not been issued or which is not included on a list published under CAA section 108 or emitted from a source category which is regulated under CAA section 112 and (2) to which a standard of performance under CAA section 111 would apply if such existing source were a new source. Section 129(b)(2) of the CAA requires that after the EPA promulgates guidelines for a category of solid waste incineration units, each state in which units in the category are operating shall submit to the EPA a plan to implement and enforce the guidelines with respect to such units. Such plans shall be at least as protective as the guidelines promulgated by the EPA. The EPA established requirements for State Plan submittals in the Code of Federal Regulations (CFR) at 40 CFR part 60, subpart B. State submittals under CAA sections 111(d) and 129 must be consistent with the relevant emission guidelines, in this instance 40 CFR part 60, subpart Cb, and the requirements of 40 CFR part 60, subpart B.

On May 10, 2006, the EPA revised the regulations established for Emissions Guidelines and Compliance Times for Large MWC That Are Constructed on or before September 20, 1994, in 40 CFR part 60, subpart Cb (71 FR 27324). This action was taken under sections 111(d) and 129 of the CAA.

On July 18, 2022, SRCAA submitted to the EPA a section 111(d)/129 plan for existing large MWC. The submitted section plan was in response to the May 10, 2006, promulgation of Federal emission guidelines requirements for large MWC, 40 CFR part 60, subpart Cb (71 FR 27336).

II. Summary of the Plan and EPA Analysis

The EPA has reviewed the SRCAA section 111(d)/129 plan submittal in the context of the requirements of 40 CFR part 60, subparts B and Cb. In this action, the EPA is proposing to determine that SRCAA's section 111(d)/129 plan meets the cited Federal requirements, except with regard to fluidized bed combustors and air curtain incinerators. On April 5 2007, SRCAA amended Regulation I, Article VI, Section 6.17 to incorporate the EPA's revisions to the Emission Guidelines for large MWC and made administrative formatting updates, adopted on July 9, 2020. The primary mechanism used by SRCAA to implement the Emission Guidelines for existing large MWC under state jurisdiction is through incorporation by reference of 40 CFR part 60, subpart Cb requirements into Regulation 1, Article VI, Section 6.17. The changes SRCAA made to the language in the Emission Guidelines were made to convert the language in the Emission Guidelines to enforceable requirements. Because SRCAA reported that there are only two units at a single facility subject to the proposed State Plan—both of which utilize the mass burn waterwall combustor technology—SRCAA did not include requirements in the Emission Guidelines that apply to fluidized bed combustors (40 CFR 60.33b(d)(3)) or air curtain incinerators (40 CFR 60.37b). In each case, the Emission Guidelines clearly state that ''for approval, a State Plan shall include . . .'' the specified requirements. The EPA has no discretion to fully approve a State Plan that omits a required element. For this reason, the EPA is proposing to partially disapprove SRCAA's State Plan insofar as it does not address regulatory requirements applicable to fluidized bed combustors and air curtain incinerators.

These regulations will be applicable to existing large MWC in Spokane County, Washington upon the EPA's approval of the plan by final rulemaking, except that fluidized bed combustors and air curtain incinerators that are designated facilities under the Emission Guidelines per 40 CFR 60.32b shall be subject to the Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or before September 20, 1994 (40 CFR part 62, subpart FFF). A more detailed explanation of the rationale behind this proposed approval is available in the Technical Support Document (TSD) that may be found in the docket for this action.

III. Proposed Action

The EPA is proposing to partially approve and partially disapprove the SRCAA section 111(d)/129 plan for large MWC submitted pursuant to 40 CFR part 60, subpart Cb. Therefore, the EPA is proposing to amend 40 CFR part 62, subpart WW to reflect this action.

This partial approval and partial disapproval is based on the rationale previously discussed in this document and in further detail in the TSD that may be found in the docket for this action. The scope of the proposed partial approval of the section 111(d)/129 plan is limited to the provisions of 40 CFR part 60, subpart Cb that apply to existing large MWC in Spokane County that are not fluidized bed combustors or air curtain incinerators. The EPA Administrator continues to retain the authorities identified in 40 CFR 60.30b(b) as authorities retained by the Administrator.

IV. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text that incorporates by reference the State Plan. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference SRCAA Regulation I, Article VI, Section 6.17, which became effective within the SRCAA's jurisdiction on July 7, 2022. The regulatory provisions of this section of the SRCAA rule incorporate all the CAA 111(d)/129 State Plan elements required by the EG for existing large MWC promulgated at 40 CFR part 60, subpart Cb. The emissions standards and compliance times established within the SRCAA State Plan are at least as stringent as those required by the EG for existing large MWC subject to subpart Cb. The EPA has made, and will continue to make, these materials generally available through the docket for this action, EPA–R10–OAR–2023–0224, at *https://www.regulations.gov* and at EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

In reviewing State Plan submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The air agency did not evaluate environmental justice considerations as part of its submittal; the Clean Air Act and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not

perform an EJ analysis and did not consider EJ in this action. Due to the nature of this action, it is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

In addition, this proposed rulemaking would not apply on any Indian reservation land or in any other area in Washington where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the proposed rule would not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 7, 2023.

Casey Sixkiller,

Regional Administrator, Region 10.

[FR Doc. 2023–27295 Filed 12–12–23; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 88, No. 238
Wednesday, December 13, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–TM–23–0067]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to extend its current approval from the Office of Management and Budget to collect information for eight competitive and two non-competitive AMS Grant Programs under its Grants Division. AMS TM Grant Programs is merging collection OMB 0581–0320—Non-competitive Micro-Grants for Food Security Program (MGFSP). MGFSP was acquired through the enactment of the Agriculture Improvement Act of 2018 (Farm Bill).

DATES: Comments on this notice must be received by February 12, 2024 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments concerning this notice by using the electronic process available at *https://www.regulations.gov.* All comments should reference the document number and the date and the page number of this issue of the **Federal Register**. Written comments may be submitted to Robert Tarwater, Grants Division Director, AMS Transportation and Marketing Program, 1400 Independence Avenue SW, Stop 0269, Washington, DC 20250–0264. All comments received will be posted without change, including any personal information provided, at *https://www.regulations.gov* and will be included in the record and made available to the public. Please do not include personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. Comments may be submitted anonymously.

FOR FURTHER INFORMATION CONTACT: Robert Tarwater, Director, Grants Division, Telephone: (202) 690–1300 or Email: *Robert.Tarwater@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: AMS Grant Programs.

OMB Number: 0581–0240.

Expiration Date of Approval: 1/31/2024.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: AMS Grant Programs are authorized pursuant to the Agricultural Marketing Act of 1946 (AMA) (7 U.S.C. 1621, *et seq.*) and are implemented through the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Super Circular) (2 CFR 200). The AMS Grants Division requests to extend its current approval to collect information for its grant programs. The grant program being added to this collection is the Micro-Grants for Food Security Program (MGFSP), which operates pursuant to the authority of section 4206 of the Agriculture Improvement Act of 2018 (Pub. L. 115–343), (7 U.S.C. 7518) (Farm Bill). Section 4206 directs the Secretary of Agriculture to ''distribute funds to the agricultural department or agency of each eligible state for the competitive distribution of subgrants to eligible entities for fiscal year 2019 and each fiscal year thereafter.'' The MGFSP works to increase the quantity and quality of locally grown food in food insecure communities, including through small-scale gardening, herding, and livestock operations.

AMS solicits for subject matter experts to act as peer reviewers for competitive grant programs under its purview. Interested individuals apply and those selected objectively review and evaluate grant applications against the criteria outlined in the published announcement.

Because AMS Grant Programs are voluntary, respondents request or apply for the specific competitive or non-competitive grant program they select, and in doing so, they provide information. AMS is the primary user of the information. The information collected is needed to certify that grant participants are complying with applicable program regulations, and the data collected is the minimum information necessary to effectively carry out the requirements of the program. The information collection requirements in this request are essential to carry out the intent of the AMA, to provide the respondents the type of service they request, and to administer these programs. The burden of the AMS Grant Programs is as follows:

Combined Burden for AMS Grant Programs

Estimate of Burden: 2.34.

Respondents: Peer reviewers, grant applicants, grant recipients.

Estimated Number of Respondents: 5,047.

Estimated Total Annual Responses including Recordkeeping: 11,286.

Estimated Number of Responses per Respondent: 30.

Estimated Total Annual Burden on Respondents and Recordkeepers: 24,808.30.

Micro Grants for Food Security Program

Estimate of Burden: 2.65.

Respondents: Grant applicants and grant recipients.

Estimated Number of Respondents and Recordkeepers: 10.

Estimated Total Annual Responses including Recordkeeping: 120.

Estimated Number of Responses per Respondent including Recordkeepers: 11.

Estimated Total Annual Burden on Respondents and Recordkeepers: 318.33.

Comments are invited on: (1) whether the new 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 new collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who

are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Authority: 44 U.S.C. chapter 35.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–27305 Filed 12–12–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 12, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Institute of Food and Agriculture

Title: National 4–H Conference Registration Form, Leadership Position Interest Form, and Scholarship Interest Form.

OMB Control Number: 0524–New.

Summary of Collection: The National 4–H Conference is known as the ''Secretary's Conference'' and has been the flagship youth development opportunity of USDA since 1927. The objectives of the National 4–H Conference are to: develop the next generation of leaders; increase youth familiarity with the government and future career opportunities; and provide an opportunity for young people involved in 4–H in rural, urban, and Tribal communities to share their voice on a national level with the federal government through a Youth Perspective Briefing.

The National 4–H Conference is administered by the U.S. Department of Agriculture (USDA) National Institute of Food and Agriculture (NIFA). The statutory authority for the Conference is under Section 7511(f)(2) of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246), as amended.

Need and Use of the Information: All land-grant colleges and universities are invited to select and send high school aged 4–H members along with adult chaperones to the National 4–H Conference. Each is encouraged to partner within their state to select a diverse state delegation based on age, background, geographic distribution, and/or experience with the 4–H program. The selected youth must be 15 to 19 years old during the dates in which the National 4–H Conference is held to participate. NIFA will collect information using the Registration Form, Leadership Interest Form, and the Scholarship Interest Form. The information collected is used by NIFA and the logistics company to ensure youth and adults who would like to attend, serve in leadership, or apply for a scholarship role at the National 4–H Conference can be contacted, submit activity and dietary preferences, meet eligibility requirements, and provide the permissions required by law such as parental/guardian consent.

If NIFA were unable to collect this data, then the USDA NIFA National 4–H Conference would be unable to support the successful planning and delivery of activities associated with the National 4–H Conference.

Description of Respondents: Individuals or households.

Number of Respondents: 400.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 700.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–27291 Filed 12–12–23; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–863]

Large Diameter Welded Pipe From the Republic of Canada: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Evraz Inc. NA, Evraz Inc. NA Canada, and The Canadian National Steel Corporation (collectively, Evraz) and the 36 non-examined companies, for which a review was initiated, made sales of the subject merchandise at prices below normal value (NV), during the period of review (POR) May 1, 2021, through April 30, 2022. We also determine that Forterra Pipe & Precast, Ltd. (Forterra), Hyprescon Inc. (Hyprescon), and Canam Group Inc. (Canam) had no shipments of subject merchandise during the POR.

DATES: Applicable December 13, 2023.

FOR FURTHER INFORMATION CONTACT: Faris Montgomery, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1537.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2023, Commerce published the *Preliminary Results* in the 2021–2022 administrative review of the antidumping duty order on large diameter welded pipe from Canada and invited interested parties to comment.[1] A summary of the events that occurred since publication of the *Preliminary Results*, as well as a full discussion of

[1] *See Large Diameter Welded Pipe from Canada: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2021–2022,* 88 FR 37011 (June 6, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

the issues raised by parties for these final results, are discussed in the Issues and Decision Memorandum.[2] Commerce conducted this administrative review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [3]

The merchandise covered by the *Order* is welded carbon and alloy steel pipe (other than stainless steel pipe), more than 406.4 mm (16 inches) in nominal outside diameter (large diameter welded pipe), regardless of wall thickness, length, surface finish, grade, end finish, or stenciling. Imports of the product are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.1060, 7305.19.5000, 7305.31.4000, 7305.31.6090, 7305.39.1000 and 7305.39.5000. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in parties' case and rebuttal briefs are addressed in the Issues and Decision Memorandum and are listed in Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade/gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our analysis of the comments received from interested parties, Commerce made certain changes to the margin calculations for Evraz. The Issues and Decision Memorandum contains descriptions of these changes.

Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a weighted-average dumping margin to be determined for companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when determining the weighted-average dumping margin for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted average of the estimated weighted- average dumping margins established for exporters and producers individually investigated, excluding rates that are zero, *de minimis* or determined entirely on the basis of facts available.

For these final results of review, we calculated a weighted-average dumping margin that is not zero, *de minimis*, or based entirely on facts available for Evraz, the sole mandatory respondent. Because this is the only weighted-average dumping margin determined in this review for an individually examined respondent, we are applying this rate to the non-examined companies under review consistent with section 735(c)(5)(A) of the Act.[4]

Determination of No Shipments

As noted in the *Preliminary Results,* we received no shipment claims from Forterra, Hyprescon, and Canam and preliminarily determined that Forterra, Hyprescon, and Canam had no shipments of subject merchandise during the POR.[5] We received no comments from interested parties with respect to these claims. Therefore, because the record indicates that Forterra, Hyprescon, and Canam had no suspended entries of subject merchandise to the United States during the POR, we continue to find that Forterra, Hyprescon, and Canam had no shipments of subject merchandise during the POR.

Final Results of Review

We determine that the following weighted-average dumping margins exist for the period May 1, 2021, through April 30, 2022:

Producer/exporter	Weighted-average dumping margin (percent)
Evraz Inc. NA; Evraz Inc. NA Canada; The Canadian National Steel Corporation	9.17
Non-Examined Companies [6]	9.17

Disclosure

We intend to disclose the calculations performed for Evraz within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

Assessment Rates

Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in this review, in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these final results in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Pursuant to 19 CFR 351.212(b)(1), because Evraz's weighted-average dumping margin is not zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), and Evraz reported the entered value of all its U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2021–2022 Antidumping Duty Administrative Review: Large Diameter Welded Pipe from Canada,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Large Diameter Welded Pipe from Canada: Antidumping Duty Order,* 84 FR 18775 (May 2, 2019) (*Order*).

[4] *See* Appendix II for a list of non-examined companies under review.

[5] *See Preliminary Results,* 88 FR at 37011.

[6] *See* Appendix II for a list of these companies.

total entered value of those sales. Where an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[7]

For entries of subject merchandise during the POR produced by Evraz for which it did not know its merchandise was destined for the United States, we intend to instruct CBP to liquidate such entries at the all-others rate (*i.e.,* 12.32 percent) [8] if there is no rate for the intermediate company(ies) involved in the transaction.[9]

For the companies which were not selected for individual examination, we will instruct CBP to assess antidumping duties at a rate equal to the weighted-average dumping margin determined for the non-examined companies in the final results of review.[10]

For the companies with no shipments, *i.e.,* Forterra, Hyprescon, and Canam, any suspended entries made under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in the final results of the review; (2) for subject merchandise exported by a company not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review or the less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the subject merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 12.32 percent *ad valorem,* the all-others rate established in the LTFV investigation.[11] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

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

Notification to Interested Parties

We are issuing and publishing these final results of administrative review in accordance with sections 751(a) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: December 1, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

Appendix II

Review-Specific Average Rate Applicable to Companies Not Selected for Individual Examination

1. Acier Profile SBB Inc.
2. Aciers Lague Steels Inc.
3. Amdor Inc.
4. BPC Services Group
5. Bri-Steel Manufacturing
6. Canada Culvert.
7. Cappco Tubular Products Canada Inc.
8. CFI Metal Inc.
9. Dominion Pipe & Piling
10. Enduro Canada Pipeline Services
11. Fi Oilfield Services Canada
12. Gchem Ltd.
13. Graham Construction
14. Groupe Fordia Inc.
15. Grupo Fordia Inc.
16. Hodgson Custom Rolling
17. Interpipe Inc.
18. K K Recycling Services
19. Kobelt Manufacturing Co.
20. Labrie Environment
21. Les Aciers Sofatec
22. Lorenz Conveying P
23. Lorenz Conveying Products
24. Matrix Manufacturing
25. MBI Produits De Forge
26. Nor Arc
27. Peak Drilling Ltd.
28. Pipe & Piling Sply Ltd.
29. Pipe & Piling Supplies
30. Prudental
31. Prudential
32. Shaw Pipe Protecction
33. Shaw Pipe Protection
34. Tenaris Algoma Tubes Facility
35. Tenaris Prudential
36. Welded Tube of Can Ltd.

[FR Doc. 2023–27356 Filed 12–12–23; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012).

[8] *See Order,* 84 FR at 18775–76.

[9] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[10] *See* section 751(a)(2)(C) of the Act.

[11] *See Order,* 84 FR at 18768.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–888]

Certain Carbon and Alloy Steel Cut-to-Length Plate From the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies were provided to POSCO, a producer and exporter of certain carbon and alloy steel cut-to-length plate (CTL plate) from the Republic of Korea (Korea), during the period of review (POR) from January 1, 2021, through December 31, 2021.

DATES: Applicable December 13, 2023.

FOR FURTHER INFORMATION CONTACT: Faris Montgomery, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade

Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1537.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2023, Commerce published the *Preliminary Results* of this administrative review in the **Federal Register**.[1] On August 9, 2023, Commerce released a post-preliminary analysis memorandum regarding the provision of electricity for less than adequate remuneration and electricity for more than adequate remuneration programs.[2] Between August 29 and September 1, 2023, Commerce conducted on-site verification of the questionnaire responses submitted by the Government of Korea.[3]

On September 6, 2023, Commerce extended the deadline for the final results of this review to no later than December 1, 2023.[4] For a complete description of the events that followed the *Preliminary Results, see* the Issues and Decision Memorandum.[5]

We conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order[6]

The merchandise covered by the *Order* is CTL plate. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in interested parties' briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed is attached to this notice at the appendix to this notice.

The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our analysis of the case and rebuttal briefs and the evidence on the record, we made certain changes to POSCO's countervailable subsidy calculations from the *Preliminary Results.* These changes are explained in the Issues and Decision Memorandum.

Methodology

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Act. For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[7] The Issues and Decision Memorandum contains a full description of the methodology underlying Commerce's conclusions.

Verification

As provided in section 782(i)(3) of the Act and 19 CFR 351.307(b)(iv), in August 2023, Commerce conducted an on-site verification of the subsidy information reported by the Government of Korea. We used standard on-site verification procedures, including an examination of relevant accounting records and original source documents provided by the respondent.

Final Results of Review

In accordance with 19 CFR 351.221(b)(5), we calculated an individual net countervailable subsidy rate for POSCO. Commerce determines that, during the POR, the net countervailable subsidy rate for the producers/exporter under review is as follows:

Producer/exporter	Subsidy rate (percent *ad valorem*)
POSCO[8]	0.87

Disclosure

We intend to disclose the calculations performed in connection with the final results of review to parties in this proceeding within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to 19 CFR 351.212(b)(2), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review, for the above-listed company at the applicable *ad valorem* assessment rate. We intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown for the company listed above based on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.[9] For all non-reviewed firms subject to the *Order,* we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent

[1] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2021,* 88 FR 37019 (June 6, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Post-Preliminary Analysis,'' dated August 9, 2023.

[3] *See* Memorandum, ''Verification of the Questionnaire Responses of the Government of Korea for the Provision of Electricity for Less than Adequate Remuneration Program,'' dated September 28, 2023.

[4] *See* Memorandum, ''Extension of Deadline for Final Results of Countervailing Duty Administrative Review,'' dated September 6, 2023.

[5] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea; 2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[6] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Countervailing Duty Order,* 82 FR 24103 (May 25, 2017) (*Order*).

[7] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[8] As discussed in the *Preliminary Results,* Commerce found the following companies to be cross-owned with POSCO: Pohang Scrap Recycling Distribution Center Co. Ltd.; POSCO Chemical Co., Ltd.; POSCO M-Tech Co., Ltd.; POSCO Nippon Steel RHF Joint Venture Co., Ltd.; POSCO SPS Co., Ltd.; and POSCO Terminal Co., Ltd. The subsidy rate applies to all cross-owned companies. We note that POSCO has an affiliated trading company through which it exported certain subject merchandise during the POR, POSO International (aka POSCO International Corporation). POSCO International was not selected as a mandatory respondent but was examined in the context of POSCO. Therefore, there is not an established countervailing duty rate for POSCO International; POSCO International's subsidies are accounted for in POSCO's total subsidy rate. Instead, entries of subject merchandise exported by POSCO International will receive the rate of the producer listed on the U.S. Customs and Border Protection (CBP) entry form. Thus, the subsidy rate applied to POSCO and POSCO's cross-owned companies is also applied to POSCO International for entries of subject merchandise produced by POSCO.

[9] *See, e.g., Honey from Argentina: Results of Countervailing Duty Administrative Review,* 69 FR 29518 (May 24, 2004), and accompanying Issues and Decision Memorandum at Issue 4.

company-specific rate or the all-others rate (3.72 percent), as appropriate.[10] These cash deposit requirements, effective upon publication of these final results, shall remain in effect until further notice.

Administrative Protective Order

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

Notification to Interested Parties

We are issuing and publishing these final results of administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: December 1, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–27354 Filed 12–12–23; 8:45 am]

BILLING CODE 3510–DS–P

[10] *See Order,* 82 FR at 24103.

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

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

DATES: Applicable December 13, 2023.

SUMMARY: The U.S. Department of Commerce (Commerce) hereby publishes a list of scope rulings and circumvention determinations made during the period July 1, 2023, through September 30, 2023. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Marcia E. Short, 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) 482–1560.

SUPPLEMENTARY INFORMATION:

Background

Commerce regulations provide that it will publish in the **Federal Register** a list of scope rulings on a quarterly basis.[1] Our most recent notification of scope rulings was published on September 1, 2023.[2] This current notice covers all scope rulings made by Enforcement and Compliance between July 1, 2023, and September 30, 2023.

Scope Rulings Made July 1, 2023, Through September 30, 2023

People's Republic of China (China)

A–570–979 and C–570–980: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From China

Requestor: Anker Innovations Limited. The T8700 eufyCam security solar panel is not covered by the scope of the antidumping duty (AD) and countervailing duty (CVD) orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from China because it meets an express exclusion in the scope of the orders for off-grid solar panels; July 17, 2023.

A–570–117 and C–570–118: Wood Mouldings and Millwork Products From China

Requestor: Hardware Resources, Inc. Edge-glued boards are covered by the scope of the AD order on wood mouldings and millwork products from China because they are made of wood, continuously shaped wood, finger-jointed, and edge-glued mouldings or millwork blanks (whether or not resawn); August 2, 2023.

A–570–899: Certain Artist Canvas From China

Requestor: Printing Textiles, LLC dba Berger Textiles (Berger Textiles). Canvas banner matisse (CBM) imported by Berger Textiles is covered by the scope of the AD order on certain artist canvas from China because CBM is a polyester fabric that is primed/coated to convert the fabric into a canvas and enters the United States as rolls for art reproduction, wall covering, and décor applications; August 15, 2023.

A–570–979 and C–570–980: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From China

Requestor: Sonali Energees USA LLC (Sonali). The solar cells assembled into solar modules in Cambodia from Chinese-origin silicon wafers, do not fall within the scope of the AD/CVD orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from China because the formation of the p/n junction occurred in Cambodia. As the Chinese-origin silicon wafers did not undergo the activation of the p/n junction until reaching Cambodia, the raw material is not a solar cell from China within the meaning of the scope of the Orders; August 23, 2023. Note that Sonali's merchandise may be subject to the U.S. Department of Commerce's final circumvention determination dated August 23, 2023, as imports of solar cells and modules that have been completed in Cambodia, using parts and components produced in China, that are then subsequently exported from Cambodia to the United States were found to be circumventing the antidumping duty and countervailing duty orders on solar cells and modules from China.

A–570–601: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From China

Requestor: Precision Components Inc. Low-carbon steel blanks are covered by the scope of the AD order on tapered roller bearings and parts thereof, finished, and unfinished, from China, because the scope explicitly covers unfinished tapered roller bearing parts; September 19, 2023.

A–570–865: Certain Hot-Rolled Carbon Steel Flat Products From China

Requestor: Concept2, Inc. The front foot and front foot caster assembly for

[1] *See* 19 CFR 351.225(o).

[2] *See Notice of Scope Rulings,* 88 FR 60434 (September 1, 2023).

exercise equipment are not covered by the scope of the AD order on certain hot-rolled carbon steel flat products from China, because the front foot is not flat, and it is expressly excluded from the scope because it is not in coils, is non-rectangular in shape, has been processed by cutting (from a large steel sheet), and, together with other parts form the front foot caster assembly, has assumed the character of an article classified outside HTSUS Chapter 72; and the front foot caster assembly comprises the front foot and other parts that do not meet the physical and chemical requirements of the scope; September 25, 2023.

Preliminary Scope Rulings Made July 1, 2023, Through September 30, 2023

China

A–570–981 and C–570–982: Utility Scale Wind Towers From China

Requestor: Orsted A/S, Orsted North America Inc. The sources enumerated in 19 CFR 351.225(k)(1) demonstrate that monopiles, *i.e.,* steel cylinders that serve as a foundation for offshore wind turbines, are not covered by the scope of the AD/CVD orders on utility scale wind towers from China; August 14, 2023.

A–570–135 and C–570–136: Certain Chassis and Subassemblies Thereof From China

Requestor: Pitts Enterprises, Inc. dba Dorsey Intermodal. Vietnamese chassis containing Chinese-origin subassemblies are covered by the scope of the AD order on certain chassis and subassemblies thereof from China because a Chinese-origin subassembly is considered an unfinished chassis and subject merchandise. Furthermore, the scope clearly outlines that any processing of finished and unfinished chassis in a third country does not remove the product from the scope; September 15, 2023.

Spain

A–469–823: Utility Scale Wind Towers From Spain

Requestor: Orsted A/S, Orsted North America Inc. The sources enumerated in 19 CFR 351.225(k)(1) demonstrate that monopiles, *i.e.,* steel cylinders that serve as a foundation for offshore wind turbines, are not covered by the scope of the AD order on utility scale wind towers from Spain; August 14, 2023.

Notification to Interested Parties

Interested parties are invited to comment on the completeness of this list of completed scope inquiries and scope/circumvention inquiry combinations made during the period July 1, 2023, through September 30, 2023. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, via email to *CommerceCLU@trade.gov.*

This notice is published in accordance with 19 CFR 351.225(o).

Dated: December 8, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–27326 Filed 12–12–23; 8:45 am]

BILLING CODE 3510–DS–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; Sea Grant Program Application Requirements for Grants, for Sea Grant Fellowships, Including the Dean John A. Knauss Marine Policy Fellowships, and for Designation as a Sea Grant College or Sea Grant Institution

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. 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 February 12, 2024.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0362 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to The National Sea Grant Office, Attn: Patricia Razafindrambinina, 1315 East West Hwy, Silver Spring, MD 20910, 202–996–7850, *oar.sg.info-admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for the extension of an existing information collection.

The objectives of the National Sea Grant College Program, as stated in the Sea Grant legislation (33 U.S.C. 1121 *et seq.*) are to increase the understanding, assessments, development, utilization, and conservation of the Nation's ocean, coastal, and Great Lakes resources. It accomplishes these objectives by conducting research, education, and outreach programs. Grant monies are available for funding activities that help obtain the objectives of the Sea Grant Program. Both single and multi-project grants are awarded, with the latter representing approximately 80 percent of the total grant program. In addition to other standard grant application requirements, three forms are required with the grants. The Sea Grant Control Form (NOAA Form 90–1) is used to identify the organizations and personnel who would be involved in the grant and briefly summarize the proposed activities under the grant. The Project Record Form (NOAA Form 90–2), which collects summary data on projects, helps the National Sea Grant Office (NSGO) evaluate the proposals during its funding decisions. The Sea Grant Budget Form (NOAA Form 90–4) provides information similar to, but more detailed than, standardized budget forms SF–424A or SF–424C, and allows the NSGO to determine whether or not the breakdown cost of multi-project grant awards is reasonable. Collectively, the data supplied in these documents form the basis for many of NSGO's responses to the Administration, the Congress, other agencies, and to the public about the scope of Sea Grant activities.

The National Sea Grant College Program Act (33 U.S.C. 1126) also provides for the designation of a public or private institution of higher education, institute, laboratory, or State or local agency as a Sea Grant college or Sea Grant institute. Applications are required for designation of Sea Grant Colleges and Sea Grant Institutes, although no forms are required. The data the collection provides helps the National Sea Grant Office determine the suitability of the applicant for meeting the standards and conditions for being a Sea Grant College as set forth in 33 U.S.C 1126 and 15 CFR 918.5.

II. Method of Collection

Responses are made in a variety of formats, including forms and narrative submissions, via mail or email. The Sea Grant Project Record Form (NOAA Form 90–2) must be submitted directly to the 90–2 Webform. The Sea Grant Budget Form (NOAA Form 90–4) must be submitted in electronic format through *grants.gov* if the grant applicant has the means to do so. Most of the responses are received electronically.

III. Data

OMB Control Number: 0648–0362.

Form Number(s): NOAA Forms 90–1, 90–2, and 90–4.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Academic and not-for-profit institutions; individuals or households; business or other for-profit organizations; State, Local, or Tribal government.

Estimated Number of Respondents: 680.

Estimated Time per Response: 30 minutes for a Sea Grant Control form; 20 minutes for a Project Record Form; 15 minutes for a Sea Grant Budget form; and 20 hours for an application for designation as a Sea Grant college or Sea Grant institute.

Estimated Total Annual Burden Hours: 1,091.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: 33 U.S.C. 1121 *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 ICR. 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 may 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.

Sheleen Dumas,

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

[FR Doc. 2023–27252 Filed 12–12–23; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF EDUCATION

Extension of the Application Deadline Date; Applications for New Awards; Personnel Development To Improve Services and Results for Children With Disabilities—Preparation of Related Services Personnel Serving Children With Disabilities Who Have High-Intensity Needs

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: On November 16, 2023, the Department of Education (Department) published in the **Federal Register** a notice inviting applications (NIA) for the fiscal year (FY) 2024 Personnel Development to Improve Services and Results for Children with Disabilities—Preparation of Related Services Personnel Serving Children with Disabilities who have High-Intensity Needs competition, Assistance Listing Number 84.325R. The NIA established a deadline date of January 16, 2024, for the transmittal of applications. This notice extends the deadline date for transmittal of applications for all eligible applicants until January 31, 2024, and extends the date of intergovernmental review until March 30, 2024.

DATES:

Deadline for Transmittal of Applications: January 31, 2024.

Deadline for Intergovernmental Review: March 30, 2024.

FOR FURTHER INFORMATION CONTACT: Louise Tripoli, U.S. Department of Education, 400 Maryland Avenue SW, Room 4A10, Washington, DC 20202. Telephone: (202) 245–7554. Email: *Louise.Tripoli@ed.gov.*

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

SUPPLEMENTARY INFORMATION: On November 16, 2023, we published the NIA for the FY 2024 Personnel Development to Improve Services and Results for Children with Disabilities—Preparation of Related Services Personnel Serving Children with Disabilities who have High-Intensity Needs competition in the **Federal Register** (88 FR 78731). The NIA established a deadline of January 16, 2024, for eligible applicants to submit applications. We are extending the deadline for transmittal of applications for all eligible applicants under this competition until January 31, 2024. We are extending the deadline in order to allow all applicants more time to prepare and submit their applications. Applicants that have already timely submitted applications under this competition may resubmit applications but are not required to do so. If a new application is not submitted, the Department will use the application that was submitted by the original deadline. If a new application is submitted, the Department will consider the application that is last submitted and timely received.

Note: All information in the NIA, including eligibility criteria, remains the same, except for the deadline for the transmittal of applications and the deadline for intergovernmental review. The NIA is available at *https://www.federalregister.gov/documents/2023/11/16/2023-25307/applications-for-new-awards-personnel-development-to-improve-services-and-results-for-children-with*.

Information about Personnel Development to Improve Services and Results for Children with Disabilities—Preparation of Related Services Personnel Serving Children with Disabilities who have High-Intensity Needs is available on the Department's website at *https://www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html.*

Program Authority: 20 U.S.C. 1462 and 1481.

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

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the

Code of Federal Regulations at *www.govinfo.gov.* At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

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

Glenna Wright-Gallo,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2023–27307 Filed 12–12–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Nuclear Energy Advisory Committee; Charter Amendments, Establishments, Renewals and Terminations: Nuclear Energy Advisory Committee

AGENCY: Office of Nuclear Energy, Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to the Federal Advisory Committee Act, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Nuclear Energy Advisory Committee's charter will be renewed for a two-year period.

FOR FURTHER INFORMATION CONTACT: Krystal Milam, Designated Federal Officer at (301) 961–0383; email: *krystal.milam@nuclear.energy.gov.*

SUPPLEMENTARY INFORMATION: The Committee continues to provide advice and recommendations to the Assistant Secretary for Nuclear Energy and advise on national policy and scientific aspects of nuclear issues of concern to DOE; provide periodic reviews of the various program elements within DOE's nuclear programs and recommendations based thereon; ascertain the needs, views, and priorities of DOE's nuclear programs, and advise on long-range plans, priorities, and strategies to address more effectively the technical, financial, and policy aspects of such programs; and advise on appropriate levels of resources to develop those plans, priorities, and strategies.

Additionally, the Nuclear Energy Advisory Committee has been determined to be essential to conduct Department of Energy business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy, by law and agreement. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, adhering to the rules and regulations in implementation of that Act.

Signing Authority

This document of the Department of Energy (DOE) was signed on December 8, 2023, by Shena Kennerly, Acting Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on December 8, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–27316 Filed 12–12–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Biological and Environmental Research Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to the Federal Advisory Committee Act, and in accordance with title 41 of the Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Biological and Environmental Research Advisory Committee's (BERAC) charter will be renewed for a two-year period.

FOR FURTHER INFORMATION CONTACT: Dr. Tristram West at (301) 903–5155 or email: *Tristram.west@science.doe.gov.*

SUPPLEMENTARY INFORMATION: The Committee provides advice and recommendations to the Director, Office of Science on the Biological and Environmental Research programs.

Additionally, the renewal of BERAC has been determined to be essential to conduct business of the Department of Energy's (DOE) mission and to be in the public interest in connection with the performance of duties imposed upon the DOE by law and agreement. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, and rules and regulations issued in implementation of that Act.

Signing Authority

This document of the Department of Energy was signed on December 8, 2023, by Shena Kennerly, Acting Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on December 8, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–27315 Filed 12–12–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF24–2–000]

Western Area Power Administration; Notice of Filing

Take notice that on December 5, 2023, Western Area Power Administration submitted tariff filing: DSW OneTxRate WAPA209–20231205 to be effective 1/1/2024.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or

protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Comment Date: 5 p.m. Eastern Time on January 4, 2023.

Dated: December 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–27327 Filed 12–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2942–057, 2984–128]

Presumpscot Hydro LLC and Dichotomy Power Maine LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-capacity Amendment of License.

b. *Project Nos:* 2942–057 and 2984–128.

c. *Date Filed:* June 20, 2023, and supplemented October 31, 2023.[1]

d. *Applicant:* Presumpscot Hydro LLC and Dichotomy Power Maine LLC (co-licensees).

e. *Name of Project:* Dundee and Eel Weir, respectively.

f. *Location:* The Dundee Project is located on the Presumpscot River in Cumberland County, Maine, and the Eel Weir Project is located at the outlet of Sebago Lake on the Presumpscot River in Cumberland County, Maine. The projects do not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Jonathan DiCesare, 230 Park Avenue, Suite 307, New York, NY 10017, 518–657–9012, *info@elevatepower.com.*

i. *FERC Contact:* Jeremy Jessup, (202) 502–6779, *Jeremy.Jessup@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* January 8, 2024.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket numbers P–2942–057 and P–2984–128. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The co-licensees propose to upgrade the generating units at the Eel Weir Project by replacing two of the existing units (Units 1 and 2) with two new vertical double-regulated Kaplan units that would increase the authorized installed capacity from 1.80 megawatts (MW) to 1.99 MW, and decrease the total hydraulic capacity of the powerhouse from 822 to 796 cubic feet per second. Existing Unit 3 would remain in place and continue to operate. The co-licensees also propose modifications to the transmission lines at both the Dundee and the Eel Weir projects. Specifically, the co-licensees propose to remove the 3.5-mile-long, 11-kilovolt (kV) primary transmission line from Eel Weir Station to Dundee Station from the Eel Weir project boundary, and construct a new transformer at the Eel Weir Station and a new 12.5-kV primary transmission line using an existing 0.62-mile-long right-of-way along the power canal, to tie into the North Windham Substation on Route 35. At the Dundee Project, the co-licenses propose to remove the 10-mile-long, 11-kV North and South Feeder Lines from the Dundee Station to Westbrook from the project boundary, and instead transmit power from the Dundee Station to the new transformer at the Eel Weir Station using the existing 3.5-mile-long, 11-kV transmission line from Dundee to Eel Weir.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the

[1] The October 31, 2023 filing was also filed on October 30, 2023; however, the entire filing was made as Critical Energy Infrastructure Information (CEII). The October 31, 2023 filing is public except for the Exhibit F drawings which are CEII.

last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

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.*

Dated: December 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–27338 Filed 12–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–553–000]

Martin County Solar Project, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Martin County Solar Project, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 27, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Dated: December 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–27341 Filed 12–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–561–000]

VESI 23 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of VESI 23 LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888

First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 27, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: December 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–27334 Filed 12–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15334–000]

SV Hydro LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On November 16, 2023, SV Hydro LLC., filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project to be located at the U.S. Army Corps of Engineers' (Corps) Coffeeville Lock and Dam near the Town of Coffeeville, Choctaw, and Clarke Counties, Alabama. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Coffeeville Hydroelectric Project would consist of the following: (1) a 200-foot-long, 100-foot-wide intake channel; (2) a 90-foot-long, 120-foot-wide, 50-foot-high concrete powerhouse located on the northwest bank of the river at the left abutment (looking downstream) of the existing Corps' dam containing four Kaplan bulb turbine-generator units with a total capacity of 36.0 megawatts; (3) a 250-foot-long, 100-foot-wide tailrace; (4) a switchyard, adjacent to the powerhouse; and (5) a 2.7-mile-long, 69 kilovolt transmission line. The proposed project would have an estimated annual generation of 180 megawatt-hours.

Applicant Contact: Douglas Spaulding, Nelson Energy, 1030 Tyrol Trail, Suite 101, Minneapolis, MN 55416; phone: (612) 599–8493.

FERC Contact: Michael Spencer; phone: (202) 502–6093, or by email at *michael.spencer@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

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.*

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15334–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's website at *https://elibrary.ferc.gov/eLibrary/search.* Enter the docket number (P–15334) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: December 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–27337 Filed 12–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–551–000]

Elkhart County Solar Project, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Elkhart County Solar Project, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 27, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: December 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–27331 Filed 12–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–542–000]

TAI Huntsville Solar LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of TAI Huntsville Solar LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 27, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: December 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–27340 Filed 12–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–552–000]

Martin County II Solar Project, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Martin County II Solar Project, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 27, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

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Dated: December 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–27332 Filed 12–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–560–000]

Carpenter Wind Farm LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Carpenter Wind Farm LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 27, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission

processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: December 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–27336 Filed 12–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–541–000]

Kiowa County Solar Project, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Kiowa County Solar Project, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 27, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

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Dated: December 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–27329 Filed 12–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–548–000]

Dow Hydrocarbons and Resources LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Dow Hydrocarbons and Resources LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 27, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–27333 Filed 12–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–21–000]

Algonquin Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on November 30, 2023, Algonquin Gas Transmission, LLC (Algonquin), 915 N Eldridge Parkway, Suite 1100, Houston, Texas 77079, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.208 of the Commission's regulations under the Natural Gas Act (NGA), and Algonquin's blanket certificate issued in Docket No. CP87–317–000, for authorization to modify its existing E System Lateral Tap Site (Tap Site) located in the Town of Coventry, Tolland County, Connecticut (E–1 System Regulator Installation Project or Project). Algonquin states that the Project will have no impact on the certificated capacity of its system, and there will be no abandonment or reduction in service to any customer of Algonquin as a result of the Project. The estimated cost for the project is $15,700,000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*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. Public access to records formerly available in the Commission's physical Public Reference Room, which was located at the Commission's headquarters, 888 First Street NE, Washington, DC 20426, are now available via the Commission's website. For assistance, contact the Federal Energy Regulatory Commission at *FercOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY (202) 502–8659.

Any questions concerning this request should be directed to Arthur Diestel, P.O. Box 1642, Houston, Texas 77251–1642, (713) 627–5116, *Arthur.Diestel@enbridge.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5 p.m. Eastern Time on February 5, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is February 5, 2024. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is February 5, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before February 5, 2024. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP24–21–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP24–21–000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other method: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Arthur Diestel, Director Regulatory, P.O. Box 1642, Houston, Texas 77251–1642 or by email *Arthur.Diestel@enbridge.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: December 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–27330 Filed 12–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–563–000]

Crooked Lake Solar II LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Crooked Lake Solar II LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 27, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: December 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–27335 Filed 12–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL24–27–000]

Notice of Institution of Section 206 Proceeding and Refund Effective Date

Duke Energy Commercial Enterprises, LLC
Duke Energy Carolinas, LLC
Duke Energy Florida, LLC
Duke Energy Progress, LLC
Duke Energy Renewable Services, LLC
Broad River Solar, LLC
Stony Knoll, LLC
Speedway Solar NC, LLC
Carolina Solar Power, LLC
CPRE Lessee, LLC

On December 7, 2023, the Commission issued an order in Docket No. EL24–27–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation to determine whether the market-based rate authority of Duke Energy Commercial Enterprises, LLC, Duke Energy Carolinas, LLC, Duke Energy Florida, LLC, Duke Energy Progress, LLC, Duke Energy Renewable Services, LLC, Broad River Solar, LLC, Stony Knoll, LLC, Speedway Solar NC, LLC, Carolina Solar Power, LLC, and CPRE Lessee, LLC in the Florida Municipal Power Pool balancing authority area is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Duke Energy Commercial Enterprises, LLC, et al.,* 185 FERC ¶ 61,173 (2023).

The refund effective date in Docket No. EL24–27–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL24–27–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2022), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The 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 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–27328 Filed 12–12–23; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meetings

TIME AND DATE: 4:01 p.m. on Friday, December 8, 2023.

PLACE: The meeting was held via video conference on the internet.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Special Review Committee of the Federal Deposit Insurance Corporation met to consider matters related to the Corporation's corporate activities within its authority to act on behalf of the Federal Deposit Insurance Corporation. In calling the meeting, the Special Review Committee determined, by the unanimous vote of Director Jonathan P. McKernan and Director Michael J. Hsu (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2) and (c)(4) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2) and (c)(4)).

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Debra A. Decker, Executive Secretary of the Corporation, at 202–898–8748.

Dated: December 8, 2023.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–27428 Filed 12–11–23; 11:15 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than December 28, 2023.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice

President) 1 Memorial Drive, Kansas City, Missouri, 64198–0001. Comments can also be sent electronically to *KCApplicationComments@kc.frb.org:*

1. *The Marital Trust created under Indenture of the James S. Birkbeck Revocable Trust, dated April 20, 1995, Holton, Kansas, Paula Birkbeck Taylor, Holton, Kansas, and J. Patrick Birkbeck, Topeka, Kansas, as co-trustees; Paula N. Birkbeck Taylor Revocable Trust UIT dated August 8, 2002, Holton, Kansas, Paula Birkbeck Taylor, as trustee; Paula Birkbeck as co-trustee of the Mary Lou Birkbeck Trust dated April 20, 1995, Holton, Kansas; J. Patrick Birkbeck Revocable Trust UIT dated March 31, 2008, Topeka, Kansas, J. Patrick Birkbeck, as trustee; and Ryan Patrick Taylor, Holton, Kansas;* to become members of the Birkbeck/Taylor Family Control Group, a group acting in concert, to retain voting shares of Denison Bancshares, Inc. of Holton, and thereby indirectly retain voting shares of Denison State Bank, both of Holton, Kansas.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–27357 Filed 12–12–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Interstate Administrative Subpoena and Notice of Lien (Office of Management and Budget OMB #: 0970–0152)

AGENCY: Office of Child Support Services, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) is requesting a 3-year extension with proposed revisions to the Interstate Administrative Subpoena and Notice of Lien forms (Office of Management and Budget #0970–0152, expiration 6/30/2024). The forms are updated to reflect the name change of the Federal child support program office from the Office of Child Support Enforcement to the Office of Child Support Services.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Administrative Subpoena is used by State child support agencies to obtain income and other financial information regarding noncustodial parents for purposes of establishing, enforcing, and modifying child support orders. The Notice of Lien imposes liens in cases with overdue support and allows a State child support agency to file liens across State lines, when it is more efficient than involving the other State's IV–D agency.

Section 452(a)(11) of the Social Security Act requires the Secretary of the Department of Health and Human Services to promulgate forms for administrative subpoenas and imposition of liens used by State child support agencies in interstate cases. Section 454(9)(E) of the Social Security Act requires each State to cooperate with any other State in using the Federal forms for issuance of administrative subpoenas and imposition of liens in interstate child support cases.

Respondents: State, local, or Tribal agencies administering a child support program under title IV–D of the Social Security Act.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Administrative Subpoena	54	462	.5	12,474
Notice of Lien	54	29,762	.5	803,574

Estimated Total Annual Burden Hours: 816,048.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 652; 42 U.S.C. 654.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–27313 Filed 12–12–23; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–4974]

Advanced Manufacturing Technologies Designation Program; Draft Guidance for Industry; Availability; Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of a

draft guidance for industry entitled ''Advanced Manufacturing Technologies Designation Program.'' FDA encourages the early adoption of advanced manufacturing technologies (AMTs) that have the potential to benefit patients by improving manufacturing and supply dependability and optimizing development time of drug and biological products. These technologies can be integral to ensuring quality and supporting a robust supply of drugs that are life-supporting, life-sustaining, of critical importance to providing healthcare, or in shortage. AMTs can directly improve product quality through higher capability manufacturing designs and enhanced controls (*e.g.,* leading to fewer human errors). This draft guidance provides recommendations to persons and organizations interested in participating in FDA's Advanced Manufacturing Technologies Designation Program, which is intended to facilitate the development of drugs, including biological products, manufactured using an AMT that has been designated as such under the program.

DATES: Submit either electronic or written comments on the draft guidance by February 12, 2024 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance. Submit electronic or written comments on the proposed collection of information in the draft guidance by February 12, 2024.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–D–4974 for ''Advanced Manufacturing Technologies Designation Program.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

With regard to the draft guidance: Ranjani Prabhakara, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 6648, Silver Spring, MD 20993, 240–402–4652; or Anne Taylor, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

With regard to the proposed collection of information: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Advanced Manufacturing Technologies Designation Program.'' On December 29, 2022, the Food and Drug Omnibus Reform Act of 2022 (FDORA) amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) by adding section 506L (21 U.S.C. 356l), which requires the establishment of an Advanced Manufacturing Technologies Designation Program and the publication of a related guidance. FDA's

Advanced Manufacturing Technologies Designation Program offers a framework for persons or organizations (*e.g.,* applicants, contract manufacturers, technology developers) to request designation of a method or combination of methods of manufacturing a drug as an AMT. The program is intended to facilitate the development of drugs that are manufactured using a designated AMT, submitted in an application under section 505 of the FD&C Act (21 U.S.C. 355) or section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262), and regulated by the Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER). FDA will expedite development and assessment of an application, including supplements, for drugs that are manufactured using a designated AMT as described in section 506L(d)(1) of the FD&C Act.

The development of this guidance takes into consideration feedback provided at a public meeting (see section 506L(e) of the FD&C Act) and comments submitted to the public docket (Docket No. FDA–2023–N–1259) about the public meeting. The meeting was held on June 8, 2023 (April 24, 2023, 88 FR 24807), to discuss the use of innovative manufacturing technologies for CDER- and CBER-regulated products and to solicit industry and public feedback regarding the Advanced Manufacturing Technologies Designation Program.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Advanced Manufacturing Technologies Designation Program.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Advanced Manufacturing Technologies Designation Program

OMB Control Number 0910–0139—Revision

This information collection supports implementation of requirements under section 506L of the FD&C Act. The Advanced Manufacturing Technologies Designation Program encourages early adoption of new technological advances in manufacturing processes by the pharmaceutical industry or other drug/biologic developers to ensure that regulatory assessments and new drug and biologic development are based on state-of-the-art pharmaceutical science. Any request for AMT designation will be reviewed by a team of FDA experts in quality assessment to evaluate the data and information submitted and to determine if the method of manufacturing or combination of methods meets the criteria of an AMT in section 506L of the FD&C Act. If AMT designation is granted, then future new drug application (NDA), abbreviated new drug application (ANDA), or biologics license application (BLA) applicants may use or reference the designated AMT, noting specific application of the designated AMT to specific product development and inclusion in NDA, ANDA, or BLA submissions describing development and manufacturing processes.

We are issuing a draft guidance for industry entitled ''Advanced Manufacturing Technologies Designation Program,'' which outlines the process for submitting an AMT designation request; when and how FDA will communicate receipt of and provide advice on AMT designation requests; when and how FDA will assess AMT designation requests; the process by which FDA will engage with designated AMT holders and applicants for drugs manufactured using, referencing, or relying upon a designated AMT; and benefits related to drug development and application assessment.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Section 506L of the FD&C Act	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
AMT designation request; Guidance for industry section III.B	20	1	20	10	200
Total	.....	.....	20	.....	200

[1] There are no capital or operating and maintenance costs associated with the information collection.

This draft guidance also refers to previously approved FDA collections of information. The collections of information in 21 CFR part 312 regarding product development including chemistry, proposed manufacturing procedures and controls, and requests for meetings have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 regarding applicable manufacturing information for NDAs are approved under OMB control number 0910–0001; and the collections of information in 21

CFR part 601 regarding applicable manufacturing information for BLAs are approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain an electronic version of the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: December 8, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–27309 Filed 12–12–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–5022]

Data Standards; Support and Requirement Begins for the Clinical Data Interchange Standards Consortium Version 2.0 of the Study Data Tabulation Model, Version 3.4 of the Study Data Tabulation Model Implementation Guide, and Version 1.0 of the Standard for Exchange of Nonclinical Data Implementation Guide—Genetox; Requirement Ends for the Clinical Data Interchange Standards Version 3.2 of the Study Data Tabulation Model Implementation Guide

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA or Agency) Center for Biologics Evaluation and Research (CBER) and Center for Drug Evaluation and Research (CDER) are announcing that support begins for version 2.0 of the Clinical Data Interchange Standards Consortium (CDISC) Study Data Tabulation Model (SDTMv2.0), version 3.4 of the CDISC Study Data Tabulation Model Implementation Guide (SDTMIGv3.4), and version 1.0 of the Standard for Exchange of Nonclinical Data Implementation Guide—Genetox (SENDIG-Genetoxv1.0) and announcing the date that these version updates are required in certain submissions. CBER and CDER are also announcing the date that requirement ends for version 3.2 of the CDISC SDTMIG (SDTMIGv3.2). The Agency will update the FDA Data Standards Catalog (Catalog) to reflect these changes. The Agency will publish in the technical specifications document entitled ''Study Data Technical Conformance Guide'' additional details on how to implement new variables.

DATES: Support for version CDISC SDTMv2.0, SDTMIGv3.4, and SENDIG-Genetoxv1.0 begins December 13, 2023.

The requirement for electronic submissions to be submitted using CDISC SDTMv2.0, SDTMIGv3.4, and SENDIG-Genetoxv1.0 begins March 15, 2025, for new drug applications (NDAs), abbreviated new drug applications (ANDAs), certain biologics license applications (BLAs), and certain investigational new drug applications (INDs). The requirement for electronic submissions to be submitted using version CDISC SDTMIGv3.2 ends December 13, 2023.

ADDRESSES: You may submit comments as follows.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–5022 for ''Data Standards; Requirement Begins for the Clinical Data Interchange Standards Consortium Version 2.0 of the Study Data Tabulation Model and Version 3.4 of the Study Data Tabulation Model Implementation Guide; Requirement Ends for the Clinical Data Interchange Standards Version 3.2 of the Study Data Tabulation Model Implementation Guide.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the

heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: *CDER:* Helena Sviglin, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1117, Silver Spring, MD 20993–0002, 240–402–6511, *cderdatastandards@fda.hhs.gov.*

CBER: Lisa Lin and Anne Taylor, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911, *CBER-eDATA@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA's CBER and CDER are issuing this **Federal Register** notice to announce the date that support begins for CDISC SDTMv2.0, SDTMIGv3.4, and SENDIG-Genetoxv1.0 and requirement ends for version 3.2 of the CDISC SDTMIG. The guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Standardized Study Data,'' published June 2021 (eStudy Data guidance) (available at *https://www.fda.gov/media/82716/download*), implements the electronic submission requirements of section 745A(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379k–1(a)) for study data contained in NDAs, ANDAs, certain BLAs, and certain INDs submitted to CBER or CDER by specifying the format for electronic submissions. The eStudy Data guidance states that a **Federal Register** notice will specify any new standards and version updates to FDA-supported study data standards that will be added to the Catalog, when the support for such standards and version updates begins or ends, and when the requirement to use such standards and version updates in submissions begins or ends.

Support for CDISC SDTMv2.0, SDTMIGv3.4, and SENDIG-Genetoxv1.0 begins December 13, 2023. The transition date for these version updates is March 15, 2024. The requirement for electronic submissions to be submitted using CDISC SDTMv2.0, SDTMIGv3.4, and SENDIG-Genetoxv1.0 is March 15, 2025, for NDAs, ANDAs, certain BLAs, and certain INDs. The requirement for electronic submissions to be submitted using version 3.2 of the CDISC SDTMIG ends December 13, 2023.

Dated: December 8, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–27310 Filed 12–12–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0008]

Request for Nominations for Voting Members for the Genetic Metabolic Diseases Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is requesting nominations for voting members excluding consumer and industry representatives, to serve on the Genetic Metabolic Diseases Advisory Committee (the Committee) in the Center for Drug Evaluation and Research. Nominations will be accepted for current vacancies effective with this notice. FDA seeks to include the views of members of all gender groups, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore encourages nominations of appropriately qualified candidates from these groups.

DATES: Nominations received on or before February 12, 2024 will be given first consideration for membership on the Committee. Nominations received after February 12, 2024 will be considered for nomination to the committee as later vacancies occur.

ADDRESSES: All nominations for membership should be sent electronically by logging into the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* and selecting Academician/Practitioner from the dropdown menu (regardless of whether Academician/Practitioner accurately describes the nominee), or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: Moon Choi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–2894, email: *GEMDAC@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is requesting nomination for voting members to fill current vacancies on the Genetic Metabolic Diseases Advisory Committee. This notice does not include consumer and industry representative nominations. The Agency will publish two separate notices announcing the vacancy of a representative of consumer interests and the vacancy of a representative of industry interests.

I. General Description of the Committee Duties

The Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drug and biologic products for use in the treatment of genetic metabolic diseases and makes appropriate recommendations to the Commissioner of Food and Drugs.

II. Criteria for Voting Members

The Committee consists of a core of nine voting members, including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of medical genetics, manifestations of inborn errors of metabolism, small population trial design, translational science, pediatrics, epidemiology, or statistics and related specialties. Members will be invited to serve for overlapping terms of up to 4 years. Non-Federal members of this committee will serve either as Special Government Employees or non-voting representatives. Federal members will serve as Regular Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who serves as an individual, but who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting representative member who is identified with industry interests. There may also be an alternate industry representative.

III. Nomination Procedures

Any interested person may nominate one or more qualified individuals for membership on the Committee with the exception of the following: individuals who are not U.S. citizens or nationals cannot be appointed as Advisory Committee Members (42 U.S.C. 217(a))

in FDA. Self-nominations are also accepted. Nominations must include a cover letter; a current, complete résumé or curriculum vitae for each nominee, including current business and/or home address, telephone number, and email address if available, and a signed copy of the Acknowledgement and Consent form available at the FDA Advisory Nomination Portal (see **ADDRESSES**). Nominations must specify the advisory committee for which the nominee is recommended. Nominations must also acknowledge that the nominee is aware of the nomination, unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters related to financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*) and 21 CFR part 14, relating to advisory committees.

Dated: December 7, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–27301 Filed 12–12–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0008]

Request for Nominations for Individuals and Consumer Organizations for Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is requesting that any consumer organizations interested in participating in the selection of voting and/or nonvoting consumer representatives to serve on its advisory committees or panels notify FDA in writing. FDA is also requesting nominations for voting and/or nonvoting consumer representatives to serve on advisory committees and/or panels for which vacancies currently exist or are expected to occur in the near future. Nominees recommended to serve as a voting or nonvoting consumer representative may be self-nominated or may be nominated by a consumer organization. FDA seeks to include the views of individuals on its advisory committee regardless of their gender identification, religious affiliation, racial and ethnic identification, or disability status and, therefore, encourages nominations of appropriately qualified candidates from all groups.

DATES: Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests on an FDA advisory committee or panel may send a letter or email stating that interest to FDA (see **ADDRESSES**) by January 29, 2024, for vacancies listed in this notice. Concurrently, nomination materials for prospective candidates should be sent to FDA (see **ADDRESSES**) by January 29, 2024. Nominations will be accepted for current vacancies and for those that will or may occur through December 31, 2023.

ADDRESSES: All statements of interest from consumer organizations interested in participating in the selection process should be submitted electronically to *ACOMSSubmissions@fda.hhs.gov or* by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002.

Consumer representative nominations should be submitted electronically by logging into the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm,* or by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002. Additional information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: *For questions relating to participation in the selection process:* Kimberly Hamilton, Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002, 301–796–8220, *Kimberly.Hamilton@fda.hhs.gov.*

For questions relating to specific advisory committees or panels, contact the appropriate contact person listed in table 1.

TABLE 1—ADVISORY COMMITTEE CONTACTS

Contact person	Committee/panel
Rakesh Raghuwanshi, Office of the Chief Scientist, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 3309, Silver Spring, MD 20993–0002, 301–796–4769, *Rakesh.Raghuwanshi@fda.hhs.gov*.	FDA Science Board Advisory Committee.
Prabhakara Atreya, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 1226, Silver Spring, MD 20993–0002, 240–402–8006, *Prabhakara.Altreya@fda.hhs.gov*.	Allergenic Products Advisory Committee.
Moon Hee Choi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2434, Silver Spring, MD 20993–0002, 301–796–2894, *MoonHee.Choi@fda.hhs.gov*.	Anesthetic and Analgesic Drug Products Advisory Committee, Non-Prescription Drugs Advisory Committee.
She-Chia Jankowski, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6178, Silver Spring, MD 20993–0002, 240–402–5343, *She-Chia.Jankowski@fda.hhs.gov*.	Antimicrobial Drugs Advisory Committee.
Jessica Seo, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2412, Silver Spring, MD 20993–0002, 301–796–7699, *Jessica.Seo@fda.hhs.gov*.	Peripheral and Central Nervous System Drugs Advisory Committee.
Yvette Waples, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2510, Silver Spring, MD 20993–0002, 301–796–9034, *Yvette.Waples@fda.hhs.gov*.	Cardiovascular and Renal Drugs Advisory Committee, Medical Imaging Drugs Advisory Committee.

TABLE 1—ADVISORY COMMITTEE CONTACTS—Continued

Contact person	Committee/panel
LaToya Bonner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2428, Silver Spring, MD 20993–0002, 301–796–2855, *LaToya.Bonner@fda.hhs.gov*.	Endocrinologic and Metabolic Drugs Advisory Committee.
Takyiah Stevenson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2406, Silver Spring, MD 20993–0002, 240–402–2507, *Takyiah.Stevenson@fda.hhs.gov*.	Pharmacy Compounding Advisory Committee.
Joyce Frimpong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2438, Silver Spring, MD 20993–0002, 301–796–7973, *Joyce.Frimpong@fda.hhs.gov*.	Psychopharmacologic Drugs Advisory Committee.
Candace Nalls, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993–0002, 301–636–0510, *Candace.Nalls@fda.hhs.gov*.	Anesthesiology and Respiratory Therapy Devices Panel; Clinical Chemistry and Clinical Toxicology Devices Panel; Ear, Nose and Throat Devices Panel; Gastroenterology-Urology Devices Panel; General and Plastic Surgery Devices Panel.
James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993–0002, 301–796–6313, *James.Swink@fda.hhs.gov*.	Circulatory System Devices Panel; Microbiology Devices Panel.
Akinola Awojope, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5216, Silver Spring, MD 20993–0002, 301–636–0512, *Akinola.Awojope@fda.hhs.gov*.	Dental Products Panel; Orthopaedic and Rehabilitation Devices Panel.
Jarrod Collier, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 1333, Silver Spring, MD 20993–0002, 240–672–5763, *Jarrod.Collier@fda.hhs.gov*.	General Hospital and Personal Use Devices Panel; Hematology and Pathology Devices Panel; Molecular and Clinical Genetics Panel; Ophthalmic Devices Panel; Radiological Devices Panel.
James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993–0002, 301–796–6313, *James.Swink@fda.hhs.gov*.	National Mammography Quality Assurance Advisory Committee.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting and/or nonvoting consumer representatives for the vacancies listed in table 2:

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
FDA Science Board Advisory Committee—The Science Board provides advice to the Commissioner of Food and Drugs Administration (Commissioner) and other appropriate officials on specific complex scientific and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board provides advice that supports the Agency in keeping pace with technical and scientific developments, including in regulatory science; and input into the Agency's research agenda, and on upgrading its scientific and research facilities and training opportunities. It also provides, where requested, expert review of Agency-sponsored intramural and extramural scientific research programs.	1—Voting	Immediately.
Allergenic Products Advisory Committee—Knowledgeable in the fields of allergy, immunology, pediatrics, internal medicine, biochemistry, and related specialties.	1—Voting	Immediately.
Anesthetic and Analgesic Drug Products Advisory Committee—Knowledgeable in the fields of anesthesiology, analgesics (such as: abuse-deterrent opioids, novel analgesics, and issues related to opioid abuse) epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Non-Prescription Drugs Advisory Committee—Knowledgeable in the fields of internal medicine, family practice, clinical toxicology, clinical pharmacology, pharmacy, dentistry, and related specialties.	1—Voting	Immediately.
Antimicrobial Drugs Advisory Committee—Knowledgeable in the fields of infectious disease, internal medicine, microbiology, pediatrics, epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Peripheral and Central Nervous Systems Drugs Advisory Committee—Knowledgeable in the fields of neurology, neuropharmacology, neuropathology, otolaryngology, epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Cardiovascular and Renal Drugs Advisory Committee—Knowledgeable in the fields of cardiology, hypertension, arrhythmia, angina, congestive heart failure, diuresis, and biostatistics.	1—Voting	Immediately.
Medical Imaging Drugs Advisory Committee—Knowledgeable in the fields of nuclear medicine, radiology, epidemiology, statistics, and related specialties.	1—Voting	Immediately.
Endocrinologic and Metabolic Drugs Advisory Committee—Knowledgeable in the fields of endocrinology, metabolism, epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Pharmacy Compounding Advisory Committee—Knowledgeable in the fields of pharmaceutical compounding, pharmaceutical manufacturing, pharmacy, medicine, and related specialties.	1—Voting	Immediately.
Psychopharmacologic Drugs Advisory Committee—Knowledgeable in the fields of psychopharmacology, psychiatry, epidemiology or statistics, and related specialties.	1—Voting	Immediately.

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED—Continued

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
Anesthesiology and Respiratory Therapy Devices Panel—Anesthesiologists, pulmonary medicine specialists, or other experts who have specialized interests in ventilator support, pharmacology, physiology, or the effects and complications of anesthesia.	1—Nonvoting	Immediately.
Clinical Chemistry and Clinical Toxicology Devices Panel—Doctor of Medicine or Philosophy with experience in clinical chemistry (*e.g.,* cardiac markers), clinical toxicology, clinical pathology, clinical laboratory medicine, and endocrinology.	1—Nonvoting	Immediately.
Ear, Nose and Throat Devices Panel—Otologists, neurotologists, and audiologists	1—Nonvoting	Immediately.
Gastroenterology-Urology Devices Panel—Gastroenterologists, urologists, and nephrologists	1—Nonvoting	Immediately.
General and Plastic Surgery Devices Panel—Surgeons (general, plastic, reconstructive, pediatric, thoracic, abdominal, pelvic and endoscopic); dermatologists; experts in biomaterials, lasers, wound healing, and quality of life; and biostatisticians.	1—Nonvoting	Immediately.
Circulatory System Devices Panel—Interventional cardiologists, electrophysiologists, invasive (vascular) radiologists, vascular and cardiothoracic surgeons, and cardiologists with special interest in congestive heart failure.	1—Nonvoting	Immediately.
Microbiology Devices Panel—Clinicians with an expertise in infectious disease, *e.g.,* pulmonary disease specialists, sexually transmitted disease specialists, pediatric infectious disease specialists, experts in tropical medicine and emerging infectious diseases, mycologists; clinical microbiologists and virologists; clinical virology and microbiology laboratory directors, with expertise in clinical diagnosis and in vitro diagnostic assays, *e.g.,* hepatologists; molecular biologists.	1—Nonvoting	Immediately.
Dental Products Panel—Dentists, engineers and scientists who have expertise in the areas of dental implants, dental materials, periodontology, tissue engineering, and dental anatomy.	1—Nonvoting	Immediately.
Obstetrics and Gynecology Devices Panel—Experts in perinatology, embryology, reproductive endocrinology, pediatric gynecology, gynecological oncology, operative hysteroscopy, pelviscopy, electrosurgery, laser surgery, assisted reproductive technologies, contraception, postoperative adhesions, and cervical cancer and colposcopy; biostatisticians and engineers with experience in obstetrics/gynecology devices; urogynecologists; experts in breast care; experts in gynecology in the older patient; experts in diagnostic (optical) spectroscopy; experts in midwifery; labor and delivery nursing.	1—Nonvoting	Immediately.
Orthopaedic and Rehabilitation Devices Panel—Orthopedic surgeons (joint spine, trauma, and pediatric); rheumatologists; engineers (biomedical, biomaterials, and biomechanical); experts in rehabilitation medicine, sports medicine, and connective tissue engineering; and biostatisticians.	1—Nonvoting	Immediately.
General Hospital and Personal Use Devices Panel—Internists, pediatricians, neonatologists, endocrinologists, gerontologists, nurses, biomedical engineers, or microbiologists/infection control practitioners or experts.	1—Nonvoting	Immediately.
Hematology and Pathology Devices Panel—Hematologists (benign and/or malignant hematology), hematopathologists (general and special hematology, coagulation and hemostasis, and hematological oncology), gynecologists with special interests in gynecological oncology, cytopathologists, and molecular pathologists with special interests in development of predictive biomarkers.	1—Nonvoting	Immediately.
Molecular and Clinical Genetics Devices Panel—Experts in human genetics and in the clinical management of patients with genetic disorders, *e.g.,* pediatricians, obstetricians, neonatologists. The Agency is also interested in considering candidates with training in inborn errors of metabolism, biochemical and/or molecular genetics, population genetics, epidemiology, and related statistical training. Additionally, individuals with experience in genetic counseling, medical ethics, and ancillary fields of study will be considered.	1—Nonvoting	Immediately.
Ophthalmic Devices Panel—Ophthalmologists with expertise in corneal-external disease, vitreo-retinal surgery, glaucoma, ocular immunology, ocular pathology; optometrists; vision scientists; and ophthalmic professionals with expertise in clinical trial design, quality-of-life assessment, electrophysiology, low-vision rehabilitation, and biostatistics.	1—Nonvoting	Immediately.
Radiological Devices Panel—Physicians with experience in general radiology, mammography, ultrasound, magnetic resonance, computed tomography, other radiological subspecialties, and radiation oncology; scientists with experience in diagnostic devices, radiation physics, statistical analysis, digital imaging, and image analysis.	1—Nonvoting	Immediately.
National Mammography Quality Assurance Advisory Committee—Physician, practitioner, or other health professional whose clinical practice, research specialization, or professional expertise includes a significant focus on mammography.	3—Voting	Immediately.

I. Functions and General Description of the Committee Duties

A. FDA Science Board Advisory Committee

The Science Board Advisory Committee (Science Board) provides advice to the Commissioner of Food and Drugs (Commissioner) and other appropriate officials on specific complex scientific and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board provides advice that supports the Agency in keeping pace with technical and scientific developments, including in regulatory science, and input into the Agency's research agenda and on upgrading its scientific and research facilities and training opportunities. It also provides, where requested, expert review of Agency-sponsored intramural and extramural scientific research programs.

B. Allergenic Products Advisory Committee

Reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of marketed and investigational allergenic biological products or materials that are administered to humans for the diagnosis, prevention, or treatment of allergies and allergic disease and makes appropriate recommendations to the Commissioner regarding the affirmation or revocation of biological product licenses; on the safety, effectiveness, and labeling of the products; on clinical and laboratory studies of such products; on amendments or revisions to regulations governing the manufacture, testing, and licensing of allergenic biological products; and on the quality and relevance of FDA's research programs.

C. Anesthetic and Analgesic Drug Products Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products, including analgesics (*e.g.,* abuse-deterrent opioids, novel analgesics, and issues related to opioid abuse) and drug products for use in anesthesiology, and makes appropriate recommendations to the Commissioner.

D. Nonprescription Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products, or any other FDA-regulated product, for use in the treatment of a broad spectrum of human symptoms and diseases, and advises the Commissioner either on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded or on the approval of new drug applications for such drugs. The Committee serves as a forum for the exchange of views regarding the prescription and nonprescription status, including switches from one status to another, of these various drug products and combinations thereof. The Committee may also conduct peer review of Agency-sponsored intramural and extramural scientific biomedical programs in support of FDA's mission and regulatory responsibilities.

E. Antimicrobial Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders.

F. Arthritis Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of arthritis, rheumatism, and related diseases.

G. Peripheral and Central Nervous System Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of neurologic diseases.

H. Cardiovascular and Renal Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of cardiovascular and renal disorders.

I. Medical Imaging Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

J. Endocrinologic and Metabolic Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of endocrine and metabolic disorders.

K. Pharmacy Compounding Advisory Committee

Provides advice on scientific, technical, and medical issues concerning drug compounding under sections 503A and 503B of the Federal Food, Drug, and Cosmetic Act (FD&C Act), and, as required, any other product for which FDA has regulatory responsibility.

L. Psychopharmacologic Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the practice of psychiatry and related fields.

M. Medical Devices Advisory Committee Panels

The Medical Devices Advisory Committee has established certain panels to review and evaluate data on the safety and effectiveness of marketed and investigational devices and make recommendations for their regulation. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area: (1) advises on the classification or reclassification of devices into one of three regulatory categories and advises on any possible risks to health associated with the use of devices; (2) advises on formulation of product development protocols; (3) reviews premarket approval applications for medical devices; (4) reviews guidelines and guidance documents; (5) recommends exemption of certain devices from the application of portions of the FD&C Act; (6) advises on the necessity to ban a device; and (7) responds to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and Agency guidance and policies. The Panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or Agency decisions or actions.

N. National Mammography Quality Assurance Advisory Committee

Advises the Agency on the development of appropriate quality standards and regulations for mammography facilities; standards and regulations for bodies accrediting mammography facilities under this program; regulations with respect to sanctions; procedures for monitoring compliance with standards; establishing a mechanism to investigate consumer complaints; and reporting new developments concerning breast imaging that should be considered in the oversight of mammography facilities. The Committee also advises on determining whether there exists a shortage of mammography facilities in

rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas; determining whether there will be a sufficient number of medical physicists after October 1, 1999; and determining the costs and benefits of compliance with these requirements.

II. Criteria for Members

Persons nominated for membership as consumer representatives on committees or panels should meet the following criteria: (1) demonstrate an affiliation with and/or active participation in consumer or community-based organizations, (2) be able to analyze technical data, (3) understand research design, (4) discuss benefits and risks, and (5) evaluate the safety and efficacy of products under review. The consumer representative should be able to represent the consumer perspective on issues and actions before the advisory committee; serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations; and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

III. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include the use of organizations representing the public interest and public advocacy groups. These organizations recommend nominees for the Agency's selection. Representatives from the consumer health branches of Federal, State, and local governments also may participate in the selection process. Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests should send a letter stating that interest to FDA (see **ADDRESSES**) within 30 days of publication of this document.

Within the subsequent 45 days, FDA will compile a list of consumer organizations that will participate in the selection process and will forward to each such organization a ballot listing at least two qualified nominees selected by the Agency based on the nominations received, together with each nominee's current curriculum vitae or résumé. Ballots are to be filled out and returned to FDA within 30 days. The nominee receiving the highest number of votes ordinarily will be selected to serve as the member representing consumer interests for that particular advisory committee or panel.

IV. Nomination Procedures

Any interested person or organization may nominate one or more qualified persons to represent consumer interests on the Agency's advisory committees or panels. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee and a signed copy of the *Acknowledgement and Consent* form available at the FDA Advisory Nomination Portal (see **ADDRESSES**), and a list of consumer or community-based organizations for which the candidate can demonstrate active participation.

Nominations must also specify the advisory committee(s) or panel(s) for which the nominee is recommended. In addition, nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest. Members will be invited to serve for terms of up to 4 years.

FDA will review all nominations received within the specified timeframes and prepare a ballot containing the names of qualified nominees. Names not selected will remain on a list of eligible nominees and be reviewed periodically by FDA to determine continued interest. After selecting qualified nominees for the ballot, FDA will provide those consumer organizations that are participating in the selection process with the opportunity to vote on the listed nominees. Only organizations vote in the selection process. Persons who nominate themselves to serve as voting or nonvoting consumer representatives will not participate in the selection process.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: December 8, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–27308 Filed 12–12–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0008]

Request for Nominations of Individuals and Consumer Organizations for the Genetic Metabolic Diseases Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is requesting nominations for a voting consumer representative to serve on the Genetic Metabolic Diseases Advisory Committee. FDA is also requesting that any consumer organizations interested in participating in the selection of a voting consumer representative to serve on the Genetic Metabolic Diseases Advisory Committee notify FDA in writing. Nominees recommended to serve as a voting consumer representative may either be self-nominated or may be nominated by a consumer organization. Nominations will be accepted for the current vacancy effective with this notice. FDA seeks to include the views of members of all gender groups, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

DATES: Any consumer organization interested in participating in the selection of an appropriate voting member to represent consumer interests on the Genetic Metabolic Diseases Advisory Committee may send a letter or email stating that interest to FDA (see **ADDRESSES**) by February 12, 2024 for vacancy listed in this notice. Concurrently, nomination materials for prospective candidates should be sent to FDA (see **ADDRESSES**) by February 12, 2024. Nominations will be accepted for current vacancy.

ADDRESSES: All statements of interest from consumer organizations interested in participating in the selection process should be submitted electronically to *ACOMSSubmissions@fda.hhs.gov* or by mail to Advisory Committee and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002.

Consumer representative nominations should be submitted electronically by logging into the FDA Advisory Committee Membership Nomination

Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002. Additional information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm*.

FOR FURTHER INFORMATION CONTACT:

For questions relating to participation in the selection process: Kimberly Hamilton, Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002, 301–796–8220, *kimberly.hamilton@fda.hhs.gov*.

For questions relating to the Genetic Metabolic Diseases Advisory Committee: Moon Choi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–2894, *GEMDAC@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for a voting consumer representative on the Genetic Metabolic Diseases Advisory Committee. Elsewhere in this **Federal Register**, FDA is publishing separate documents regarding:

1. Genetic Metabolic Diseases Advisory Committee; Notice of Establishment
2. Request for Nominations for Voting Members on a Public Advisory Committee: Genetic Metabolic Diseases Advisory Committee
3. Request for Nominations of Individuals and Industry Organizations for the Genetic Metabolic Diseases Advisory Committee

I. Function and General Description of the Committee Duties

Genetic Metabolic Diseases Advisory Committee

The Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drug and biologic products for use in the treatment of genetic metabolic diseases and makes appropriate recommendations to the Commissioner of Food and Drugs.

II. Criteria for Members

Persons nominated for membership as a consumer representative on this committee should meet the following criteria: (1) demonstrate an affiliation with and/or active participation in consumer or community-based organizations, (2) be able to analyze technical data, (3) understand research design, (4) discuss benefits and risks, and (5) evaluate the safety and efficacy of products under review. The consumer representative should be able to represent the consumer perspective on issues and actions before the advisory committee; serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations; and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

III. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include the use of organizations representing the public interest and public advocacy groups. These organizations recommend nominees for the Agency's selection. Representatives from the consumer health branches of Federal, State, and local governments also may participate in the selection process. Any consumer organization interested in participating in the selection of an appropriate voting member to represent consumer interests should send a letter stating that interest to FDA (see **ADDRESSES**) within 30 days of publication of this document.

Within the subsequent 60 days, FDA will compile a list of consumer organizations that will participate in the selection process and will forward to each such organization a ballot listing at least two qualified nominees selected by the Agency based on the nominations received, together with each nominee's current curriculum vitae or résumé. Ballots are to be filled out and returned to FDA within 30 days. The nominee receiving the highest number of votes ordinarily will be selected to serve as the member representing consumer interests for that particular advisory committee.

IV. Nomination Procedures

Any interested person or organization may nominate one or more qualified persons to represent consumer interests on the Genetic Metabolic Diseases Advisory Committee with the exception of the following: Individuals who are not U.S. citizens or nationals cannot be appointed as advisory committee members (42 U.S.C. 217(a)) in FDA. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee, including current business and/or home address, telephone number, and email address if available; a signed copy of the Acknowledgment and Consent form available at the FDA Advisory Nomination Portal (see **ADDRESSES**); and a list of consumer or community-based organizations for which the candidate can demonstrate active participation.

Nominations should also specify the advisory committee for which the nominee is recommended. In addition, nominations must also acknowledge that the nominee is aware of the nomination, unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters related to financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest. Members will be invited to serve for terms up to 4 years.

FDA will review all nominations received within the specified timeframes and prepare a ballot containing the names of qualified nominees. Names not selected will remain on a list of eligible nominees and be reviewed periodically by FDA to determine continued interest. After selecting qualified nominees for the ballot, FDA will provide those consumer organizations that are participating in the selection process with the opportunity to vote on the listed nominees. Only organizations vote in the selection process. Persons who nominate themselves to serve as voting consumer representatives will not participate in the selection process.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*) and 21 CFR part 14, relating to advisory committees.

Dated: December 7, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–27302 Filed 12–12–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1506]

Methodological Challenges Related to Patient Experience Data; Summary of Received Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a summary on the comments received for the ''Methodological Challenges Related to

Patient Experience Data; Request for Information and Comments'' notice published on May 2, 2023. The input received in response to the Request for Information will help FDA plan two public workshops focused on methodological challenges and will help FDA identify priorities for future work.

FOR FURTHER INFORMATION CONTACT: Ethan Gabbour, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6306, Silver Spring, MD 20993, 301–796–8112, *Ethan.Gabbour@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under the seventh iteration of the Prescription Drug User Fee Act, incorporated as part of the FDA User Fee Reauthorization Act of 2022, FDA committed to facilitate the advancement and use of systematic approaches to collect and utilize robust and meaningful patient and caregiver input that can more consistently inform drug development and, as appropriate, regulatory decision making. This included issuing a Request for Information (RFI) available at *https://www.federalregister.gov/documents/2023/05/02/2023-09265/methodological-challenges-related-to-patient-experience-data-request-for-information-and-comments* to elicit public input on methodologic challenges related to patient experience data encountered by stakeholders, and other areas of greatest interest or concern to public stakeholders.[1] The RFI was published on May 2, 2023, and the public comment period was open until July 3, 2023. A summary of the comments received can be found in the in the public docket or by going to *https://www.regulations.gov* and entering the following docket number: FDA–2023–N–1506.

II. Electronic Access

Persons with access to internet may obtain the summary within the public docket at *https://www.regulations.gov/docket/FDA-2023-N-1506.*

[1] The Federal Food, Drug, and Cosmetic Act, as amended by the 21st Century Cures Act (Pub. L. 114–255) and the FDA Reauthorization Act of 2017 (FDARA) (Pub. L. 115–52), defines patient experience data as data that are collected by any persons (including patients, family members and caregivers of patients, patient advocacy organizations, disease research foundations, researchers and drug manufacturers) and are intended to provide information about patients' experiences with a disease or condition, including the impact (including physical and psychosocial impacts) of such disease or condition or a related therapy or clinical investigation and patient preferences with respect to treatment of the disease or condition.

Dated: December 8, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–27312 Filed 12–12–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–4917]

Advisory Committee; Genetic Metabolic Diseases Advisory Committee; Establishment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of establishment.

SUMMARY: Under the Federal Advisory Committee Act, the Food and Drug Administration (FDA) is announcing the establishment of the Genetic Metabolic Diseases Advisory Committee. The Commissioner of Food and Drugs (Commissioner) has determined that it is in the public interest to establish such a committee. Duration of this committee is 2 years from the date the Charter is filed, unless the Commissioner formally determines that renewal is in the public interest.

DATES: Either electronic or written comments on the notice must be submitted by February 12, 2024. FDA is establishing a docket for public comment on this document. The docket number is FDA–2023–N–4917. The docket will close on February 12, 2024.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 12, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–4917 for ''Advisory Committee; Genetic Metabolic Diseases Advisory Committee; Establishment.'' Received comments, those filed in a timely manner, will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not

in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Moon Choi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–2894, *GEMDAC@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: The Genetic Metabolic Diseases Advisory Committee (Committee) reviews and evaluates data on the safety and effectiveness of marketed and investigational human drug and biologic products for use in the treatment of genetic metabolic diseases and makes appropriate recommendations to the Commissioner.

The Committee shall consist of a core of nine voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of medical genetics, manifestations of inborn errors of metabolism, small population trial design, translational science, pediatrics, epidemiology, or statistics and related specialties. Members will be invited to serve for overlapping terms of up to 4 years. Non-Federal members of this committee will serve either as special government employees or non-voting representatives. Federal members will serve as regular government employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who serves as an individual, but who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons.

In addition to the voting members, the Committee may include one non-voting representative member who is identified with industry interests. There may also be an alternate industry representative.

Elsewhere in this issue of the **Federal Register**, FDA is publishing separate documents regarding: (1) Genetic Metabolic Diseases Advisory Committee: Request for Nominations for Voting Members on a Public Advisory Committee: Genetic Metabolic Diseases Advisory Committee; (2) Request for Nomination of Individuals and Consumer Organizations for the Genetic Metabolic Diseases Advisory Committee; and (3) Request for Nomination of Individuals and Industry Organizations for the Genetic Metabolic Diseases Advisory Committee.

FDA intends to publish in the **Federal Register** a final rule adding the Genetic Metabolic Diseases Advisory Committee to 21 CFR 14.100.

Dated: December 7, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–27304 Filed 12–12–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0008]

Request for Nominations of Individuals and Industry Organizations for the Genetic Metabolic Diseases Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is requesting that industry organizations interested in participating in the selection of a nonvoting industry representative to serve on the Genetic Metabolic Diseases Advisory Committee (the Committee) in the Center for Drug Evaluation and Research notify FDA in writing. FDA is also requesting nominations for a nonvoting industry representative to serve on the Committee. Nominees recommended to serve as a nonvoting industry representative may either be self-nominated or nominated by an industry organization. Nominations will be accepted for the current vacancy effective with this notice.

DATES: Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interest, must send a letter stating that interest to the FDA by *February 12, 2024,* (see sections I and II of this document for details). Concurrently, nomination materials for prospective candidates should be sent to FDA by *February 12, 2024*.

ADDRESSES: All statements of interest from interested industry organizations interested in participating in the selection process of a nonvoting industry representative should be sent electronically to Nicholas Marsh (see **FOR FURTHER INFORMATION CONTACT**). All nominations for the nonvoting industry representative may be submitted electronically by accessing the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002.

Information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm*.

FOR FURTHER INFORMATION CONTACT: Nicolas Marsh, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2418, Silver Spring, MD 20993–0002, 240–402–5357, email: *nicholas.marsh@fda.hhs.gov*.

For questions relating to the Genetic Metabolic Diseases Advisory Committee: Moon Choi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–2894, email: *GEMDAC@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for a nonvoting industry representative for the Genetic Metabolic Diseases Advisory Committee.

Elsewhere in this issue of the **Federal Register**, FDA is publishing separate documents regarding:

1. Genetic Metabolic Diseases Advisory Committee; Notice of Establishment
2. Request for Nominations for Voting Members for the Genetic Metabolic Diseases Advisory Committee
3. Request for Nominations of Individuals and Consumer Organizations for the Genetic Metabolic Diseases Advisory Committee

I. General Description of the Genetic Metabolic Diseases Advisory Committee's Duties

The Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drug and biologic products for use in the treatment of genetic metabolic diseases and makes appropriate recommendations to the Commissioner of Food and Drugs.

II. Qualifications

Persons nominated for the Committee should be full-time employees of firms that develop human drug and biologic products, or consulting firms that represent human drug and biologic product developers or have similar appropriate ties to industry.

III. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interest must send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 60 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations; and a list of all nominees along with their current résumés or *curriculum vitae*. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, to represent industry interest for the committee, within 60 days after the receipt of the FDA letter. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner will select temporary nonvoting members to represent industry interests.

IV. Nomination Procedure

Individuals may self-nominate and/or an organization may nominate one or more individuals to serve as a temporary nonvoting industry representative. Nominations must include a cover letter and a current, complete résumé or *curriculum vitae* for each nominee, including current business and/or home address, telephone number, and email address if available; and a signed copy of the Acknowledgement and Consent form available at the FDA Advisory Committee Membership Nomination Portal (see **ADDRESSES**). Nominations should specify the advisory committee for which the nominee is recommended within 60 days of publication of this document (see **DATES**). Nominations should also acknowledge that the nominee is aware of the nomination, unless self-nominated. FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. Only interested industry organizations participate in the selection process. Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process.

FDA seeks to include the views of members of all gender groups, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore encourages nominations of appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*) and 21 CFR part 14, relating to advisory committees.

Dated: December 7, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–27303 Filed 12–12–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Applications for Deemed Public Health Service Employment With Liability Protections Under the Federal Tort Claims Act for Health Centers, Deemed Health Center Volunteers, and Free Clinic Sponsored Individuals, OMB No. 0906–XXXX–New

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than February 12, 2024.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Joella Roland, the HRSA Information Collection Clearance Officer, at (301) 443–3983.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Applications for Deemed Public Health Service (PHS) Employment with Liability Protections Under the Federal Tort Claims Act (FTCA) for Health Centers, Deemed Health Center Volunteers, and Free Clinic Sponsored Individuals, OMB No. 0906–XXXX–New.

Abstract: Section 224(g)–(n) of the PHS Act (42 U.S.C. 233(g)–(n)) states that entities receiving funds under section 330 of the PHS Act and specified individuals of that entity may be deemed to be PHS employees for the purpose of eligibility for liability protections, including FTCA coverage, for the performance of medical, surgical, dental, and related functions within the scope of deemed employment upon approval of an application for deemed employment. The Health Center Program and Health Center FTCA Program are administered by HRSA. Health centers submit deeming applications annually to HRSA in the prescribed form and manner in order to obtain deemed PHS employee status, with the associated eligibility for FTCA coverage. Such applications must be approved by HRSA in a Notice of Deeming Action. Deemed health centers must resubmit applications annually meeting all deeming requirements in order to maintain deemed status.

Volunteer Health Professionals (VHPs)

Section 224(q) of the PHS Act (42 U.S.C. 233(q)) extends eligibility for deemed PHS employee status to VHPs sponsored by deemed health centers upon approval of an individual sponsorship application for deemed PHS employment. The Health Center VHP FTCA Program is administered by HRSA. In order to maintain deemed status for VHPs, deemed health centers must submit to HRSA an annual deeming sponsorship application on behalf of individually named VHPs. For liability protections to apply, such

applications must be approved by HRSA in a Notice of Deeming Action applicable to the individual VHP, which, absent other intervening facts, generally is applicable to covered activities within the scope of such deemed PHS employment for a calendar year.

Free Clinics

Section 224(o) of the PHS Act (42 U.S.C. 233(o)) extends eligibility for deemed PHS employee status to free clinic health professionals, including employees, officers, board members, contractors, and volunteer health professionals, at qualifying free clinics. The Free Clinics FTCA Program is administered by HRSA. Free clinics must submit deeming sponsorship applications to HRSA in the specified form and manner on behalf of named individuals for HRSA's review and approval. In order to continue to participate in the Free Clinics FTCA Program and maintain deemed status for individuals, free clinics must submit to HRSA an annual deeming sponsorship application on behalf of named individuals. For liability protections to apply, such applications must be approved by HRSA in a Notice of Deeming Action applicable to the sponsored individual, which, absent other intervening facts, generally is applicable to covered activities within the scope of such deemed PHS employment for a calendar year. Approvals are reflected, resulting in a ''deeming determination'' that includes associated FTCA coverage for these individuals.

HRSA proposes combining the three existing ICRs for these programs into a single ICR consisting of the three application forms. The three existing ICRs are: (1) Application for Health Center Program Recipients for Deemed PHS Employment with Liability Protections Under the FTCA (OMB No. 0906–0035); (2) Application for Deemed Health Center Program Award Recipients to Sponsor VHPs for Deemed PHS Employment (OMB No. 0915–0032); and (3) FTCA Program Deeming Sponsorship Applications for Free Clinics (OMB No. 0915–0293). HRSA recognizes that the content of these three FTCA applications differs but proposes combining these three separate ICRs in order to increase efficiencies, decrease burden on stakeholders, and allow commentors to provide feedback more easily where applicable to commonalities that may impact all three ICRs. Pursuant to Section 224(g)–(o), and (q) of the PHS Act (42 U.S.C. 233(g)–(o) and (q)), as amended, all three collections are done for the purpose of collecting information from certain health centers that receive grant funding under Section 330 of the PHS Act and free clinics to determine eligibility for liability protections, including FTCA coverage. Applications for these programs must be submitted through HRSA's web-based application system, the Electronic Handbooks. These electronic application forms decrease the time and effort required to complete the older, paper-based OMB approved FTCA application forms. In order to make the terminology more consistent, the names of the applications are now as follows: (1) Application for Health Center Program Recipients for Deemed PHS Employment with Liability Protections Under the FTCA; (2) Application for Deemed Health Center Program Recipients to Sponsor VHPs for Deemed PHS Employment with Liability Protections Under the FTCA; and (3) Application for Free Clinics to Sponsor Individuals for Deemed PHS Employment with Liability Protections Under the FTCA. In this single ICR, HRSA proposes updating the content of the applications forms, which OMB has previously approved as three individual ICRs. The revisions are described below.

Proposed Revisions

1. Application for Health Center Program Recipients for Deemed PHS Employment With Liability Protections Under the FTCA

HRSA is proposing several changes to the content of the Application for Health Center Program Recipients for Deemed PHS Employment with Liability Protections Under the FTCA, to be used for health center deeming applications for calendar year (CY) 2024 and thereafter, to improve question clarity and clarify required documentation. The application includes: Contact Information, Section 1: Review of Risk Management Systems, Section 2: Quality Improvement/Quality Assurance, Section 3: Credentialing and Privileging, Section 4: Claims Management, and Section 5: Additional Information, Certification, and Signatures. In addition to minor changes made for clarity, the application includes the following proposed changes:

- A disclaimer regarding training for health center staff was added to the beginning of the Review of Risk Management Systems, Quality Improvement/Quality Assurance, Credentialing and Privileging, and Claims Management sections.

Review of Risk Management Systems:

- Questions related to required FTCA trainings for Obstetrics, Infection Control, the Health Insurance Portability and Accountability Act, and other specific areas of risk were separated into four questions, and detailed guidance for Obstetrics training was added for clarity.
- To facilitate the verification of compliance with training requirements, applicants will be required to enter their training tracking information in a Word or PDF document that will be part of the information collection tool.
- To enhance clarity and ensure accurate uploading of information, the quarterly assessments have been divided into four separate questions. This change aims to outline the required elements and information necessary for each risk assessment.

Credentialing and Privileging:

- The credentialing and privileging section was revised to include clarification regarding policy and procedure requirements for temporary privileging.
- A new attestation question was added to clearly outline the requirements of Chapter 5 of the Health Center Compliance Manual, Clinical Staffing regarding for Credentialing and Privileging of health care practitioners.
- A new question was added to ensure health centers ensure credentialing and privileging for all provider types, including Licensed Independent Practitioners, Other Licensed or Certified Practitioners, and Other Clinical Staff.

Claims Management:

- A new claims management question was added to ensure documents relating to potential tort claims are in the correct format when transmitted to the Department of Health and Human Services, Office of the General Counsel's General Law Division.

2. Application for Deemed Health Center Program Recipients To Sponsor VHPs for Deemed PHS Employment With Liability Protections Under the FTCA

HRSA is proposing several changes to the content of the Application for Deemed Health Center Program Recipients to Sponsor VHPs for Deemed PHS Employment with Liability Protections Under the FTCA, to be used for deeming sponsorship applications for CY 2024 and thereafter, to improve question clarity, clarify required documentation, and support HRSA's analysis and understanding of program impact. The application includes the following sections: Acknowledgments of Deemed Status Requirements, Acknowledgment of Required

Performance Conditions, and Information on the Volunteers Sponsored for Deeming. Specifically, the application includes the following proposed changes:

- *Volunteers Sponsored for Deeming:* A new question has been added to better assist health centers sponsoring VHPs who perform activities during declared emergencies. The question asks if the submitted application relates to services provided during a declared emergency.
- *Credentialing and Privileging:* Language has been added to ensure grantees understand the 2-year requirement for credentialing and privileging.

3. Application for Free Clinics To Sponsor Individuals for Deemed PHS Employment With Liability Protections Under the FTCA

HRSA is proposing several changes to the content of the Applications for Free Clinics to Sponsor Individuals for Deemed PHS Employment with Liability Protections Under the FTCA, to be used for deeming sponsorship applications for CY 2024 and thereafter, to improve question clarity and clarify required documentation. Specifically, the application includes the following proposed changes:

- In Section III, ''Sponsoring Free Clinic Eligibility,'' a note was added to clarify the non-profit status documentation requirements for free clinics; and
- In Section VII, ''Patient Visit Data,'' clarifying language was added to ensure that free clinics provide precise and accurate data.

Need and Proposed Use of the Information: Deeming applications must address certain specified criteria required by law to be approved, and FTCA application forms are critical to HRSA's deeming determination process. The application submissions provide HRSA with the information essential to evaluate the application and make a deeming determination. Moreover, the application information is also used to determine whether a site visit is appropriate to assess issues relating to quality of care and to determine technical assistance needs.

Likely Respondents: Respondents include Health Center Program funding recipients seeking deemed PHS employee status for purposes of eligibility for liability protections, including FTCA coverage; Health Center Program funding recipients that have been deemed as PHS employees and that seek to sponsor VHPs for deemed PHS employee status for purposes of eligibility for liability protections, including FTCA coverage; and free clinics that seek to sponsor individuals for deemed PHS employee status for purposes of eligibility for liability protections, including FTCA coverage.

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

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Application for Health Center Program Recipients for Deemed PHS Employment with Liability Protections Under the FTCA	1,160	1	1,160	2.5	2,900
Application for Deemed Health Center Program Recipients to Sponsor Volunteer Health Professionals (VHPs) for Deemed PHS Employment with Liability Protections Under the FTCA	1,156	3	3,468	2.0	6,936
Application for Free Clinics to Sponsor Individuals for Deemed PHS Employment with Liability Protections Under the FTCA	374	3	1,122	2.0	2,244
Total	2,655	7	5,705	9	12,080

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–27362 Filed 12–12–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of the Fourth Meeting of the 2025 Dietary Guidelines Advisory Committee

AGENCY: Office of Disease Prevention and Health Promotion, Department of Health and Human Services (HHS), Office of the Assistant Secretary for Health (OASH); Department of Agriculture (USDA), Food, Nutrition, and Consumer Services (FNCS).

ACTION: Notice.

SUMMARY: The Departments of Health and Human Services and Agriculture announce the fourth meeting of the 2025 Dietary Guidelines Advisory Committee (Committee). This meeting will be open to the public virtually.

DATES: The fourth Committee meeting will be held on January 19, 2024, from 8:30 a.m. to 3:00 p.m. Eastern Time.

ADDRESSES: The meeting will be accessible online via livestream and recorded for later viewing. Registrants will receive the livestream information prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, 2025 Dietary Guidelines Advisory Committee, Janet M. de Jesus, MS, RD; Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Suite 420, Rockville, MD 20852; Phone: 240–453–8266; Email *DietaryGuidelines@hhs.gov.* Additional information is at *DietaryGuidelines.gov.*

SUPPLEMENTARY INFORMATION:

Authority and Purpose: Under section 301 of Public Law 101–445 (7 U.S.C. 5341, the National Nutrition Monitoring and Related Research Act of 1990, Title III), the Secretaries of HHS and USDA are directed to publish the *Dietary Guidelines for Americans* jointly at least every five years. See 88 FR 3423, January 19, 2023, for notice of the first meeting of the 2025 Dietary Guidelines Advisory Committee, the complete Authority and Purpose, and the Committee's Task. The 2025 Dietary Guidelines Advisory Committee is formed and governed under the provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C., app).

Purpose of the Meeting: The Committee will meet to provide subcommittee updates, including presentations by each subcommittee, and deliberation by the full Committee regarding progress made since the third public meeting, including protocol development, evidence review and synthesis, draft conclusion statements, and plans for future Committee work.

Meeting Agendas: The agenda will be announced in advance of the meeting on *DietaryGuidelines.gov.*

Meeting Registration: This Committee meeting is open to the public. The meeting will be accessible online via livestream and recorded for later viewing. Registration is required for the livestream. To register, go to *DietaryGuidelines.gov* and click on the link for ''Meeting Registration.''

Meeting materials for each meeting will be accessible at *DietaryGuidelines.gov.* Materials may be requested by email at *DietaryGuidelines@hhs.gov.*

Public Comments: A call for written public comment to the Committee opened on January 19, 2023 and will remain open throughout the Committee's deliberations. Written comments may be submitted at *Regulations.gov* (Document ID: HHS–OASH–2022–0021–0001).

Paul Reed,

Deputy Assistant Secretary for Health, Office of Disease Prevention and Health Promotion.

[FR Doc. 2023–27011 Filed 12–12–23; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Glioma, Multiple Sclerosis, and Neuroinflammation.

Date: December 22, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Salma Asmat Quraishi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0592, *salma.quraishi@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 7, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–27296 Filed 12–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS Clinician K Review.

Date: January 9, 2024.

Time: 9:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Rockville, MD 20852, 301–496–0660, *benzingw@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; HEAL Initiative: Team based research review meeting.

Date: January 23, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Abhignya Subedi, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH NSC, 6001 Executive Blvd., Rockville, MD 20852, 301–496–9223, *abhi.subedi@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Team-Research BRAIN Circuits U19 Review.

Date: January 25–26, 2024.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

Contact Person: Tatiana Pasternak, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH NSC, 6001 Executive Blvd., Rockville, MD 20852, 301–496–9223, *tatiana.pasternak@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; HEAL Initiative: Biomarker applications review.

Date: January 30, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive

Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Abhignya Subedi, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH NSC, 6001 Executive Blvd., Rockville, MD 20852, 301–496–9223 *abhi.subedi@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: December 8, 2023.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–27350 Filed 12–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Fellowships in Kidney, Urology, and Hematology DDK–G Fellowships in Kidney, Urology, and Hematology.

Date: February 14, 2024.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Xiaodu Guo, Ph.D., M.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7023, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 7, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–27266 Filed 12–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; ASPREE–XT Renewal Review.

Date: February 15, 2024.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rajasri Roy, Ph.D., M.P.H, Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 496–9666, *rajasri.roy@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 7, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–27265 Filed 12–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; R01 Review Panel on Clonal Hematopoiesis.

Date: March 4, 2024.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ivan Tadeu Rebustini, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, RM: 100, Bethesda, MD 20892, (301) 555–1212, *ivan.rebustini@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 7, 2023.

Miguelina Perez

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–27263 Filed 12–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurological and Neuropsychological Injuries and Disorders II.

Date: January 2, 2024.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Todd Everett White, Ph.D. Scientific Review, Officer Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–3962, *todd.white@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 7, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–27298 Filed 12–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Future ADRD Prevention with Intensive Treatment of Hypertension.

Date: February 2, 2024.

Time: 10:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rajasri Roy, Ph.D., M.P.H, Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 496–9666, *rajasri.roy@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 7, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–27264 Filed 12–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

New Date for the Spring 2024 Customs Broker's License Examination

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection has changed the date on which the semi-annual examination for an individual broker's license will be held to Wednesday, May 1, 2024.

DATES: The customs broker's license examination originally scheduled for April 2024 will be held on Wednesday, May 1, 2024.

FOR FURTHER INFORMATION CONTACT: Omar Qureshi, Branch Chief, Broker Management Branch, Commercial Operations and Entry Division, Trade Policy and Programs Directorate, Office of Trade, (202) 909–3753, or *brokermanagament@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that a person (an individual, corporation, association, or partnership) must hold a valid customs broker's license and permit in order to transact customs business on behalf of others, sets forth standards for the issuance of brokers' licenses and permits, and provides for the taking of disciplinary action against brokers that have engaged in specified types of infractions. This section also provides that an examination may be conducted to assess an applicant's qualifications for a license.

The regulations issued under the authority of section 641 are set forth in title 19 of the Code of Federal Regulations, part 111 (19 CFR part 111). Part 111 sets forth the regulations regarding the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers. These regulations also include the qualifications required of applicants and the procedures for applying for licenses and permits. Section 111.11 of the CBP regulations (19 CFR 111.11) sets forth the basic requirements for a broker's license, and in paragraph (a)(4) of that section provides that an applicant for an individual broker's license must attain a passing grade (75 percent or higher) on the examination.

Section 111.13 of the CBP regulations (19 CFR 111.13) sets forth the requirements and procedures for the examination for an individual broker's license and states that the customs broker's license examinations will be given on the fourth Wednesday in April and October unless the regularly scheduled examination date conflicts with a national holiday, religious observance, or other foreseeable event.

The regularly scheduled examination date for April 2024 (Wednesday, April 24, 2024) coincides with the observance of the religious holiday of Passover. In consideration of this conflict, CBP has decided to change the regularly scheduled date of the examination. As a result, this document announces that CBP will hold the customs broker's license examination on Wednesday, May 1, 2024.

John P. Leonard,

Acting Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2023–27256 Filed 12–12–23; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2391]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood

Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

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	Online location of letter of map revision	Date of modification	Community No.
Alabama: Autauga	City of Prattville (23–04–1024P).	The Honorable Bill Gillespie, Jr., Mayor, City of Prattville, 101 West Main Street, Prattville, AL 36067.	City Hall, 102 West Main Street, Prattville, AL 36067.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 26, 2023	010002
Colorado:						
Adams	City of Aurora (22–08–0792P).	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.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 15, 2023	080002
Adams	City of Federal Heights (23–08–0183P).	The Honorable Linda S. Montoya, Mayor, City of Federal Heights, 2380 West 90th Avenue, Federal Heights, CO 80260.	City Hall, 2380 West 90th Avenue, Federal Heights, CO 80260.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 12, 2024	080240
Adams	Unincorporated areas of Adams County (22–08–0792P).	Steve O'Dorisio, Chair, Adams County Board of Commissioners, 4430 South Adams County Parkway, Brighton, CO 80601.	Adams County Community and Economic Development, 4430 South Adams County Parkway, Brighton, CO 80601.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 15, 2023	080001
El Paso	Unincorporated areas of El Paso County (23–08–0623X).	Cami Bremer, Chair, El Paso County Board of Commissioners, 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903.	Pikes Peak Regional Building Department, Floodplain Management Office, 2880 International Circle, Colorado Springs, CO 80910.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 29, 2024	080059

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Florida:						
Charlotte	Unincorporated areas of Charlotte County (23–04–3477P).	Bill Truex, Chair, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Building Department, 18400 Murdock Circle, Port Charlotte, FL 33948.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 20, 2024	120061
Duval	City of Jacksonville (23–04–1483P).	The Honorable Donna Deegan, Mayor, City of Jacksonville, 117 West Duval Street, Jacksonville, FL 32202.	City Hall, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 21, 2023	120077
Lee	Unincorporated areas of Lee County (23–04–3477P).	Dave Harner, Manager, Lee County, P.O. Box 398, Fort Myers, FL 33901.	Lee County Community Development Department, 1500 Monroe Street, Fort Myers, FL 33901.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 20, 2024	125124
Manatee	Unincorporated areas of Manatee County (23–04–3710P).	Lee Washington, Manatee County Administrator, 1112 Manatee Avenue West, Bradenton, FL 34205.	Manatee County Administration Building, 1112 Manatee Avenue West, Bradenton, FL 34205.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 29, 2024	120153
Monroe	Unincorporated areas of Monroe County (23–04–5435P).	The Honorable Craig Cates, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 28, 2024	125129
Monroe	Unincorporated areas of Monroe County (23–04–5436P).	The Honorable Craig Cates, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 29, 2024	125129
Monroe	Unincorporated areas of Monroe County (23–04–5437P).	The Honorable Craig Cates, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 28, 2024	125129
Monroe	Village of Islamorada (23–04–5402P).	The Honorable Joseph Buddy Pinder III, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Building Department, 86800 Overseas Highway, Islamorada, FL 33036.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 26, 2024	120424
Orange	City of Orlando (23–04–3675P).	The Honorable Buddy Dyer, Mayor, City of Orlando, 400 South Orange Avenue, Orlando, FL 32801.	Public Works Department, Engineering Division, 400 South Orange Avenue, 8th Floor, Orlando, FL 32801.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 26, 2024	120186
Kentucky: Marshall	Unincorporated areas of Marshall County 23–04–0278P).	The Honorable Kevin Spraggs, Marshall County Judge, 1101 Main Street, Benton, KY 42025.	Marshall County Information Technology Department, 1101 Main Street, Benton, KY 42025.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 12 , 2024	210252
Massachusetts:						
Essex	City of Haverhill (22–01–1004P).	The Honorable James J. Fiorentini, Mayor, City of Haverhill, 4 Summer Street, Room 100, Haverhill, MA 01830.	Engineering Division, 4 Summer Street, Room 300, Haverhill, MA 01830.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 2, 2024	250085
Essex	Town of Groveland (22–01–1004P).	Daniel MacDonald, Chair, Town of Groveland Board of Selectmen, 183 Main Street, Groveland, MA 01834.	Economic Development Planning and Conservation Department, 183 Main Street, Groveland, MA 01834.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 2, 2024	250083
Essex	Town of West Newbury (22–01–1004P).	Angus Jennings, Town of West Newbury Manager, 381 Main Street, West Newbury, MA 01985.	Town Hall, 381 Main Street, West Newbury, MA 01985.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 2, 2024	250108
South Carolina: Jasper.	City of Hardeeville (22–04–2011P).	The Honorable Harry Williams, Mayor, City of Hardeeville, 205 Main Street, Hardeeville, SC 29927.	City Hall, 205 Main Street, Hardeeville, SC 29927.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 1, 2024	450113
Tennessee:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Hickman	Unincorporated areas of Hickman County (23–04–1242P).	The Honorable Jim Bates, Mayor, Hickman County, 114 North Central Avenue, Suite 204, Centerville, TN 37033.	Hickman County Administration Building, 114 North Central Avenue, Suite 101, Centerville, TN 37033.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 19, 2024	470091
Maury	Unincorporated areas of Maury County (23–04–1242P).	The Honorable Sheila K. Butt, Mayor, Maury County, 41 Public Square, Columbia, TN 38401.	Maury County Walter Harlan Building, 5 Public Square, Columbia, TN 38401.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 19, 2024	470123
Obion	Unincorporated areas of Obion County (23–04–1092P).	The Honorable Steve Carr, Mayor, Obion County, 316 South 3rd Street, Union City, TN 38261.	Obion County Department of Emergency Management, 1700 North 5th Street, Union City, TN 38261.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 25, 2024	470361
Texas:						
Collin	City of Plano (23–06–1596P).	The Honorable John B. Muns, Mayor, City of Plano, 1520 K Avenue, Plano, TX 75074.	Engineering Department, 1520 K Avenue, Plano, TX 75074.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 26, 2024	480140
Denton	City of The Colony (23–06–1976P).	The Honorable Richard Boyer, Mayor, City of The Colony, 6800 Main Street, The Colony, TX 75056.	Engineering Department, 6800 Main Street, The Colony, TX 75056.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 29, 2024	481581
Midland	City of Midland (23–06–1603P).	The Honorable Lori Blong, Mayor, City of Midland, 300 North Loraine Street, Midland, TX 79701.	City Hall, 300 North Loraine Street, 5th Floor, Midland, TX 79701.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 20, 2024	480477
Tarrant	City of Arlington (23–06–1165P).	The Honorable Jim Ross, Mayor, City of Arlington, P.O. Box 90231, Arlington, TX 76004.	Public Works Department, 101 West Abram Street, Arlington, TX 76010.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 26 , 2024	485454
Tarrant	City of Fort Worth (23–06–1609P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 20, 2024	480596
Webb	Unincorporated areas of Webb County (23–06–0352P).	The Honorable Tano E. Tijerina, Webb County Judge, 1000 Houston Street, 3rd Floor, Laredo, TX 78040.	Webb County Planning Department, 1110 Washington Street, Suite 302, Laredo, TX 78040.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 21, 2023	481059
Utah: Salt Lake	City of Riverton (23–08–0038P).	The Honorable Trent Staggs, Mayor, City of Riverton, 12830 South Redwood Road, Riverton, UT 84065.	City Hall, 12830 South Redwood Road, Riverton, UT 84065.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 18, 2024	490104

[FR Doc. 2023–27349 Filed 12–12–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2388]

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 March 12, 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–2388, 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
Cass County, North Dakota (All Jurisdictions) **Project: 10–08–0041S Preliminary Date: January 29, 2016 and July 10, 2023**	
City of Harwood	City Hall, 108 Main Street, Harwood, ND 58042.
City of Horace	City Hall, 215 Park Drive E, Horace, ND 58047.
City of West Fargo	City Hall, 800 4th Avenue E, Suite 1, West Fargo, ND 58078.
Township of Normanna	Cass County Planning Office, 1201 Main Avenue W, West Fargo, ND 58078.
Township of Pleasant	Cass County Planning Office, 1201 Main Avenue W, West Fargo, ND 58078.

[FR Doc. 2023–27343 Filed 12–12–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002]

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:					
Arapahoe (FEMA Docket No.: B–2372).	Unincorporated areas of Arapahoe County (23–08–0051P).	Carrie Warren-Gully, Chair, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, CO 80120.	Arapahoe County Public Works and Development Department, 6924 South Lima Street, Centennial, CO 80112.	Nov 3, 2023	080011
Chaffee (FEMA Docket No.: B–2368).	City of Salida (23–08–0089P).	The Honorable Dan Shore, Mayor, City of Salida, 448 East 1st Street, Suite 112, Salida, CO 81201.	Community Development Department, 448 East 1st Street, Suite 112, Salida, CO 81201.	Nov. 13, 2023	080031
Chaffee (FEMA Docket No.: B–2368).	Unincorporated areas of Chaffee County (23–08–0089P).	Keith Baker, Chair, Chaffee County Board of Commissioners, P.O. Box 699, Salida, CO 81201.	Chaffee County Development Services Department, 104 Crestone Avenue, Salida, CO 81201.	Nov. 13, 2023	080269
Douglas (FEMA Docket No.: B–2376).	Town of Castle Rock (22–08–0671P).	The Honorable Jason Gray, Mayor, Town of Castle Rock, 100 North Wilcox Street, Castle Rock, CO 80104.	Water Department, 175 Kellogg Court, Castle Rock, CO 80194.	Nov. 13, 2023	080050
Douglas (FEMA Docket No.: B–2376).	Unincorporated areas of Douglas County (22–08–0671P).	Abe Laydon, Chair, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	Department of Public Works/Engineering, 100 3rd Street, Castle Rock, CO 80104.	Nov. 13, 2023	080049
Weld (FEMA Docket No.: B–2368).	City of Greeley (22–08–0472P).	The Honorable John Gates, Mayor, City of Greeley, 1000 10th Street, Greeley, CO 80631.	City Hall, 1000 10th Street, Greeley, CO 80631.	Nov. 2, 2023	080184
Weld (FEMA Docket No.: B–2368).	Town of Kersey (22–08–0472P).	The Honorable Gary Lagrimanta, Mayor, Town of Kersey, P.O. Box 657, Kersey, CO 80644.	Town Hall, 446 1st Street, Kersey, CO 80644.	Nov. 2, 2023	080185
Weld (FEMA Docket No.: B–2368).	Unincorporated areas of Weld County (22–08–0472P).	Mike Freeman, Chair, Weld County Board of Commissioners, P.O. Box 758, Greeley, CO 80632.	Weld County Administrative Building, 1150 O Street, Greeley, CO 80631.	Nov. 2, 2023	080266
Florida:					
Broward (FEMA Docket No.: B–2372).	City of Pompano Beach (22–04–5491P).	The Honorable Rex Hardin, Mayor at Large, City of Pompano Beach, 100 West Atlantic Boulevard, Pompano Beach, FL 33060.	Building Department, 100 West Atlantic Boulevard, Pompano Beach, FL 33060.	Nov. 3, 2023	120055
Hillsborough (FEMA Docket No.: B–2361).	City of Plant City (23–04–2405P).	Bill McDaniel, Manager, City of Plant City, 302 West Reynolds Street, Plant City, FL 33563.	City Hall, 302 West Reynolds Street, Plant City, FL 33563.	Oct. 26, 2023	120113
Pasco (FEMA Docket No.: B–2368).	Unincorporated areas of Pasco County (23-04-1144P).	Mike Carballa, Pasco County Administrator, 8731 Citizens Drive, New Port Richey, FL 34654.	Pasco County Administration Building, 8731 Citizens Drive, New Port Richey, FL 34654.	Nov. 13, 2023	120230
Pasco (FEMA Docket No.: B–2368).	Unincorporated areas of Pasco County (23-04-1704P).	Mike Carballa, Pasco County Administrator, 8731 Citizens Drive, New Port Richey, FL 34654.	Pasco County Administration Building, 8731 Citizens Drive, New Port Richey, FL 34654.	Nov. 13, 2023	120230
Polk (FEMA Docket No.: B–2361).	Unincorporated areas of Polk County (22–04–4292P).	Bill Beasley, Polk County Manager, 330 West Church Street, Bartow, FL 33831.	Polk County Land Development Division, 330 West Church Street, Bartow, FL 33831.	Oct. 26, 2023	120261
Polk (FEMA Docket No.: B–2361).	Unincorporated areas of Polk County (23–04–0252P).	Bill Beasley, Polk County Manager, 330 West Church Street, Bartow, FL 33831.	Polk County Land Development Division, 330 West Church Street, Bartow, FL 33831.	Oct. 26, 2023	120261
Georgia: Effingham (FEMA Docket No.: B–2372).	Unincorporated areas of Effingham County (23–04–0200P).	Tim Callanan, Manager, Effingham County, 804 South Laurel Street, Springfield, GA 31329.	Effingham County Administrative Complex, 804 South Laurel Street, Springfield, GA 31329.	Nov. 2, 2023	130076
Kentucky: Jefferson (FEMA Docket No.: B–2368.).	Metropolitan Government of Louisville and Jefferson County (23-04-3227P).	The Honorable Craig Greenberg, Mayor, Metropolitan Government of Louisville and Jefferson County, 527 West Jefferson Street, Louisville, KY 40202.	Louisville/Jefferson County Metropolitan Sewer District, 700 West Liberty Street, Louisville, KY 40203.	Nov. 3, 2023	210120
North Carolina:					
Buncombe (FEMA Docket No.: B–2382).	Unincorporated areas of Buncombe County (23–04–1182P).	Brownie Newman, Chair, Buncombe County Board of Commissioners, 200 College Street, Suite 300, Asheville, NC 28801.	Buncombe County Planning and Development Department, 46 Valley Street, Asheville, NC 28801.	Nov. 10, 2023	370031

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Jackson and Swain (FEMA Docket No.: B–2386).	Eastern Band of Cherokee Indians (21–04–5780P).	The Honorable Richard Sneed, Principal Chief, Eastern Band of Cherokee Indians, P.O. Box 455, Cherokee, NC 28719.	Office of the Principal Chief, 88 Council House Loop, Cherokee, NC 28719.	Nov. 13, 2023	370401
Jackson (FEMA Docket No.: B–2386).	Unincorporated areas of Jackson County (21–04–5780P).	The Honorable Mark Letson, Chair, Jackson County Board of Commissioners, P.O. Box 246, Cashiers, NC 28714.	Jackson County Planning Department, 401 Grindstaff Cove Road, Sylva, NC 28779.	Nov. 13, 2023	370282
Swain (FEMA Docket No.: B–2386).	Unincorporated areas of Swain County (21–04–5780P).	The Honorable Kevin Seagle, Chair, Swain County Board of Commissioners, P.O. Box 2321, Bryson City, NC 28713.	Swain County Administration Building, 50 Main Street, Suite 300, Bryson City, NC 28713.	Nov. 13, 2023	370227
Oklahoma:					
Wagoner (FEMA Docket No.: B–2372).	City of Broken Arrow (22–06–0519P).	The Honorable Debra Wimpee, Mayor, City of Broken Arrow, 220 South 1st Street, Broken Arrow, OK 74012.	Operations Building, 485 North Poplar Avenue, Broken Arrow, OK 74012.	Nov. 2, 2023	400236
Wagoner (FEMA Docket No.: B–2372).	Unincorporated areas of Wagoner County (22–06–0519P).	Chris Edwards, Chair, Wagoner County Commissioners, 908 Southwest 15th Street, Wagoner, OK 74467.	Wagoner County Courthouse, 307 East Cherokee Street, Wagoner, OK 74467.	Nov. 2, 2023	400215
Pennsylvania: Blair (FEMA Docket No.: B–2376).	Township of Frankstown (23–03–0118P).	George W. Henry, Jr., Chair, Township of Frankstown Board of Supervisors, 2122 Frankstown Road, Hollidaysburg, PA 16648.	Township Hall, 2122 Frankstown Road, Hollidaysburg, PA 16648.	Nov. 13, 2023	421387
South Carolina: Orangeburg (FEMA Docket No.: B–2368).	Unincorporated areas of Orangeburg County (22-04-0400P).	Harold Young, Orangeburg County Administrator, 1437 Amelia Street, Orangeburg, SC 29115.	Orangeburg County Floodplain Development Department, 1437 Amelia Street, Orangeburg, SC 29115.	Nov. 2, 2023	450160
Texas:					
Bexar (FEMA Docket No.: B–2372).	Unincorporated areas of Bexar County (22–06–2616P).	The Honorable Peter Sakai, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 1948 Probandt Street, San Antonio, TX 78214.	Nov. 6, 2023	480035
Bowie (FEMA Docket No.: B–2368).	City of Texarkana (22-06-2469P).	The Honorable Bob Bruggeman, Mayor, City of Texarkana, 220 Texas Boulevard, Texarkana, TX 75501.	Public Works Department, 220 Texas Boulevard, Texarkana, TX 75501.	Nov. 2, 2023	480060
Collin (FEMA Docket No.: B–2372).	City of Anna (22–06–2931P).	The Honorable Nate Pike, Mayor, City of Anna, P.O. Box 776, Anna, TX 75409.	Public Works, Building Department, 3223 North Powell Parkway, Anna, TX 75409.	Nov. 3, 2023	480132
Collin (FEMA Docket No.: B–2368).	City of McKinney (22-06-2372P).	The Honorable George Fuller, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070.	Engineering Department, 221 North Tennessee Street, McKinney, TX 75069.	Nov. 13, 2023	480135
Collin (FEMA Docket No.: B–2368).	City of Melissa (22-06-2372P).	The Honorable Jay Northcut, Mayor, City of Melissa, 3411 Barker Avenue, Melissa, TX 75454.	City Hall, 3411 Barker Avenue, Melissa, TX 75454.	Nov. 13, 2023	481626
Collin (FEMA Docket No.: B–2368).	Unincorporated areas of Collin County (22-06-2372P).	The Honorable Chris Hill, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Collin County Engineering Department, 4690 Community Avenue, Suite 200, McKinney, TX 75071.	Nov. 13, 2023	480130
Denton (FEMA Docket No.: B–2372).	City of Lewisville (23–06–0197P).	The Honorable T.J. Gilmore, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, TX 75057.	Engineering Department, 151 West Church Street, Lewisville, TX 75057.	Oct. 30, 2023	480195
Ellis (FEMA Docket No.: B–2372).	Unincorporated areas of Ellis County (23–06–1297P).	The Honorable Todd Little, Ellis County Judge, 101 West Main Street, Waxahachie, TX 75165.	Ellis County Public Works Department, 109 South Jackson Street, Waxahachie, TX 75165.	Nov. 2, 2023	480798
Guadalupe (FEMA Docket No.: B–2368).	City of Cibolo (23-06-0055P).	The Honorable Mark Allen, Mayor, City of Cibolo, 200 South Main Street, Cibolo, TX 78108.	Public Works Department, 108 Cibolo Drive, Cibolo, TX 78108.	Nov. 2, 2023	480267
Guadalupe (FEMA Docket No.: B–2368).	City of Schertz (23-06-0055P).	The Honorable Ralph Gutierrez, Mayor, City of Schertz, 1400 Schertz Parkway, Schertz, TX 78154.	Engineering Department, 1400 Schertz Parkway, Schertz, TX 78154.	Nov. 2, 2023	480269
Hunt (FEMA Docket No.: B–2368).	City of Royse City (22-06-2909P).	The Honorable Clay Ellis, Mayor, City of Royse City, P.O. Box 638, Royse City, TX 75189.	City Hall, 305 North Arch Street, Royse City, TX 75189.	Nov. 13, 2023	480548
Hunt (FEMA Docket No.: B–2368).	Unincorporated areas of Hunt County (22-06-2909P).	The Honorable Bobby W. Stovall, Hunt County Judge, 2507 Lee Street, 2nd Floor, Greenville, TX 75401.	Hunt County Courthouse, 2507 Lee Street, 2nd Floor, Greenville, TX 75401.	Nov. 13, 2023	480363
Medina (FEMA Docket No.: B–2368).	Unincorporated areas of Medina County (23-06-0288P).	The Honorable Keith Lutz, Medina County Judge, 1300 Avenue M, Room 250, Hondo, TX 78861.	Medina County Environmental Health Department, 1502 Avenue K, Hondo, TX 78861.	Nov. 3, 2023	480472
Tarrant (FEMA Docket No.: B–2368).	City of Fort Worth (22-06-2655P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102.	Oct. 30, 2023	480596
Virginia:					
Loudoun (FEMA Docket No.: B–2372).	Unincorporated areas of Loudoun County (23–03–0047P).	Tim Hemstreet, Loudoun County Administrator, 1 Harrison Street, Southeast, 5th Floor, Leesburg, VA 20175.	Loudoun County Government Center, 1 Harrison Street, Southeast, 3rd Floor, MSC #60, Leesburg, VA 20175.	Nov. 6, 2023	510090
Prince William (FEMA Docket No.: B–2372).	Unincorporated areas of Prince William County (22–03–1081P).	Christopher Shorter, Prince William County Executive, 1 County Complex Court, Prince William, VA 22192.	Prince William County Watershed Management Branch, 5 County Complex Court, Suite 170, Prince William, VA 22192.	Oct. 27, 2023	510119

[FR Doc. 2023–27348 Filed 12–12–23; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2390]

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 March 12, 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–2390, 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
Stark County, Illinois and Incorporated Areas Project: 20–05–0021S Preliminary Date: December 15, 2022	
City of Toulon	City Hall, 122 North Franklin Street, Toulon, IL 61483.
City of Wyoming	City Hall, 108 East Williams Street, Wyoming, IL 61491.
Unincorporated Areas of Stark County	Stark County Courthouse, 130 West Main Street, Toulon, IL 61483.
Village of Bradford	Village Hall, 160 West Main Street, Bradford, IL 61421.
Bristol County, Massachusetts (All Jurisdictions) Project: 17–01–0182S Preliminary Date: February 03, 2023	
City of Attleboro	City Hall, 77 Park Street, Attleboro, MA 02703.

Community	Community map repository address
Town of North Attleborough	Town Hall, 43 South Washington Street, North Attleborough, MA 02760.

[FR Doc. 2023–27345 Filed 12–12–23; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2023–0012]

Notice of President's National Infrastructure Advisory Council Meeting

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: Amendment of notice; partial closure and date change.

SUMMARY: On November 16, 2023 the Department of Homeland Security (DHS) published a notice in the **Federal Register** announcing the President's National Infrastructure Advisory Council (NIAC) meeting on Tuesday, December 12, 2023. This notice amends that prior notice. Meeting changes have occurred because of senior leadership availability and the urgent need to discuss priorities and potential threats concerning the nation's critical infrastructure.

DATES:

Meeting Registration: Registration is required to attend the meeting and must be received no later than 5:00 p.m. Eastern Standard Time (EST) on December 11, 2023. For more information on how to participate, please contact *NIAC@cisa.dhs.gov.*

Speaker Registration: Registration to speak during the meeting's public comment period must be received no later than 5:00 p.m. EST on December 11, 2023.

Written Comments: Written comments must be received no later than 5 p.m. EST on December 11, 2023.

Meeting Date: The NIAC will meet on December 13, 2023, from 1 p.m. to 4 p.m. EST. The meeting may close early if the council has completed its business.

ADDRESSES: The National Infrastructure Advisory Council's open session will be held in-person at 1650 Pennsylvania Ave. NW, Washington, DC; however, members of the public may participate via teleconference only. Requests to participate will be accepted and processed in the order in which they are received. For access to the conference call bridge, information on services for individuals with disabilities, or to request special assistance, please email *NIAC@cisa.dhs.gov* by 5:00 p.m. EST on December 11, 2023. The NIAC is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Celinda Moening at *NIAC@cisa.dhs.gov* as soon as possible.

Comments: The council will consider public comments on issues as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated materials for potential discussions during the meeting will be available for review at *https://www.cisa.gov/niac* by December 12, 2023. Comments should be submitted by 5 p.m. EST on December 12, 2023 and must be identified by Docket Number CISA–2023–0012. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Please follow the instructions for submitting written comments.
- *Email: NIAC@cisa.dhs.gov.* Include the Docket Number CISA–2023–0012 in the subject line of the email.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the Docket Number for this action. Comments received will be posted without alteration to *www.regulations.gov,* including any personal information provided. You may wish to read the Privacy & Security Notice which is available via a link on the homepage of *www.regulations.gov.*

Docket: For access to the docket and comments received by the National Infrastructure Advisory Council, please go to *www.regulations.gov* and enter docket number CISA–2023–0012.

A public comment period will take place. Speakers who wish to participate in the public comment period must email *NIAC@cisa.dhs.gov* to register. Speakers should limit their comments to 1 minute and will speak in order of registration. Please note that the public comment period may end before the time indicated, depending on the number of speakers who register to participate.

FOR FURTHER INFORMATION CONTACT: Celinda Moening, 571–532–4119, *NIAC@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The NIAC is established under Section 10 of E.O. 13231 issued on October 16, 2001, as amended and continued under the authority of E.O. 14109, dated September 29, 2023. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. Ch. 10 (Pub. L. 117–286). The NIAC provides the President, through the Secretary of Homeland Security, advice on the security and resilience of the Nation's critical infrastructure sectors.

The meeting date is being changed from Tuesday, December 12, 2023 to Wednesday, December 13, 2023. This meeting will now be partially closed to the public, with the closure time of the meeting yet to be determined. Members of the public who register to participate virtually will be informed what portion of the meeting will be closed.

Agenda: The National Infrastructure Advisory Council will meet in an open session on Wednesday, December 13, 2023, from 1 p.m. to 4 p.m. EST to discuss NIAC activities. The open session will include: (1) a period for public comment; (2) read-on, deliberation and vote on the NIAC's Managing the Infrastructure Challenges of Increasing Electrification report; and (3) additional study topics discussion.

The council will meet in a closed session, with the closure time of the meeting yet to be determined. During the closed session, senior White House officials will discuss priorities and potential threats concerning the nation's critical infrastructure.

Basis for Closure: In accordance with section 10(d) of FACA and 5 U.S.C. 552b(c)(1), *The Government in the Sunshine Act,* it has been determined that a portion of the agenda requires closure, as the disclosure of the information that will be discussed would not be in the public interest.

Public disclosure of these threats, as well as vulnerabilities and mitigations, is a risk to the Nation's infrastructure security posture as adversaries could use this information to do harm.

Celinda E. Moening,

Alternate Designated Federal Officer, National Infrastructure Advisory Council, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2023–27282 Filed 12–12–23; 8:45 am]
BILLING CODE 9110–9P–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037058; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the Sherman Institute, Riverside County, CA.

DATES: Repatriation of the human remains in this notice may occur on or after January 12, 2024.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

Description

Human remains representing, at minimum, two individuals were collected at the Sherman Institute, Riverside County, CA. The human remains are hair clippings collected from one individual who was recorded as being 20 years old and one individual who was recorded as being 19 years old. Both individuals were identified as ''Mission.'' Samuel H. Gilliam took the hair clippings at the Sherman Institute between 1930 and 1933. Gilliam sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: kinship and anthropological.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Pala Band of Mission Indians.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after January 12, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: December 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–27372 Filed 12–12–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037065; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Robert S. Peabody Institute of Archaeology, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Robert S. Peabody Institute of Archaeology intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Onondaga County, NY.

DATES: Repatriation of the cultural items in this notice may occur on or after January 12, 2024.

ADDRESSES: Ryan J. Wheeler, Robert S. Peabody Institute of Archaeology, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email *rwheeler@andover.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Robert S. Peabody Institute of Archaeology. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the Robert S. Peabody Institute of Archaeology.

Description

The 733 cultural items were removed from Onondaga County, NY. The cultural items were removed from the Pompey Center Site (C2A 7–1), Onondaga County, New York and obtained by archeologist James W. Bradley circa 1970. Bradley describes Pompey Center as a large Onondaga village site dating to 1610–1625, based on the presence of European-derived

objects like glass beads and copper or brass kettles. Bradley donated the collection to the Robert S. Peabody Institute of Archaeology in 1994. The 733 unassociated funerary objects and objects of cultural patrimony are 32 lots of faunal remains and modified faunal remains; 87 lots of metal items and fragments; 34 lots of ceramic sherds, pipes, pendants, and ceramic fragments; 550 lots of stone tools, stone debitage, and stone items; 24 lots of beads; one shell button; one stone effigy; one gun flint; one lot miscellaneous items; one whetstone; and one glass shard.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological information, geographical information, historical information, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Robert S. Peabody Institute of Archaeology has determined that:

- The 733 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- The 733 cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Onondaga Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after January 12, 2024. If competing requests for repatriation are received, the Robert S. Peabody Institute of Archaeology must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Robert S. Peabody Institute of Archaeology is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: December 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–27379 Filed 12–12–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037066; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Field Museum, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Field Museum has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at an unknown location or locations.

DATES: Repatriation of the human remains in this notice may occur on or after January 12, 2024.

ADDRESSES: Helen Robbins, Repatriation Director, Field Museum, 1400 S Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7317, email *hrobbins@fieldmuseum.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Field Museum. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Field Museum.

Description

Human remains representing, at minimum, one individual were collected at an unknown location or locations. The human remain is a hair clipping belonging to one individual, identified with the tribal designation Wyandotte (Field Museum catalog number #193207.9). Field Museum staff believe this hair clipping was collected under the direction of Franz Boas and Frederick Ward Putnam for the 1893 World's Columbian Exposition in Chicago. The hair clippings were accessioned into the Field Museum's collection in 1939. No information regarding the individual's name, sex, age, or geographic location has been found. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: historical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Field Museum has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Wyandotte Nation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations

identified in this notice and, if joined to a request from one or more of the Indian Tribes, the Huron-Wendat Nation, a non-federally recognized Indian group.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after January 12, 2024. If competing requests for repatriation are received, the Field Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Field Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: December 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–27380 Filed 12–12–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037056; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Reclamation, Missouri Basin Region, Nebraska-Kansas Area Office, McCook, NE

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Bureau of Reclamation, Nebraska-Kansas Area Office (Reclamation Nebraska-Kansas Area Office) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Jewell, Mitchell, Norton, and Phillips Counties, KS, and from Frontier County, NE.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 12, 2024.

ADDRESSES: Catherine Griffin, Bureau of Reclamation, Nebraska-Kansas Area Office, 1706 West 3rd Street, McCook, NE 69001, telephone (308) 345–8324, email *cgriffin@usbr.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Reclamation Nebraska-Kansas Area Office. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Reclamation Nebraska-Kansas Area Office.

Description

14JW–HOFTS

Human remains representing, at minimum, one individual were removed from Jewell County, KS. Sometime prior to 1982, a private citizen reported that human remains were exposed on the south shore of Lovewell Reservoir. Native American archeological sites with fragmentary human remains are known to erode from the south shore of Lovewell Reservoir. These sites date to either the Plains Woodland period (A.D. 1–1000) or Plains Village period (A.D. 1000–1500). The Kansas Historical Society (KHS) assigned Unmarked Burial Sites (UBS) case number UBS 1991–52 to the human remains. The box was labelled ''Hofts Collection.'' In 1995, Reclamation transferred the human remains to the Wichita State University's Biological Anthropology Laboratory (WSU–BAL) for inventory and secure storage. The fragmentary human remains belong to a young adult, probably female, 20 to 30 years of age. No associated funerary objects are present.

14JW312

Human remains representing, at minimum, 11 individuals were removed from Jewell County, KS. In 1982, the KHS, working under a cooperative agreement with Reclamation, excavated fragmentary and poorly preserved human remains that were eroding into Lovewell Reservoir at site 14JW312, aka the Begin Ossuary. KHS excavated an estimated 10 sets of commingled human remains from a burial pit, and one set of human remains from an extended primary burial. KHS assigned case number UBS 1989–29 to the human remains. In 1995, Reclamation transferred the human remains and associated funerary objects to WSU–BAL for inventory and secure storage. The fragmentary human remains collected from 14JW312 belong to an infant, a child, an adolescent, and male and female adults. The four associated funerary objects are one shell disc bead, one lot consisting of pottery sherds (from at least two different vessels), one lot consisting of chipped stone debitage, and one lot consisting of unmodified deer bones. The associated funerary objects date to the Upper Republican phase of the Central Plains Tradition (A.D. 950–1400).

14ML1

Human remains representing, at minimum, one individual were removed from Mitchell County, KS. In 1952, the Smithsonian Institution's River Basin Surveys (SI–RBS) recommended that a salvage excavation be conducted at the late prehistoric village site 14ML1, aka the Glen Elder Site, prior to its destruction by construction of Glen Elder Dam. In 1963, the University of Nebraska, Lincoln (UNL) excavated site 14ML1 under a cooperative agreement with the National Park Service (NPS). The 1963 excavation recovered two human bones from a filled pit. In 2001, graduate students working on faunal and artifact curation found additional human remains within the 14ML1 archeological collection. The archeological materials from 14ML1 date to the Central Plains Tradition (A.D. 1000–1500). In 2001, Reclamation transferred the human remains to WSU–BAL for inventory and secure storage. The fragmentary human remains collected from 14ML1 belong to a mature adult of unknown sex. No associated funerary objects are present.

14ML5

Human remains representing, at minimum, one individual were removed from Mitchell County, KS. In 1952, the SI–RBS recommended that a salvage excavation be conducted at the late prehistoric village site 14ML5 prior to its inundation by Glen Elder Dam and Waconda Lake. From 1964 to 1965, the UNL excavated site 14ML5 under a cooperative agreement with the NPS. UNL excavated two earthen lodge floors and an extramural work area. Human remains were excavated from an unknown area within the site. The archeological materials from site 14ML5 are associated with the Solomon River phase of the Central Plains Tradition

(A.D. 1000–1300). In 1992, Reclamation transferred the human remains to WSU–BAL for inventory and secure storage. The human remains collected from 14ML5 belong to an infant or a young child less than seven years of age. No associated funerary objects are present.

14ML11

Human remains representing, at minimum, two individuals were removed from Mitchell County, KS. In 1952, the SI–RBS recommended that a salvage excavation be conducted at the late prehistoric village site 14ML11 prior to its being inundated by Glen Elder Dam and Waconda Lake. From 1965 to 1967, the UNL excavated site 14ML11 under a cooperative agreement with the NPS. UNL excavated an earthen lodge floor, where they found one nearly complete infant skeleton and one set of adult human remains. The archeological materials from the site are associated with the Solomon River phase of the Central Plains Tradition (A.D. 1000–1300). In 1998, Reclamation transferred the human remains to WSU–BAL for inventory and secure storage. The human remains belong to an infant or a young child less than four years in age, and a mature adult of indeterminate sex. No associated funerary objects are present.

14ML15

Human remains representing, at minimum, one individual were removed from Mitchell County, KS. In 1952, the SI–RBS recommended that a salvage excavation be conducted at the late prehistoric village site 14ML15 prior to its being inundated by Glen Elder Dam and Waconda Lake. In 1964 and 1965, the UNL excavated site 14ML15 under a cooperative agreement with the NPS. Human remains were present in one of four earthen lodge floors excavated by the UNL. The archeological materials from the site are associated with the Central Plains Tradition (A.D. 1000–1500). In 1992, Reclamation transferred the human remains to WSU–BAL for inventory and secure storage. The human remains collected from 14ML15 belong to a young adult female, 20 to 35 years of age. No associated funerary objects are present.

14ML16

Human remains representing, at minimum, 33 individuals were removed from Mitchell County, KS. In 1952, the SI–RBS recommended that a salvage excavation be conducted at the late prehistoric village site 14ML16 prior to its being inundated by Glen Elder Dam and Waconda Lake. In 1964 and 1965, the UNL excavated site 14ML16 under a cooperative agreement with the NPS. UNL excavated flexed and commingled burials from several pit features within earthen lodge floors. The archeological materials from the site are associated with the Central Plains Tradition (A.D. 1000–1500). KHS assigned case number UBS 1995–9 to the human remains. In 1992, Reclamation transferred the human remains and associated funerary objects to WSU–BAL for inventory and secure storage. The fragmentary human remains collected from 14ML16 belong to a fetus, an infant, a child, an adolescent, a young adult, and mature adults of both sexes. The nine associated funerary objects are one lot consisting of unworked faunal bones, one lot consisting of worked faunal bones, one lot consisting of chipped stone debris, one lot consisting of chipped stone tools, one lot consisting of pottery sherds, one lot consisting of shell beads, one lot consisting of miscellaneous shells, one marine shell gorget, and one lot consisting of charcoal.

14NT11

Human remains representing, at minimum, one individual were removed from Norton County, KS. In 1962, the UNL surveyed and excavated site 14NT11 under a cooperative agreement with the NPS, prior to the site being inundated by Norton Dam and Keith Sebelius Lake. The site's Plains Woodland period (A.D. 1–1000) component included an undisturbed midden and subterranean pit features containing charred corn and bison faunal remains. During a NAGPRA inventory in 1998, UNL identified the human remains, and in 1999, Reclamation transferred the human remains to WSU–BAL for inventory and secure storage. The human remains collected from 14NT11 belong to a child between 7.5 and 12.5 years of age and of unknown sex. No associated funerary objects are present.

14PH10

Human remains representing, at minimum, three individuals were removed from Phillips County, KS. In 1952, the SI–RBS recorded site 14PH10, aka the West Island Site, but did not recommend an excavation. In 1963, a U.S. Fish and Wildlife Service (FWS) employee discovered human remains and artifacts eroding from site because of exposure during low lake levels at Kirwin Reservoir. That same year, the KHS State Archeologist, working under a cooperative agreement with the NPS, conducted an initial excavation, during which human remains were collected from the surface of the island's eroding shelf. In 1965, archeologists from the University of Kansas, Lawrence (KU), working under a cooperative agreement with the NPS, excavated the site and collected additional human remains. The archeological materials from the site date to the Keith phase of the Plains Woodland period (A.D. 600–800). The human remains collected in 1963, which are securely stored at KHS (case number UBS 1990–25), belong to one adult male between 34 and 40 years of age, and one adult female of unknown age. The human remains collected in 1965, which are securely stored at KU (accession number 698.1996), belong to one adult, probably female based on the presence of a wide sciatic notch of the innominate. No associated funerary objects are present.

14PH305

Human remains representing, at minimum, one individual were removed from Phillips County, KS. In 1978, KHS, working under a contract with the FWS, surveyed and tested site 14PH305 during an archeological survey of the Kirwin National Wildlife Refuge. The surveyors collected artifacts and bone from the surface of the site and excavated at least one soil core probe. The archeological materials from the site date to the Plains Woodland period (A.D. 1–1000). In 2000, Dr. Michael Finnegan at Forensic Anthropological Consultants in Manhattan, KS, inventoried the human remains, but could not determine the age, sex, or ancestry of the individual. In 2023, Reclamation conducted a repository facility review of KHS and became aware of the human remains from 14PH305. The human remains are securely stored at KHS (case number UBS–2000.15). No associated funerary objects are present.

25FT—

Human remains representing, at minimum, one individual were removed from Frontier County, NE. Sometime prior to 1982, a private individual collected a human skull from Harry Strunk Lake and subsequently donated it to the University of Nebraska State Museum (UNSM). The reported discovery location is near two archeological sites—25FT18, a Plains Woodland period site (A.D. 1–1000), and 25FT20, a Central Plains Tradition site (A.D. 1000–1500). In 1995, UNSM transferred the donated remains to Reclamation. Prior to Reclamation's possession, the skull had been reconstructed and coated in a shellac-like substance. In 2017, Dr. E. Melanie Ryan, Reclamation's California-Great Basin Region, Regional NAGPRA

Program Manager, determined that the human remains belonged to an individual of Native American ancestry, based on non-metric cranial traits. In 2019, Reclamation transferred the human remains to WSU–BAL for secure storage. The human remains belong to an adult male, 18 to 42 years of age. No associated funerary objects are present.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, geographical, linguistic, oral traditional, other relevant information, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Reclamation Nebraska-Kansas Area Office has determined that:

- The human remains described in this notice represent the physical remains of 56 individuals of Native American ancestry.
- The 13 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Pawnee Nation of Oklahoma; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 12, 2024. If competing requests for repatriation are received, the Reclamation Nebraska-Kansas Area Office must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Reclamation Nebraska-Kansas Area Office is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: December 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–27370 Filed 12–12–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037059; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and determined they are reasonably believed to be related to the lineal descendant in this notice. The human remains were collected at the Flandreau Indian School in Moody County, SD.

DATES: Repatriation of the human remains in this notice may occur on or after January 12, 2024.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

Description

Human remains representing, at minimum, one individual were collected at the Flandreau Indian School in Moody County, SD. The human remains are hair clippings collected from one individual identified as ''Sioux'' who was recorded as being 16 years old. George E. Peters took the hair clippings at the Flandreau Indian School between 1930 and 1933. Peters sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Lineal Descent

The human remains in this notice are connected to an identifiable individual whose descendants can be traced directly and without interruption by means of a traditional kinship system or by the common law system of descendance.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a direct lineal descendant to the named individual whose human remains are described in this notice.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the lineal descendants, Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or

a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after January 12, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the lineal descendant identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: December 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–27373 Filed 12–12–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037051; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Kansas State University, Manhattan, KS

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Kansas State University has completed an inventory of human remains and associated funerary objects and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any Indian Tribe. The human remains and associated funerary objects were removed from Geary County, KS.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after January 12, 2024.

ADDRESSES: Megan Williamson, Department of Sociology, Anthropology, and Social Work, Kansas State University, 204 Waters Hall, 1603 Old Claflin Place, Manhattan, KS 66506–4003, telephone (785) 532–6005, email *mwillia1@ksu.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Kansas State University. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by Kansas State University.

Description

Human remains representing, at minimum, two individuals were removed from Ruhnke Mound, 14GE605, in Geary County, KS. In September of 1980, Dr. Patricia J. O'Brien of Kansas State University conducted a one-day excavation at this site. The resulting assemblage was processed by Dr. O'Brien and then removed to the archaeology laboratory at Kansas State University for analysis, reporting, and curation, where it has since remained. The human remains were extremely fragmented. The 12 associated funerary objects are one lot consisting of wood fragments (approximately 17 pieces), one nutshell fragment, one lot consisting of miscellaneous seeds, one gastropod shell, one fragment of leather, one stone tool, two bifaces, one lot consisting of stone debitage (approximately 115 pieces), two stone cores, and one lot consisting of unworked rocks (approximately 109 pieces).

Aboriginal Land

The human remains and associated funerary objects in this notice were removed from a known geographic location. This location is the aboriginal lands of one or more Indian Tribes. The following information was used to identify the aboriginal land: treaties.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, Kansas State University has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The 12 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects described in this notice were removed from the aboriginal land of the Kaw Nation, Oklahoma; Pawnee Nation of Oklahoma; The Osage Nation; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma.

Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES.** Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains and associated funerary objects described in this notice to a requestor may occur on or after January 12, 2024. If competing requests for disposition are received, Kansas State University must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. Kansas State University is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and 10.11.

Dated: December 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–27365 Filed 12–12–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037068; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Field Museum, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Field Museum has completed an inventory of human remains and has determined that

there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at an unknown location or locations.

DATES: Repatriation of the human remains in this notice may occur on or after January 12, 2024.

ADDRESSES: Helen Robbins, Repatriation Director, Field Museum, 1400 S Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7317, email *hrobbins@fieldmuseum.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Field Museum. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Field Museum.

Description

Human remains representing, at minimum, two individuals were collected at an unknown location or locations. The human remains are hair clippings belonging to two individuals, identified with the tribal designations ''Delaware'' and ''Shawnee'' (Field Museum catalog numbers 193208.3 and 193213.3). Field Museum staff believe they were collected under the direction of Franz Boas and Frederick Ward Putnam for the 1893 World's Columbian Exposition in Chicago. The hair clippings were accessioned into the Field Museum's collection in 1939. No information regarding the individual's name, sex, age, or geographic location has been found. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: historical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Field Museum has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Absentee-Shawnee Tribe of Indians of Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; and the Shawnee Tribe.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice and, if joined to a request from one or more of the Indian Tribes, the Munsee-Delaware Nation or the Eelünaapéewi Lahkéewiit, both non-federally recognized Indian groups.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after January 12, 2024. If competing requests for repatriation are received, the Field Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Field Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: December 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–27382 Filed 12–12–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037062; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: University of Alaska Museum of the North, Fairbanks, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Alaska Museum of the North intends to repatriate a certain cultural item that meets the definition of an unassociated funerary object and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural item was removed from the Aleutians West Census Area, AK.

DATES: Repatriation of the cultural item in this notice may occur on or after January 12, 2024.

ADDRESSES: Josh Reuther, University of Alaska Museum of the North, 1962 Yukon Drive, Fairbanks, AK 99775, telephone (907) 474–6945, email *jreuther@alaska.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Alaska Museum of the North. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the University of Alaska Museum of the North.

Description

The one cultural item was removed from the Aleutians West Census Area, AK. In 1958, a single unassociated funerary object was collected from Unalaska Island by Lt. William Trafton and deposited at the University of Alaska Museum of the North. The exact location is unknown; the provenience is listed as Dutch Harbor. The unassociated funerary object is an ivory labret.

Cultural Affiliation

The cultural item in this notice is connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes,

peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the University of Alaska Museum of the North has determined that:

- The one cultural item described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Qawalangin Tribe of Unalaska.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after January 12, 2024. If competing requests for repatriation are received, the University of Alaska Museum of the North must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item is considered a single request and not competing requests. The University of Alaska Museum of the North is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: December 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–27376 Filed 12–12–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037054; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items Amendment: The Andy Warhol Museum, Pittsburgh, PA

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), The Andy Warhol Museum has amended a Notice of Intent to Repatriate published in the **Federal Register** on August 3, 2023. This notice amends the cultural affiliation in a collection removed from Moody County, SD.

DATES: Repatriation of the cultural item in this notice may occur on or after January 12, 2024.

ADDRESSES: Matt Gray, Director of Archives, The Andy Warhol Museum, 117 Sandusky Street, Pittsburgh, PA 15212, telephone (412) 237–8363, email *graym@warhol.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of The Andy Warhol Museum. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the summary or related records held by The Andy Warhol Museum.

Amendment

This notice amends the determinations published in a Notice of Intent to Repatriate in the **Federal Register** (88 FR 51345, August 3, 2023). Repatriation of the item in the original Notice of Intent to Repatriate has not occurred.

Before the date when repatriation could occur (September 5, 2023), a request for repatriation of the same object from the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota was submitted to The Andy Warhol Museum. The Tribe that submitted the first request for repatriation, the Flandreau Santee Sioux Tribe of South Dakota was informed of the second request. Soon after, on August 28, 2023, the Flandreau Santee Sioux Tribe of South Dakota rescinded their request in favor of the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota.

Determinations (as Amended)

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, The Andy Warhol Museum determined that:

- The one cultural item described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items in this notice and the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after January 12, 2024. If competing requests for repatriation are received, The Andy Warhol Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. The Andy Warhol Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, 10.13, and 10.14.

Dated: December 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–27368 Filed 12–12–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037067; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Field Museum, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Field Museum has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at an unknown location or locations.

DATES: Repatriation of the human remains in this notice may occur on or after January 12, 2024.

ADDRESSES: Helen Robbins, Repatriation Director, Field Museum, 1400 S Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7317, email *hrobbins@fieldmuseum.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Field Museum. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Field Museum.

Description

Human remains representing, at minimum, one individual were collected at an unknown location or locations. The human remains are hair clippings belonging to one individual, identified with the tribal designation ''Pottowotomie'' (Field Museum catalog numbers 193211.11). Field Museum staff believe they were collected under the direction of Franz Boas and Frederick Ward Putnam for the 1893 World's Columbian Exposition in Chicago. The hair clippings were accessioned into the Field Museum's collection in 1939. No information regarding the individual's name, sex, age, or geographic location has been found. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: historical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Field Museum has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and the Prairie Band Potawatomi Nation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after January 12, 2024. If competing requests for repatriation are received, the Field Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Field Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: December 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–27381 Filed 12–12–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037053; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: San Francisco State University NAGPRA Program, San Francisco, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the San Francisco State University NAGPRA Program, in consultation with the appropriate Indian tribes, intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Lake County, CA.

DATES: Repatriation of the cultural items in this notice may occur on or after January 12, 2024.

ADDRESSES: Elise Green, San Francisco State NAGPRA Program, 1600 Holloway Avenue, San Francisco, CA 94132, telephone (415) 405–3545, email *egreent@sfsu.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the San Francisco State NAGPRA Program. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of the consultation, can be found in the summary or related records held by the San Francisco State NAGPRA Program.

Description

In 1972, cultural items were removed from site CA–LAK–305, on the main arm of Sam Alley Ridge in Lake County, CA. The items were stored in the San Francisco State College Anthropology Collection and subsequently became part of the Tregenza Anthropology Museum's (TAM) archeological

collection. Upon closure of the TAM in 2012, the items were transferred to the San Francisco State University NAGPRA program. The 180 unassociated funerary objects are 22 shells, three pieces of wire, one medial section square nail, one partial obsidian point, 39 square nails, 11 obsidian projectile point tip fragments, six chert projectile point fragments, 10 chert scrapers, seven obsidian scrapers, four obsidian projectile point fragments, one small square nail, one round nail, seven square nail fragments, one partial basal projectile point, one notched obsidian point, one corner notch point, two corner notch projectile point fragments, two square nail fragments, two corner notch obsidian point projectiles, one side notch projectile point, one projectile point fragment, two obsidian flakes, one medial section square nail, one chert projectile point base fragment, one projectile point fragment, one fragment of cooper, one iron chunk, two worked chert flakes, 14 worked pieces of chert, one chert corner notch point, one drill scraper point, two modified chert flakes, two pieces of glass, one square spike, one chert tip fragment, one obsidian burin, one medial obsidian projectile point fragment, one Winchester No.12 shotgun shell, one modified obsidian flake, one obsidian flake tool, one basal fragment small projectile point, one large nail, one large nail fragment, one chert knife fragment, one utilized chert flake, one reworked obsidian flake, two utilized obsidian flakes, one worked piece of obsidian, one thin triangular blade tip flake, one chert core medial fragment, one square nail medial, one modified piece of chert, four worked pieces of obsidian, two pieces of milky quartz, and one heavy metal ring.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, geographical, historical, linguistic, and other relevant information or expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the San Francisco State NAGPRA Program has determined that:

- The 180 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Habematolel Pomo of Upper Lake, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after January 12, 2024. If competing requests for repatriation are received, the San Francisco State NAGPRA Program must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The San Francisco State NAGPRA Program is responsible for sending a copy of this notice to the Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: December 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–27367 Filed 12–12–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037064; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Robert S. Peabody Institute of Archaeology, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Robert S. Peabody Institute of Archaeology has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Jefferson County, NY.

DATES: Repatriation of the human remains in this notice may occur on or after January 12, 2024.

ADDRESSES: Ryan Wheeler, Robert S. Peabody Institute of Archaeology, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email *rwheeler@andover.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Robert S. Peabody Institute of Archaeology. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Robert S. Peabody Institute of Archaeology.

Description

Human remains representing, at minimum, one individual were removed from Jefferson County, NY. The individual was removed from an unknown site by R.W. Amidon and O. Pomeroy in 1902 and sent to the Robert S. Peabody Institute of Archaeology at some time after that. Originally reported on NAGPRA inventories as being from Monroe or St. Lawrence Counties, Amidon and Pomeroy focused their disturbance of sites in Jefferson County, NY. Amidon's notes indicate that human teeth were found occasionally, but a specific site cannot be determined. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological information, geographical information,

historical information, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Robert S. Peabody Institute of Archaeology has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Onondaga Nation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after January 12, 2024. If competing requests for repatriation are received, the Robert S. Peabody Institute of Archaeology must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Robert S. Peabody Institute of Archaeology is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: December 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–27378 Filed 12–12–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037048; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Sierra National Forest, Clovis, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of Agriculture, Forest Service, Sierra National Forest has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Fresno County, CA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 12, 2024.

ADDRESSES: Kim Sorini-Wilson, Sierra National Forest, 29688 Auberry Road, Prather, CA 93651, telephone (559) 855–5355, email *kim.sorini@usda.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Sierra National Forest. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Sierra National Forest.

Description

In 1977, human remains representing, at minimum, five individuals were removed from sites CA–FRE–613 (1), CA–FRE–682 (1), CA–FRE–741 (2), and CA–FRE–747 (1) on the Sierra National Forest in Fresno County, CA, by Don Wren of Fresno City College (FCC) as part of planning for a proposed hydroelectric project. Sites CA–FRE–613, CA–FRE–682, CA–FRE–741, and CA–FRE–747 lie in the Sierra Nevada mountains and foothills on lands managed by the Forest Service. This area is well-documented ethnographically as the territory of the Holkoma people. All four sites include features and artifacts indicative of late-precontact occupation, and two of them also evidence a proto-historic occupation.

In January of 2017, an osteological examination of the faunal remains collected from the excavations and curated at FCC was conducted to determine if human remains were present. That examination resulted in the identification of the human remains listed in this notice. All the human remains are fragmentary. A total of two bone fragments and 27 teeth, representing a minimum of five individuals, were identified. No known individuals were identified. The 13 associated funerary objects are 11 beads (five glass, three shell, two steatite, one of unknown material) and two steatite sherds.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological information, archaeological information, and geographical information.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Sierra National Forest has determined that:

- The human remains described in this notice represent the physical remains of at least five individuals of Native American ancestry.
- The 13 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Cold Springs Rancheria of Mono Indians of California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in

ADDRESSES. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 12, 2024. If competing requests for repatriation are received, the Sierra National Forest must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Sierra National Forest is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: December 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–27363 Filed 12–12–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NCR–NAMA–NPS0036844; PPNCNAMAN70, PPMPSPD1Z.YM00000 (222); OMB Control Number 1024–0021]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; National Capital Area Application for Public Gathering

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before January 12, 2024.

ADDRESSES: Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to *http://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR–ICCO), 13461 Sunrise Valley Drive, (MS 244) Reston, VA 20192 (mail); or *phadrea_ponds@nps.gov* (email). Please reference OMB Control Number 1024–0021 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Marisa Richardson, Permit Specialist, at *marisa_richardson@nps.gov* (email); or 202–245–4715 (telephone). Please reference OMB Control Number 1024–0021 in the subject line of your comments. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States. You may also view the ICR at *https://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on January 12, 2023 (88 FR 2121). We did not receive any comments in response to that notice.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

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

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

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

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Division of Permits Management of the National Mall and Memorial Parks is authorized by regulations codified in 36 CFR 7.96(g) to issue permits for public gatherings, including special events and demonstrations, held on NPS property within the National Capital Area. The regulations reflect the special demands on many urban National Capital Area parks used as sites for demonstrations and special events. A special event is defined as any presentation, program, or display that is recreational, entertaining, or celebratory in nature (*e.g.,* sports events, pageants, celebrations, historical reenactments, regattas, entertainments, exhibitions, parades, fairs, festivals, and similar events). The term ''demonstration'' includes demonstrations, picketing, speechmaking, marching, holding vigils or religious services, and all other forms of conduct that involve the communication or expression of views or grievances. We use NPS Form 10–941 ''Application for a Permit to Conduct a Demonstration or Special Event in Park Areas'' to collect information that is used to identify the nature of the proposed activity and determine the statutory authority to grant the permit.

Title of Collection: National Capital Area Application for Public Gathering.

OMB Control Number: 1024–0021.

Form Number: NPS Form 10–941, ''Application for a Permit to Conduct a Demonstration or Special Event in Park Areas''.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals, organizations, businesses, and State, local, or tribal governments.

Total Estimated Number of Annual Respondents: 1,890.

Total Estimated Number of Annual Responses: 7,166.

Estimated Completion Time per Response: Varies from 0.5 hours to 1.5 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 6,617.

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

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: The estimated annual nonhour burden cost associated with this information collection is 169.920 ($120 × 1,416 applicants). A $120.00 application fee is submitted to recover the cost of processing the request. There is no application fee for permits to cover First Amendment activities.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2023–27253 Filed 12–12–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037052; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Kansas State University, Manhattan, KS

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Kansas State University has completed an inventory of human remains and associated funerary objects and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any Indian Tribe. The human remains and associated funerary objects were removed from Geary County, KS.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after January 12, 2024.

ADDRESSES: Megan Williamson, Department of Sociology, Anthropology, and Social Work, Kansas State University, 204 Waters Hall, 1603 Old Claflin Place, Manhattan, KS 66506–4003, telephone (785) 532–6005, email *mwillia1@ksu.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Kansas State University. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by Kansas State University.

Description

Human remains representing, at minimum, two individuals were removed from the Elliot site, 14GE303, in Geary County, KS. The Elliott site was first excavated in the fall of 1970, by Dr. Patricia J. O'Brien of Kansas State University. The area designated the Elliott site is assigned a single site number, but it is not a continuous debris scatter. Rather, it is comprised of several discrete clusters of material culture that span the Early Plains Archaic through the Middle Ceramic periods. Accordingly, each cluster has been assigned a separate site number. Thus, in addition to the 14GE303 number, the following 12 additional State of Kansas archeological site numbers pertain to this locality: 14GE310, 14GE311, 14GE312, 14GE313, 14GE322, 14GE401, 14GE625, 14GE626, 14GE627, 14GE628, 14GE629, and 14GE630. The human remains and associated funerary objects listed in this notice come from the cluster at the Elliott site designated 14GE312, which demonstrates a Woodland-era affiliation. In 1971, 1972, and 1982, additional excavations were conducted at 14GE312. The resulting assemblages were processed and cataloged in the field and then removed to the archaeology laboratory at Kansas State University for analysis, reporting, and curation, where they have since remained. The 28 associated funerary objects are 19 bone beads (whole and fragmented), eight animal bone fragments, and one bone tool.

Aboriginal Land

The human remains and associated funerary objects in this notice were removed from known geographic locations. These locations are the aboriginal lands of one or more Indian Tribes. The following information was used to identify the aboriginal land: treaties.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, Kansas State University has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The 28 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects described in this notice were removed from the aboriginal land of the Kaw Nation, Oklahoma; Pawnee Nation of Oklahoma; The Osage Nation; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma.

Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains and associated funerary objects described in this notice to a requestor may occur on or after January 12, 2024. If competing requests for disposition are received, Kansas State University must determine the most appropriate requestor prior to disposition. Requests for joint

disposition of the human remains and associated funerary objects are considered a single request and not competing requests. Kansas State University is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and 10.11.

Dated: December 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–27366 Filed 12–12–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037050; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items Amendment: Arizona State Museum, University of Arizona, Tucson, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Arizona State Museum, University of Arizona, has amended a Notice of Intent to Repatriate published in the **Federal Register** on October 17, 2018. This notice amends the number of cultural items in a collection removed from Pinal County, AZ.

DATES: Repatriation of the cultural items in this notice may occur on or after January 12, 2024.

ADDRESSES: Cristin Lucas, Repatriation Coordinator, P.O. Box 210026, Arizona State Museum, University of Arizona, Tucson, AZ 85721, telephone (520) 626–0320, email *lucasc@arizona.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Arizona State Museum, University of Arizona. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the summary or related records held by the Arizona State Museum, University of Arizona.

Amendment

This notice amends the determinations published in a Notice of Intent to Repatriate in the **Federal Register** (83 FR 52532–52535, October 17, 2018). Repatriation of the items in the original Notice of Intent to Repatriate has not occurred. This notice amends the number of unassociated funerary objects as listed in the original notice. An additional three unassociated funerary objects removed from AZ AA:3:17(ASM) in Pinal County, AZ, were identified.

From AZ AA:3:17(ASM) in Pinal County, AZ, the 10 unassociated funerary objects (previously identified as seven unassociated funerary objects) are one ceramic bowl, one ceramic jar, one mano, one polishing stone, one stone cylinder, two stone knives, one shell fragment, and two shell bracelets.

Determinations (as Amended)

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Arizona State Museum, University of Arizona, has determined that:

- The 326 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Ak-Chin Indian Community; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after January 12, 2024. If competing requests for repatriation are received, the Arizona State Museum, University of Arizona, must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Arizona State Museum, University of Arizona, is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, 10.13, and 10.14.

Dated: December 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–27364 Filed 12–12–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037055; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: The University of Oregon Museum of Natural and Cultural History, Eugene, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Oregon Museum of Natural and Cultural History has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the University of Oregon Museum of Natural and Cultural History. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or

Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the University of Oregon Museum of Natural and Cultural History at the address in this notice by January 12, 2024.

ADDRESSES: Dr. Pamela Endzweig, Director of Anthropological Collections, Museum of Natural and Cultural History, 1224 University of Oregon, Eugene, OR 97403–1224, telephone (541) 346–5120, email *endzweig@uoregon.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the University of Oregon Museum of Natural and Cultural History, Eugene, OR. The human remains and associated funerary objects were removed from four sites in Multnomah and Columbia counties, OR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Oregon Museum of Natural and Cultural History professional staff in consultation with representatives of the Confederated Tribes and Bands of the Yakama Nation; Confederated Tribes of Siletz Indians of Oregon; Confederated Tribes of the Grand Ronde Community of Oregon; and the Confederated Tribes of the Warm Springs Reservation of Oregon (hereafter referred to as ''The Tribes'').

History and Description of the Remains

In 1973, human remains representing, at minimum, seven individuals, were removed from the Cholick Site (35MU1) in Multnomah County, OR. The museum records indicate that the human remains were excavated during legally authorized excavations at the Cholick Site by University of Oregon archeologists. The human remains consist of three adults of indeterminate sex, one adult male, and one adolescent and two children of indeterminate sex (cat. #s 11–535, 11–536, 11–546, and unnumbered human remains from unit C and from Feature 8). No known individuals were identified. No associated funerary objects are present.

In 1973, human remains representing, at minimum, one individual, were removed from the Lyons Site (35MU6) in Multnomah County, OR. These human remains were also excavated during legally authorized work by University of Oregon archeologists. The human remains consist of a single individual of indeterminate age and sex (cat. #11–545). No known individuals were identified. The eight associated funerary objects are two cobble hammerstones, one metal fragment, and five glass beads.

In 1973, human remains representing, at minimum, one individual were removed from the Meier Site (35CO5) in Columbia County, OR, during legally authorized excavations by University of Oregon archaeologists. The human remains consist of one tooth from a single individual of indeterminate age and sex (no catalog number assigned). No known individual was identified. No associated funerary objects are present.

In 1973, human remains representing, at minimum, one individual were removed from an unknown location in Columbia or Multnomah counties, OR. These human remains were recovered at the time of the legally authorized investigations by University of Oregon archeologists working in the Portland Basin of the Lower Columbia Valley as described above. The human remains consist of a single adult, possibly female (no catalog number assigned). No known individual was identified. No associated funerary objects are present.

According to published materials referencing the sites and burials above, the Cholick Site is assigned to the Multnomah 1 sub-phase of the regional chronology, dated to 200–1250 CE. One burial feature (Feature 1) was recorded during excavations, and charcoal from the same stratum was radiocarbon-dated to 1510±90 RYBP. The Lyons and Meier Sites are assigned to the Multnomah 2 and 3 sub-phases of the Multnomah Phase (1250–1835 CE). This is supported by the presence of glass beads with the Lyons site burial. Historical documents, ethnographic sources, and oral history indicate that the Multnomah people occupied the Portland Basin of the Lower Columbia Valley since pre-contact times. Based on the museum records of provenience, the human remains are reasonably believed to be Multnomah. Descendants of the Multnomah are members of the Confederated Tribes of the Grand Ronde Community of Oregon.

Determinations Made by the University of Oregon Museum of Natural and Cultural History

Officials of the University of Oregon Museum of Natural and Cultural History have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 10 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the eight objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes of the Grand Ronde Community of Oregon.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Pamela Endzweig, Director of Anthropological Collections, Museum of Natural and Cultural History, 1224 University of Oregon, Eugene, OR 97403–1224, telephone (541) 346–5120, email *endzweig@uoregon.edu,* by January 12, 2024. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Confederated Tribes of the Grand Ronde Community of Oregon may proceed.

The University of Oregon Museum of Natural and Cultural History is responsible for notifying The Tribes that this notice has been published.

Dated: December 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–27369 Filed 12–12–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037061; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Alaska Museum of the North, Fairbanks, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Alaska Museum of the North has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from the Aleutians West Census Area, AK.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 12, 2024.

ADDRESSES: Josh Reuther, University of Alaska Museum of the North, 1962 Yukon Drive, Fairbanks, AK 99775, telephone (907) 474–6943, email *jreuther@alaska.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Alaska Museum of the North. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of Alaska Museum of the North.

Description

In 1937, nine associated funerary objects were collected by Don McKay from Unalaska Island in the Aleutian Islands. The exact location is unknown; the provenience is listed as Dutch Harbor Spit. In 1981, these funerary objects were deposited at the University of Alaska Museum of the North. Museum records show that in 1937, the human remains associated with these funerary objects were given to Ales Hrdlicka at the Smithsonian Institute in Washington DC The nine associated funerary objects are four worked bone objects, one pounding stone, three stone lamps, and one slate blade.

In 1977, human remains representing, at minimum, one individual were removed from the Amaknak Bridge Site on Amaknak Island in the Aleutian Islands. The human remains of this individual were removed during archeological work conducted at the site by Glenn Bacon and were deposited at the University of Alaska Museum of the North shortly thereafter. The human remains consist of a single left half of a mandible belonging to an adult between 30 and 50 years old and of unknown sex. No associated funerary objects are present.

Sometime prior to 1982, human remains representing, at minimum, one individual were removed from an unknown site on Unalaska Island in the Aleutian Islands. The human remains of this individual were removed by an unknown person and were deposited at the University of Alaska Museum of the North prior to 1982. The human remains consist of a single cranium frontal bone belonging to a juvenile 4 to 6 years old and of unknown sex. No associated funerary objects are present.

Sometime prior to 1993, human remains representing, at minimum, one individual were removed from Eider Point on Unalaska Island in the Aleutian Islands. The human remains of this individual were removed by an unknown person and were deposited at the University of Alaska Museum of the North prior to 1993. The human remains consist of a single left femur belonging to an adult female 21 to 35 years old. No associated funerary objects are present.

Sometime prior to 1993, human remains representing, at minimum, one individual were removed from Reese Bay on Unalaska Island in the Eastern Aleutian Islands. The human remains of this individual were removed by an unknown person and were deposited at the University of Alaska Museum of the North prior to 1993. The human remains consist of a single left radius belonging to an adult at least 30 years old and of unknown sex. No associated funerary objects are present.

Sometime prior to 1993, human remains representing, at minimum, two individuals were removed from an unknown location on Unalaska Island in the Eastern Aleutian Islands. The human remains of these individuals were removed by an unknown person and were deposited at the University of Alaska Museum of the North prior to 1993. The human remains consist of a single cranium (in two pieces) belonging to a juvenile 4–6 years old and of unknown sex, and a single cranial temporal bone belonging to an adult at least 20 years old and of unknown sex. No associated funerary objects are present.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the University of Alaska Museum of the North has determined that:

- The human remains described in this notice represent the physical remains of six individuals of Native American ancestry.
- The nine objects described in this notice are reasonably believed to have been placed with our near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Qawalangin Tribe of Unalaska.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 12, 2024. If competing requests for repatriation are received, the University of Alaska Museum of the North must determine the most appropriate requestor prior to repatriation. Requests for joint

repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The University of Alaska Museum of the North is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: December 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–27375 Filed 12–12–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037057; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Fish and Wildlife Service, Lahontan National Fish Hatchery, Gardnerville, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of Interior, Fish and Wildlife Service, Lahontan National Fish Hatchery has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Douglas County, NV.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 12, 2024.

ADDRESSES: Patrick W. Rennaker, Archaeologist, U.S. Fish and Wildlife Service, Cultural Resources Team, Columbia Pacific Northwest and Pacific Islands (R1), and Pacific Southwest (R8), 20555 Gerda Lane, Sherwood, OR 97140, telephone (503) 294–7490, email *patrick_rennaker@fws.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Lahontan National Fish Hatchery. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Lahontan National Fish Hatchery.

Description

Human remains representing, at minimum, three individuals were removed from Douglas County, NV. In April of 1969, Richard Messier of the National Park Service contacted the Nevada Archaeological Service to investigate a burial site which had been exposed during road improvement activities. The site was situated on the crest of a hill at the junction of Highway 395 and the Fish Hatchery access road six miles south of Garnerville. Three distinct burial pits were visible in the cut-bank of the hill, with human remains and groundstone present on the slope in front of the cut-bank. University of Nevada Reno investigators Dr. Don Fowler, Dr. Catherine Fowler, and Dr. Don Hardesty inspected the site and determined that the likelihood of further damage was high and that the best possible recourse at the time was to recover as much of the disturbed material as possible. They subsequently recovered human remains from the three burial pits and disturbed human remains below the cut-bank. It is noted that a disk shell bead was collected from the topsoil fill above the burial pits. No other associated grave materials were identified at the time of excavation. National Park Service employees also collected several human remains elements before the Nevada Archaeological Service arrived, and these were given to the investigators upon arrival. The Research Museum at the University of Nevada, Reno agreed to house this material on permanent loan from the U.S. Fish and Wildlife Service.

The initial inspection noted that the first individual is probably a young adult male between the ages of 14 and 20, the second is an adult male, and the third is an adult but too incomplete for further comment. The original site records indicate that one shell disc bead was present in the fill above Burial One. Another was possibly associated with Burial Two. The original notes indicate the beads were removed during excavation, but nothing in the paperwork denotes that these items were curated. No disk shell beads relating to this assemblage could be located during the 1995, 2021, and 2023 inventory process. In 2021, Museum staff located four manos labeled as belonging to 26DO300 in a stack of artifacts to be rehoused. There is no record of these objects in the Summary of Findings. It is assumed that the manos were acquired after the original excavation and the associated funerary objects arrived at the Museum at a later unknown date from the Park Service employees that collected elements prior to the Nevada Archaeological Service arrival as noted. The four associated funerary objects are four stone manos.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: based on lifeway, oral tradition, folklore, geography, anthropology, ethnography, archeology, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Lahontan National Fish Hatchery has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- The four objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches).

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization

not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 12, 2024. If competing requests for repatriation are received, the Lahontan National Fish Hatchery must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Lahontan National Fish Hatchery is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: December 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–27371 Filed 12–12–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037060; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the Sherman Institute, Riverside County, CA, Fort Berthold Agency, McLean County, ND, and Flandreau Indian School, Moody County, SD.

DATES: Repatriation of the human remains in this notice may occur on or after January 12, 2024.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

Description

Human remains representing, at minimum, two individuals were collected at the Sherman Institute, Riverside County, CA. The human remains are hair clippings collected from one individual who was recorded as being 18 years old and one individual who was recorded as being 19 years old. The two individuals were identified as ''Arikara.'' Samuel H. Gilliam took the hair clippings at the Sherman Institute between 1930 and 1933. Gilliam sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Human remains representing, at minimum, 12 individuals were collected at the Fort Berthold Agency, McLean County, ND. The human remains are hair clippings collected from two individuals who were recorded as being 7 years old, one individual who was recorded as being 10 years old, one individual who was recorded as being 11 years old, three individuals who were recorded as being 12 years old, four individuals who were recorded as being 13 years old, and one individual who were recorded as being 16 years old. All individuals were identified as ''Gros Ventre.'' Ralph Parsons took the hair clippings at the Sherman Institute between 1930 and 1933. Parsons sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Human remains representing, at minimum, one individual were collected at the Flandreau Indian School, Moody County, SD. The human remains are hair clippings collected from one individual who was recorded as being 20 years old and identified as ''Mandan.'' George E. Peters took the hair clippings at the Sherman Institute between 1930 and 1933. Peters sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: kinship and anthropological.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of 15 individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after January 12, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing

regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: December 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–27374 Filed 12–12–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037063; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Robert S. Peabody Institute of Archaeology, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Robert S. Peabody Institute of Archaeology has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from McDonald County, MO.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 12, 2024.

ADDRESSES: Ryan Wheeler, Robert S. Peabody Institute of Archaeology, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email *rwheeler@andover.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Robert S. Peabody Institute of Archaeology. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Robert S. Peabody Institute of Archaeology.

Description

Human remains representing, at minimum, 15 individuals were removed from Jacob's Cavern in McDonald County, MO. At the invitation of E.H. Jacobs, Charles Peabody, and Warren Moorehead of the Department of Archaeology at Phillips Academy (now the Robert S. Peabody Institute of Archaeology) traveled to Jacob's Cavern in April of 1903 to examine the site. The ancestors are five adults of indeterminate sex, five adult males, three adult females, one juvenile of indeterminate sex, and one infant. The 203 associated funerary objects are 203 faunal bone fragments.

Human remains representing, at minimum, 13 individuals were removed from Undetermined Sites in Pineville in McDonald County, MO. Undetermined Sites in Pineville is an amalgamation of four different undefined localities associated with Pineville, MO. The ancestors were removed between 1895 to 1905 by individuals associated with the Peabody Institute. The ancestors are 10 adults of indeterminate sex, two adult males, and one infant. The 215 associated funerary objects are two soil samples, two sherds, and 211 faunal bone fragments.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological information, geographical information, historical information, linguistics, oral tradition, and other relevant information.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Robert S. Peabody Institute of Archaeology has determined that:

- The human remains described in this notice represent the physical remains of 28 individuals of Native American ancestry.
- The 418 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and The Osage Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 12, 2024. If competing requests for repatriation are received, the Robert S. Peabody Institute of Archaeology must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Robert S. Peabody Institute of Archaeology is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: December 6, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–27377 Filed 12–12–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[BOEM–2021–0043; EEEE500000 234E1700D2 ET1SF0000.EAQ000

Oil and Gas Decommissioning Activities on the Pacific Outer Continental Shelf

AGENCY: Bureau of Safety and Environmental Enforcement (BSEE).

ACTION: Notice of availability of the Record of Decision for the Final Programmatic Environmental Impact Statement for Oil and Gas Decommissioning Activities on the Pacific Outer Continental Shelf.

SUMMARY: The Bureau of Safety and Environmental Enforcement (BSEE)

announces the availability of the Record of Decision for the Final Programmatic Environmental Impact Statement (PEIS) for Oil and Gas Decommissioning Activities on the Pacific Outer Continental Shelf. The Record of Decision identifies BSEE's selected alternative for the Final PEIS.

ADDRESSES: The Record of Decision and the Final PEIS with appendices are available on the Bureau of Ocean Energy Management's (BOEM's) website at *www.boem.gov/Pacific-Decomm-PEIS* and on BSEE's website at *www.bsee.gov/stats-facts/ocs-regions/pacific/pacific-region-federal-ocs-decommissioning.*

FOR FURTHER INFORMATION CONTACT: For further information on the Record of Decision for the Final PEIS, you may contact BOEM or BSEE. The BOEM point of contact (POC) is Mr. Richard Yarde, Regional Supervisor, Bureau of Ocean Energy Management, Pacific OCS Region, 760 Paseo Camarillo, Suite 102, Camarillo, CA 93010–6002. You may also contact Mr. Yarde by telephone at (805) 384–6379 or email at *richard.yarde@boem.gov.* The BSEE POC is Mr. Bruce Hesson, Regional Director, Bureau of Safety and Environmental Enforcement, Pacific Region, 760 Paseo Camarillo, Suite 102, Camarillo, CA 93010. You may also contact Mr. Hesson by telephone at (805) 384–6373 or email at *bruce.hesson@bsee.gov.*

SUPPLEMENTARY INFORMATION:

Preferred Alternative Selected: The Record of Decision identifies the Preferred Alternative, Alternative 1 with sub-alternative 1a (Alternative 1a), as the selected alternative, which is for complete removal with onshore disposal and the option of explosive severance for platform jackets.

Other Alternatives Analyzed: The Final PEIS also considered alternatives addressing partial removal of infrastructure, different severance techniques, and the potential for placement of portions of the jacket for development of an artificial reef. This Final PEIS will provide foundational analysis of the primary methods of decommissioning across a range of scenarios to facilitate evaluation of future decommissioning applications, which will undergo further analysis on a site-specific basis.

Availability of the ROD: You may download or view the Record of Decision, Final PEIS, appendices, and associated information on the following BOEM website: *www.boem.gov/Pacific-Decomm-PEIS,* or on the following BSEE website: *https://www.bsee.gov/stats-facts/ocs-regions/pacific/pacific-region-federal-ocs-decommissioning.*

Authority: 42 U.S.C. 4231 *et seq.;* 40 CFR 1506.6.

Kevin M. Sligh, Sr.,

Director, Bureau of Safety and Environmental Enforcement.

[FR Doc. 2023–27352 Filed 12–12–23; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–689 and 731–TA–1618 (Final)]

Non-Refillable Steel Cylinders From India; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–689 and 731–TA–1618 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether 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 non-refillable steel cylinders from India, provided for in subheading 7311.00.00 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (''Commerce'') to be subsidized and sold at less-than-fair-value.

DATES: December 1, 2023.

FOR FURTHER INFORMATION CONTACT: Peter Stebbins (*peter.stebins@usitc.gov*), 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:

Scope.—For purposes of these investigations, Commerce has defined the subject merchandise as ''certain seamed (welded or brazed), non-refillable steel cylinders meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation specification 39, TransportCanada specification 39M, or United Nations pressure receptacle standard ISO 11118 and otherwise meeting the description provided below (non-refillable steel cylinders). The subject non-refillable steel cylinders are portable and range from 100-cubic inch (1.6 liter) water capacity to 1,526-cubic inch (25 liter) water capacity. Subject non-refillable steel cylinders may be imported with or without a valve and/or pressure release device and are unfilled at the time of importation. Non-refillable steel cylinders filled with pressurized air otherwise meeting the physical description above are covered by this investigation. Specifically excluded are seamless nonrefillable steel cylinders.

The merchandise subject to this investigation is properly classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). The merchandise may also enter under HTSUS statistical reporting numbers 7310.29.0030 and 7310.29.0065. Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.''

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by Commerce that certain benefits which constitute subsidies within the meaning of § 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in India of non-refillable steel cylinders, and that such products are being sold in the United States at less than fair value within the meaning of § 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on April 27, 2023, by Worthington Industries, Columbus, Ohio.

For further information concerning the conduct of this phase of the investigations, hearing procedures, 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 C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject

merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

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.

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 the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on March 28, 2024, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Tuesday, April 16, 2024. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before Tuesday, April 9, 2024. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the investigation, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID–19 test result may be submitted by 3 p.m. the business day prior to the hearing. Further information about participation in the hearing will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.*

A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference, if deemed necessary, to be held at 9:30 a.m. on Thursday, April 11, 2024. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than 4:00 p.m. on April 15, 2024. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is April 4, 2024. Parties shall also file written testimony in connection with their presentation at the hearing, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is April 23, 2024. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before April 23, 2024. On May 10, 2024, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 14, 2024, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. 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.

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's 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.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: December 8, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–27358 Filed 12–12–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint *Certain Furniture Products Finished with Decorative Wood Grain Paper and Components Thereof,* DN 3711; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The

public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Toppan Interamerica, Inc. on December 7, 2023. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain furniture products finished with decorative wood grain paper and components thereof. The complaint names as a respondent: Whalen LLC d/b/a Whalen Furniture Manufacturing of San Diego, CA. The complainant requests that the Commission issue a limited exclusion order, a cease and desist order, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3711'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 7, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–27288 Filed 12–12–23; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Resource Conservation and Recovery Act

On December 7, 2023, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Illinois in the lawsuit entitled *United States, Louisiana Department of Environmental Quality, and the State of Indiana* v. *Heritage-Crystal Clean, LLC,* Civil Action No. 1:22–cv–00303.

The complaint filed in this action seeks civil penalties and injunctive relief for alleged violations of the Resource Conservation and Recovery

Act, its implementing regulations, and related state law provisions, at five Heritage-Crystal Clean (HCC) facilities located in Shreveport, Indianapolis, Atlanta, and Denver as well as at a former facility in Fairless Hills, Pennsylvania. The complaint alleged that in the course of providing solvent-based parts washing services to numerous customers throughout the United States, HCC violated various hazardous waste management requirements by (1) transporting hazardous waste without required hazardous waste manifests, (2) storing hazardous waste at HCC facilities that do not have hazardous waste permits, (3) failing to make adequate hazardous waste determinations after mixing used solvents that HCC accepted from numerous different customers, (4) failing to comply with certain requirements for reducing air emissions from hazardous waste tanks and equipment, and (5) failing to maintain adequate secondary containment for certain hazardous waste tanks. The complaint also alleged that HCC violated certain requirements applicable to storage of used oil at HCC's Shreveport facility, and certain requirements governing management of solid wastes at HCC's Indianapolis facility (the ''10th Street Facility'').

The proposed settlement prohibits HCC from treating, storing, or disposing of hazardous waste at any HCC facility that does not have a hazardous waste management permit. The proposed settlement also includes extensive measures to assure that HCC facilities do not manage used parts washing solvent that is subject to regulation as hazardous waste. These measures include: (1) screening new customers; (2) screening used parts washing solvents before HCC accepts such solvents for transport and management; (3) providing educational materials to certain parts washing customers; (4) testing of used parts washing solvent accepted by HCC to determine whether any used solvents accepted and managed by HCC are hazardous waste; (5) prompt removal from HCC facilities of any used parts washing solvents shown to be hazardous waste; (6) a prohibition on processing of certain used solvents, including by gravity separation, for the purpose of making the used solvent suitable for resale and re-use. The proposed settlement also provides for HCC to apply for a permit to store and treat hazardous waste at its 10th Street Facility. Pending issuance of a hazardous waste permit for the 10th Street Facility and construction of any waste management units authorized by such a permit, the proposed Consent Decree requires HCC to implement various interim measures at the 10th Street Facility, including various inspection requirements, and requirements to close open vents on certain tanks used to store used solvent at the 10th Street Facility. In addition, the proposed Consent Decree includes provisions for a third-party audit of HCC's implementation of Consent Decree requirements. Finally, the proposed Consent Decree provides for HCC to pay civil penalties totaling $1,162,500, with specified portions of the penalty amount allocated to the United States, the Louisiana Department of Environmental Quality, and the State of Indiana.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, Louisiana Department of Environmental Quality, and the State of Indiana* v. *Heritage-Chrystal Clean, LLC* D.J. Ref. No. 90–7–1–11889. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $33.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Thomas Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–27319 Filed 12–12–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On December 6, 2023, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of New Jersey in *United States* v. *Wyeth Holdings LLC,* 2:23–cv–22922 (D.N.J.).

The United States filed a complaint under the Comprehensive Environmental Response, Compensation, and Liability Act against Wyeth Holdings LLC, for recovery of damages for injury to, loss of, or destruction of natural resources resulting from the release of hazardous substances at or from the American Cyanamid Superfund Site (the ''Site'') in Bridgewater Township, Somerset County, New Jersey. Specifically, the United States alleges releases of hazardous substances caused injury to floodplains, riparian areas, and wetlands adjacent to the Site and the biota supported by these habitats, including macroinvertebrates, amphibians, reptiles, birds, and mammals. These natural resources are under the trusteeship of the United States Department of the Interior (DOI), through the United States Fish and Wildlife Service (FWS), the National Oceanic and Atmospheric Administration (NOAA), and New Jersey Department of Environmental Protection (NJDEP).

The proposed Consent Decree is among the United States, NJDEP, and Wyeth Holdings LLC. Under the proposed Consent Decree, Wyeth Holdings LLC, will undertake and fund the ''Duke Farms Forested Floodplain Restoration Project,'' which will restore 112 areas of former farmland located upstream of the Site on the Raritan River to a natural habitat. Wyeth will also pay the DOI, NOAA, and NJDEP's assessment and oversight costs.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, and should refer to *United States and New Jersey Department of Environmental Protection* v. *Wyeth Holdings LLC,* D.J. Ref. No. 90–11–3–07250/4. All comments must be submitted no later than sixty (60) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	pubcomment-ees.enrd@usdoj.gov.
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed consent decree upon email request to *pubcomment-ees.enrd@usdoj.gov.*

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–27251 Filed 12–12–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Proposed Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act

On December 4, 2023, a proposed Settlement Agreement between the United States, on behalf of (a) the United States Department of the Interior (''DOI'') and (b) the United States Environmental Protection Agency (''EPA''), and Mallinckrodt plc, and the Mallinckrodt General Unsecured Claims Trust (the ''GUC Trust'' and, with the Reorganized Debtors, collectively, ''Mallinckrodt''), was filed with the United States Bankruptcy Court for the District of Delaware in the Chapter 11 case captioned, *In re: Mallinckrodt PLC,* Case No.: 20–12522.

On October 12, 2020, each of Mallinckrodt plc and its debtor affiliates filed voluntary petitions in the Bankruptcy Court. The United States, on behalf of DOI and EPA, filed a proof of claim asserting a claim against Mallinckrodt for past costs and future liability as a potential liable party at the Sangamo Electric Dump/Crab Orchard National Wildlife Refuge Site pursuant to the Comprehensive Environmental Response Comprehensive Environmental Response, Compensation, and Liability Act. The proposed Settlement Agreement grants the United States an allowed unsecured claim against Mallinckrodt US Holdings LLC on behalf of DOI in the amount of $56,880,784, and for EPA in the amount of $499,216. Mallinckrodt's *Fourth Amended Joint Plan of Reorganization,* which the Bankruptcy Court confirmed, and which went effective on Jun 16, 2022, dictate the terms of payment for the United States' allowed claim.

The publication of this notice opens a period for public comment on the proposed Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to, *In re: Mallinckrodt PLC,* Case No.: 20–12522, D.J. Ref. No. 90–11–2–09556/2. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	pubcomment-ees.enrd@usdoj.gov.
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the Settlement Agreement may be examined and downloaded at this Justice Department website: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Settlement Agreement upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $3.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Patricia M. McKenna,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–27361 Filed 12–12–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On December 5, 2023, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Central District of Illinois in the lawsuit entitled *United States et al.* v. *TCI Pacific Communications LLC,* Case No. 23–4218.

The proposed Consent Decree settles claims brought by the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607 against TCI Pacific Communications LLC (''Defendant'') seeking reimbursement of response costs and performance of remedial measures with respect to Operable Unit 4 (''OU4'') of the DePue/New Jersey Zinc/Mobil Chemical Corp. Superfund Site in DePue, Illinois. The Consent Decree would also resolve claims brought by the State of Illinois under CERCLA, 42 U.S.C. 9607 and the Illinois Environmental Protection Act, 415 ILCS 5/22.2 and 5/42 (d) and (e), for performance of a remedial action and recovery of the State's unreimbursed costs incurred at or in connection with OU4 at the Site. The Consent Decree requires Defendants to pay the United States a total of $368,831.16 in EPA's response costs and perform the remedial ''Work'' defined in the Scope of Work, attached to the Consent Decree as Appendix B. The Work consists of excavation of contaminated soil and Site-related material from residences, parks, and alleys, backfilling with clean soil, revegetation, and stockpiling and management of the excavated fill in the Former Plant Site Area of OU3.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al.* v. *TCI Pacific Communications LLC,* DJ No. 90–11–3–11937/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Commenters may request an opportunity for a public meeting in the affected area in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d). Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	pubcomment-ees.enrd@usdoj.gov.
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.*

We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

For a copy of the Consent Decree, please enclose a check or money order for $61 (244 pages at 25 cents per page reproduction cost) payable to the United States Treasury.

Patricia McKenna,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–27269 Filed 12–12–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request, Work Opportunity Tax Credit (WOTC), New Collection

AGENCY: Office of the Assistant Secretary for Policy, Chief Evaluation Office, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents is properly assessed. Currently, the Department of Labor is soliciting comments concerning the collection of data about the Work Opportunity Tax Credit. A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 12, 2024.

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

Email: ChiefEvaluationOffice@dol.gov; Mail or Courier: Megan Lizik, Chief Evaluation Office, OASP, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Megan Lizik by email at *ChiefEvaluationOffice@dol.gov* or by phone at 202–693–5911.

SUPPLEMENTARY INFORMATION:

I. *Background:* The Chief Evaluation Office (CEO) of the U.S. Department of Labor (DOL) intends to design and conduct an evaluation to assess the Work Opportunity Tax Credit (WOTC) program. WOTC is a provision of the Internal Revenue Code (title 26 of the U.S. Code) that provides employers a tax credit as an incentive to hire people with barriers to employment in 10 Target Groups (including veterans, recipients of certain public benefits, people with disabilities and others). DOL is responsible for certification of WOTC participant eligibility, and the Internal Revenue Service in the Department of Treasury issues the tax credits to employers. The goal of this project is to build knowledge about the effectiveness and implementation of the program. CEO, in collaboration with the Office for Workforce Investment (OWI) in the Employment and Training Administration (ETA) and with the Office of Disability Employment Policy (ODEP), seeks to better understand the Work Opportunity Tax Credit (WOTC), how it is administered amongst state workforce agencies, how it serves job seekers and employers, the effectiveness and efficiency of its current design, potential improvements in structure and operations, and potential future research in this area. This initial request pertains to an implementation evaluation of WOTC. An outcome and impact evaluation are anticipated in the future.

This **Federal Register** Notice provides the opportunity to comment on

1. *Internet Survey of State Workforce Agency (SWA) Administrators.* Surveys will be issued in the winter of 2024–2025. These surveys will address the implementation processes used by SWAs to administer the WOTC program, including recruitment of individuals and businesses, issuance of conditional certifications, processing WOTC certification requests, interactions with other involved organizations, and use of automated systems. SWAs will also be asked to provide contact information for Businesses that requested WOTC certifications, Business Representatives used by employers seeking WOTC certifications, American Job Centers and other community organizations authorized to pre-certify WOTC Target Group members, and individuals certified in WOTC Target Groups.

*2. Internet Survey of Businesses and Business Representatives. S*urveys will be issued in the winter of 2024–2025 to address the processes used by Businesses or their Representatives to recruit, certify and hire WOTC candidates.

3. *Internet Survey of American Job Centers (AJCs) and Partner Organizations* that can pre-certify the eligibility for a WOTC Target Group. This survey will address the activities that AJCs and other partner organizations (identified by SWAs) engage in to pre-certify individuals in 10 WOTC Target groups.

4. *Internet Survey of WOTC-Certified Candidates.* This survey will address the implementation processes experienced by the WOTC Target Group members in obtaining a WOTC certification, and their subsequent employment.

II. *Desired Focus of Comments:* Currently, the Department of Labor is soliciting comments concerning the above data collection for the Work Opportunity Tax Credit program. DOL is particularly interested in comments that do the following:

- evaluate whether the proposed collection of information is necessary for the proper performance functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's burden estimate of the proposed information collection, including the validity of the methodology and assumptions;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology—for example, permitting electronic submissions of responses.

III. *Current Actions:* At this time, the Department of Labor is requesting clearance for internet surveys of State Workforce Agencies, Businesses and

Business Representatives, American Job Centers and associated partners, and WOTC-certified individuals.

Type of Review: New information collection request.

OMB Control Number: 1290–0NEW.

Affected Public: State Workforce Agency Personnel, Businesses (primarily for profit, but may include a small number of non-profits), and Individuals with WOTC certifications.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

ESTIMATED ANNUAL BURDEN HOURS

Type of instrument (form/activity)	Number of respondents	Number of responses per respondent	Total number of responses	Average burden time per response (minutes)	Estimated burden hours
Internet Survey of State Workforce Agency WOTC Administrators	50	1	50	60	50
Internet Survey of WOTC-participating Businesses	1,000	1	1,000	15	250
Internet survey of Business Representatives Acting on behalf of a WOTC-participating businesses	50	1	50	15	13
Internet Survey of American Job Center/Partner Organizations that pre-certify individuals in WOTC Target Groups	500	1	500	10	84
Internet Survey of Individuals certified in a WOTC Target Group	1,000	1	1,000	15	250
Total	2,600	.....	2,600	.....	647

Upeksha Savi Swick,

Director of Research, Employment and Training Programs, U.S. Department of Labor.

[FR Doc. 2023–27300 Filed 12–12–23; 8:45 am]

BILLING CODE 4510–HX–P

NATIONAL CAPITAL PLANNING COMMISSION

Notice of Public Comment Period and Public Meetings on Updates to the Submission Guidelines Related to Equity

AGENCY: National Capital Planning Commission.

ACTION: Notice of 90-Day public comment period and public meetings.

SUMMARY: The National Capital Planning Commission (NCPC) has released for public review draft updates to the Submission Guidelines related to equity. Federal and non-Federal agency applicants whose development proposals and plans are subject to statutory mandated Commission plan and project review must submit their proposals to the Commission following a process laid out in the Submission Guidelines. The proposed updates to the Submission Guidelines support the forthcoming updates to the Introduction Chapter of the Comprehensive Plan for the National Capital: Federal Elements. A Notice of a 90-day Public Comment Period and Public meetings relating to the revised update to the Introduction to the Comprehensive Plan for the National Capital: Federal Elements to address equity is published elsewhere in this issue of the **Federal Register**. The draft updates to the Submission Guidelines are available online for review at *https://www.ncpc.gov/initiatives/*intro. NCPC will host two public information sessions for the public to learn more about the draft updates to the Submission Guidelines.

DATES: The public comment period closes March 12, 2024. A virtual public meeting will be on January 25, 2024, from 12:00 p.m. to 1:30 p.m. Registration information for the meeting can be found at *https://www.ncpc.gov/initiatives/*intro.

An in-person public meeting will be on February 20, 2024, from 6:00 p.m. to 7:30 p.m. at NCPC, the address of which is the same for submission of written comments below.

ADDRESSES: Written public comments on the draft may be submitted by either method:

1. *U.S. mail, courier, or hand deliver:* Submission Guidelines Public Comment, National Capital Planning Commission, 401 9th Street NW, Suite 500N, Washington, DC 20004.

2. *Electronically: https://www.ncpc.gov/initiatives/intro.*

FOR FURTHER INFORMATION CONTACT: Laura Shipman at (202) 482–7251 or *info@ncpc.gov.*

Authority: 40 U.S.C. 8721(e)(2).

Dated: December 7, 2023.

Anne R. Schuyler,

General Counsel.

[FR Doc. 2023–27284 Filed 12–12–23; 8:45 am]

BILLING CODE P

NATIONAL CAPITAL PLANNING COMMISSION

Notice of Public Comment Period and Public Meetings for Updates to the Introduction Chapter of the Comprehensive Plan for the National: Federal Elements

AGENCY: National Capital Planning Commission.

ACTION: Notice of 90-day public comment period and public meetings.

SUMMARY: The National Capital Planning Commission (NCPC) has released a draft of a revised Introduction Chapter of the Comprehensive Plan for the National Capital: Federal Elements for public review. The chapter establishes the planning framework for the Comprehensive Plan's Federal Elements to guide agency actions, including review of projects and long-range plans that affect federal buildings, installations, campuses, and master plans in the National Capital Region. The revisions include references to equity considerations. A Notice of a 90-day Public Comment Period and Public Meetings for updates to the Submission Guidelines related to equity is published elsewhere in this issue of the **Federal Register**. NCPC will host two public information sessions for the public to learn more about the draft revisions. The draft Introduction Chapter is available online for review at *https://www.ncpc.gov/initiatives/Intro.*

DATES: The public comment period closes March 12, 2024. A virtual public meeting will be held on Thursday, January 25, 2024 from 12:00 p.m. to 1:30 p.m. Registration information for the meeting can be found at *https://www.ncpc.gov/initiatives/Intro.* An in-

person meeting will be held on February 20, 2024, from 6:00 p.m. to 7:30 at NCPC, which is the same as that for submission of written comments below.

ADDRESSES: Written public comments on the draft may be submitted by either method: U.S. mail, courier, or hand deliver: Introduction Chapter Public Comment, National Capital Planning Commission, 401 9th Street NW, Suite 500N, Washington, DC 20004; or Electronically: *https://www.ncpc.gov/initiatives/Intro.*

FOR FURTHER INFORMATION CONTACT: Brittney Drakeford at (202) 482–4210 or *info@ncpc.gov.*

Authority: 40 U.S.C. 8721(e)(2).

Dated: December 7, 2023.

Anne R. Schuyler,

General Counsel.

[FR Doc. 2023–27285 Filed 12–12–23; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's Committee on Oversight (CO) hereby gives notice of the scheduling of a videoconference meeting for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: Thursday, December 14, 2023, from 12:30–1:30 p.m. Eastern.

PLACE: This meeting will be held in person and by videoconference through the National Science Foundation headquarters at 2415 Eisenhower Ave., Alexandria, VA 22314.

STATUS: One portion open and one portion closed.

MATTERS TO BE CONSIDERED:

Closed: 12:30–1:05 p.m. Matters to be considered—Chairman's opening remarks regarding the agenda; and presentation and discussion of a pilot program to include experts in Broader Impacts on NSF Committees of Visitors.

Open: 1:05–1:30 p.m. Matters to be considered—Chairman's opening remarks; discussion regarding a presentation by the Inspector General and Assistant Inspector General for Audits regarding the FY 2024 Annual Audit Plan; and Chief Financial Officer update.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: (Chris Blair, *cblair@nsf.gov*), 703/292–7000. Members of the public can observe the public portion of this meeting through a YouTube livestream. The YouTube link will be available from the NSB web page.

Ann E. Bushmiller,

Senior Legal Counsel to the National Science Board.

[FR Doc. 2023–27279 Filed 12–11–23; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0149]

Discontinuation of the Mississippi Agreement State Program's Probationary Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has discontinued Mississippi's Probationary period.

DATES: December 12, 2023.

ADDRESSES: Please refer to Docket ID NRC–2022–0149 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0149. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert Johnson, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7314; email: *Robert.Johnson@nrc.gov.*

SUPPLEMENTARY INFORMATION: Section 274b of the Atomic Energy Act of 1954, as amended, (AEA) provides the statutory basis by which the NRC may enter into an agreement with the governor of a State to discontinue portions of its regulatory authority to license and regulate byproduct materials, source materials, and certain quantities of special nuclear materials. States may assume the authority to regulate those materials after the NRC determines that a perspective State's radiation control program is adequate to protect public health and safety and compatible with the NRC's regulatory program. Through the Agreement State program, 39 States have signed agreements with the NRC. The NRC retains an oversight role for adequacy to protect public health and safety, and compatibility with the NRC's regulatory program.

Section 274j of the AEA, requires that the NRC periodically review each Agreement State to ensure that the Agreement State's regulatory programs are adequate and compatible. It is the policy of the NRC to evaluate the radiation control program's performance in an integrated manner, using performance indicators, to ensure that public health and safety is being adequately protected. The periodic review process for an Agreement State's regulatory program and the NRC's radioactive materials program is called the Integrated Materials Performance Evaluation Program (IMPEP).

The IMPEP review team presents the findings to a Management Review Board (MRB). The MRB Chair then makes the final determination regarding a radiation control program's overall performance in a public meeting. Information considered by the MRB Chair includes the proposed final IMPEP report which presents suggested performance indicator ratings and recommendations prepared by the IMPEP team, input from MRB members, and information provided by the radiation control program at the MRB meeting. For most IMPEP reviews, no action other than issuance of the final IMPEP report is needed. For those infrequent reviews where additional action is needed, the MRB Chair may consider Monitoring, Heightened

Oversight, and recommendations for Probation, Suspension, or Termination. The most significant actions—Probation, Suspension, or Termination—require Commission approval.

In 2022, the MRB Chair recommended, and the Commission agreed, to place Mississippi on Probation, due to a significant decline in Program performance (87 FR 60212). The MRB Chair directed staff to conduct a follow-up IMPEP review in approximately 1 year from the 2022 IMPEP review.

During the 2023 IMPEP review, the team found that the changes made by Mississippi in response to the 2022 IMPEP review resulted in significant performance improvements across the Program and improved its performance findings relative to five indicators. The team found Mississippi's performance to be satisfactory for the following four performance indicators: Status of Materials Inspection Program; Technical Quality of Inspections; Technical Quality of Incident and Allegation Activities; and Legislation, Regulations, and Other Program Elements. The team found Mississippi's performance to be satisfactory but needs improvement for the following two performance indicators: Technical Staffing and Training and Technical Quality of Licensing Actions. The performance finding for the indicator Technical Staffing and Training remained the same, as satisfactory but needs improvement.

On June 29, 2023, the MRB met to discuss the results of the 2023 IMPEP review. Based on the results of the 2023 IMPEP review, the MRB Chair closed the 2017 IMPEP review recommendation, closed 9 of the 10 recommendations made during the 2022 IMPEP, and opened one new recommendation. The MRB Chair also found Mississippi's performance adequate to protect public health and safety but needs improvement and compatible with the NRC's program. The MRB Chair directed staff to conduct a periodic meeting take place in approximately 1 year with the next IMPEP review taking place in approximately 2 years. On July 27, 2023, the staff issued the final IMPEP report documenting the bases for these findings (ADAMS Accession No. ML23188A186).

As a result of improved performance seen during Mississippi's 2023 IMPEP review and the significant progress made on completing the actions in the Program Improvement Plan, the MRB Chair requested that the Commission discontinue Mississippi's Probationary period and be placed on a period of Heightened Oversight. The Commission agreed with the recommendations to discontinue Mississippi's Probationary Period and the Governor of Mississippi has been notified of this decision.

Dated: December 7, 2023.

For the Nuclear Regulatory Commission.

Kenneth T. Erwin,

Acting Director, Division of Materials Safety, Security, State, and Tribal Programs, Office of Material Safety and Safeguards.

[FR Doc. 2023–27250 Filed 12–12–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Week of December 11, 2023.

PLACE: Via Webcast.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Week of December 11, 2023

Tuesday, December 12, 2023

9:55 a.m. Affirmation Session (Public Meeting) (Tentative), Kairos Power, LLC (Hermes Test Reactor Construction Permit Application), Docket No. 50–7513–CP, Mandatory Hearing Decision (Tentative) (Contact: Wesley Held: 301–287–3591)

ADDITIONAL INFORMATION: By a vote of 4–0 on December 8 and 11, 2023, the Commission determined pursuant to 5 U.S.C. 552b(e)(1) and 10 CFR 9.107 that this item be affirmed with less than one week notice to the public. The item will be affirmed in the meeting being held on December 12, 2023. The public is invited to attend the Commission's meeting live by webcast at the Web address—*https://video.nrc.gov/.*

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 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.*

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.

Members of the public may request to receive this information 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.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: December 11, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023–27479 Filed 12–11–23; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–99 and CP2024–102]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 15, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The

request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–99 and CP2024–102; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 132 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 7, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 15, 2023.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–27355 Filed 12–12–23; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2024–100; Order No. 6844]

Inbound Parcel Post (at UPU Rates)

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recent Postal Service filing of a change in rates not of general applicability for Inbound Parcel Post (at Universal Postal Union rates) to be effective January 1, 2024. This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 14, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On December 6, 2023, the Postal Service filed notice announcing its intention to change rates not of general applicability for Inbound Parcel Post (at Universal Postal Union (UPU) Rates) effective January 1, 2024.[1]

II. Contents of Filing

With the Notice, the Postal Service filed: a redacted copy of Governors' Decision No. 19–1, a redacted copy of the UPU International Bureau (IB) Circular 173 that contains the new rates, a copy of the certification required under 39 CFR 3035.105(c)(2), redacted Postal Service data used to justify any bonus payments, and a copy of the Postal Service's submission to the UPU in support of an inflation-linked adjustment. Notice at 3; *see id.* Attachments 2–6. The Postal Service also filed redacted Excel versions of financial workpapers. Notice at 3.

Additionally, the Postal Service filed an unredacted copy of Governors' Decision No. 19–1, an unredacted copy of the UPU IB Circular 173, unredacted Postal Service data used to justify any bonus payments under seal, and unredacted Excel versions of financial workpapers. Notice at 4. The Postal Service filed an application for non-public treatment of materials filed under seal. *Id.* at 2–3; *id.* Attachment 1.

The Postal Service states that it has provided supporting documentation as required by Order No. 2102 and Order No. 2310.[2] In addition, the Postal Service states that it provided citations and copies of relevant UPU IB Circulars and updates to inflation-linked adjustments as required by Order No. 4933.[3]

III. Commission Action

The Commission establishes Docket No. CP2024–100 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632 and 3633 and 39 CFR part 3035. Comments are due no later than December 14, 2023. The public portions of the filing can be accessed via the Commission's website (*http://www.prc.gov*).

The Commission appoints Katalin K. Clendenin to serve as Public Representative in this docket.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2024–100 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than December 14, 2023.

[1] Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability for Inbound Parcel Post (at UPU Rates), and Notice of Filing Non-Public Materials Under Seal, December 6, 2023, at 1 (Notice).

[2] Notice at 4–6. *See* Docket No. CP2014–52, Order Accepting Price Changes for Inbound Air Parcel Post (at UPU Rates), June 26, 2014, at 6, 7 (Order No. 2102); Docket No. CP2015–24, Order Accepting Changes in Rates for Inbound Parcel Post (at UPU Rates), December 29, 2014, at 4 (Order No. 2310).

[3] Notice at 6. *See* Docket No. CP2019–43, Order Acknowledging Changes in Prices for Inbound Parcel Post (at UPU Rates), December 19, 2018, at 5 (Order No. 4933).

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2023–27258 Filed 12–12–23; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meetings

TIME AND DATE: 12 p.m., December 13, 2023.

PLACE: 844 North Rush Street, Chicago, Illinois 60611.

STATUS: Closed.

MATTERS TO BE CONSIDERED: (1) Litigation Matter.

CONTACT PERSON FOR MORE INFORMATION: Stephanie Hillyard, Secretary to the Board, Phone No. 312–751–4920.

Dated: December 8, 2023.

Stephanie Hillyard,

Secretary to the Board.

By unanimous, recorded vote of the Board members of the Railroad Retirement Board, such Board members determined that agency business required that this meeting be called with less than one week notice. 5 U.S.C. 552b(e)(1).

[FR Doc. 2023–27420 Filed 12–11–23; 11:15 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99109; File No. SR–LCH SA–2023–008]

Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to Recovery and Resolution

December 7, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 24, 2023, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been primarily prepared by LCH SA. On December 5, 2023, LCH SA filed Partial Amendment No. 1 to the proposed rule change to make certain changes to the Exhibit 5 to File No. LCH SA–2023–008.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Partial Amendment No. 1, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Partial Amendment No. 1 updates the pagination throughout Exhibit 5 to File No. LCH SA–2023–008 and the Table of Contents in Exhibit 5 to File No. LCH SA–2023–008 to reflect the revised pagination. Partial Amendment No. 1 would also remove two references to field codes in Chapter 1 of Exhibit 5 to File No. LCH SA–2023–008.

[4] LCH SA's CDS Clearing Rule Book can be found on LCH SA's public website: *https://www.lch.com/system/files/media_root/CDSClear%20Rule_Book_11.05.2022.pdf.*

[5] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade reporting.

[6] Article 9(6) of Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties. *http://data.europa.eu/eli/reg/2021/23/oj.*

[7] Article 9(14) of Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties. *http://data.europa.eu/eli/reg/2021/23/oj.*

[8] Commission Delegated Regulation (EU) 2023/840 of 25 November 2022 supplementing Regulation (EU) 2021/23 of the European Parliament and of the Council with regard to regulatory technical standards specifying the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources to be used in accordance with Article 9(14) of that Regulation. *http://data.europa.eu/eli/reg_del/2023/840/oj.*

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

LCH SA is proposing to amend its CDS Clearing Rule Book (''Rule Book'')[4] to make conforming changes necessary to implement certain provisions of Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties (''CCP Recovery and Resolution Regulation'') that are applicable to central counterparties (''CCPs'') authorized under the European Markets Infrastructure Regulation (''EMIR'')[5] (the ''Proposed Rule Change'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, LCH SA 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. LCH SA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

LCH SA is proposing to amend the Rule Book to comply with certain requirements of the CCP Recovery and Resolution Regulation.

Pursuant to Article 9(6) of the CCP Recovery and Resolution Regulation, CCPs are required to provide in their rules that they may deviate from their recovery plan measures and, in such circumstances, they shall notify their competent authority designated in accordance with EMIR.[6]

Pursuant to Article 9(14) of the CCP Recovery and Resolution Regulation, following a default event in respect of a clearing member, each CCP shall use an additional amount of its pre-funded dedicated own resources (the ''second skin-in-the-game'') prior to the requirement of non-defaulting clearing members to make a contribution in cash to the CCP up to at least each clearing member's contribution to the default fund. This amount is additional to the prefunded dedicated own resources required in accordance with EMIR (the ''first skin-in-the-game'') which will be used by the CCP before the use of each non-defaulting clearing member's initial contribution to the default fund.[7] On 25 November 2022, the European Commission adopted a delegated act specifying the methodology for calculation and maintenance of the second skin-in-the-game to be used in accordance with Article 9(14) of the CCP Recovery and Resolution Regulation (the ''Commission Delegated Regulation'').[8]

LCH SA is proposing to make the following conforming changes to its Rule Book for the purposes of complying with the above-mentioned requirements of the CCP Recovery and Resolution Regulation, as complemented by the Commission Delegated Regulation in respect of the second skin-in-the-game.

Article 1.1.1 of the Rule Book (*Terms defined in the CDS Clearing Rule Book*) will be amended to include the definition of ''CCP Recovery and Resolution Regulation'' which will mean Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties.

LCH SA maintains a recovery plan that provides for certain measures to be

taken in the case of a default or non-default event, with the goal to restore its financial resources to continue providing critical functions in all relevant scenarios. The recovery plan includes certain quantitative and qualitative indicators based on LCH SA's risk profile. These indicators are used to identify the circumstances under which LCH SA may take measures in its recovery plan. LCH SA is proposing to add a new Article 2.4.4 entitled ''Recovery'' to implement the requirement of article 9(6) of the CCP Recovery and Resolution Regulation. This Article 2.4.4 will provide that pursuant to article 9(6) of the CCP Recovery and Resolution Regulation where, in order to achieve the goals of its recovery process, LCH SA proposes to: (a) take measures provided for in its recovery plan despite the fact that the relevant indicators have not been met; or (b) refrain from taking measures provided for in their recovery plan despite the fact that the relevant indicators have been met, such proposal shall be submitted to its board of directors for approval and any decision taken by the board of directors of LCH SA in this connection and its justification shall be notified to the Autorité de contrôle prudentiel et de resolution (''ACPR'') without delay. The Proposed Rule Change would provide LCH SA with the flexibility to achieve its goal to restore financial resources in order to continue providing critical functions in all relevant scenarios identified in its recovery plan. For example, despite relevant recovery plan indicators being met, LCH SA may, in consultation with the Board of Directors, determine that certain measures provided for in its recovery plan may cause significant adverse effects to the financial system or will otherwise be ineffective given the facts and circumstances.

The default waterfall provisions in Article 4.3.3.1 of the Rule Book will be amended to include a reference to the second skin-in-the-game as a resource to be used to cover the losses resulting from the implementation of the CDS Default Management Process. In accordance with the requirement of Article 9(14) of the CCP Recovery and Resolution Regulation, the second skin-in-the-game will be added immediately before the collateral deposited by the non-defaulting clearing members as an additional contribution to the CDS Default Fund in a dedicated sub-paragraph (vi). Amended sub-paragraph (vi) will also provide that in accordance with Article 9(14) of the CCP Recovery and Resolution Regulation and Article 1 of the Commission Delegated Regulation, the LCH SA additional dedicated own resources, as determined from time to time will be (a) up to the amount of such dedicated own resources allocated to the CDS Default Fund in proportion to the size of the CDS Default Fund; and (b) in the case of an Event of Default occurring after a previous Event of Default but before LCH SA has reinstated such dedicated own resources in accordance with Article 3(2) of the Commission Delegated Regulation, up to the residual amount of such dedicated own resources in the CDS Default Fund. Consequently, the sub-paragraphs following sub-paragraph (vi) will be renumbered accordingly.

In the penultimate paragraph of Article 4.3.3.1, LCH SA is proposing to clarify that the application of the LCH SA Contribution shall mean the application of an amount that LCH SA shall bear for its own account up to the amount of the LCH SA Contribution and the LCH SA additional dedicated own resources which shall mean an amount that LCH SA shall bear for its own account up to the amount of the dedicated own resources allocated to the CDS Default Fund.

Additionally, Clause 7.5 (*Application of any recoveries*) of Appendix 1 to the Rule Book is proposed to be amended for consistency purposes by adding a reference to the LCH SA dedicated own resources allocated to the CDS Default Fund referred to in sub-paragraph (vi) of Article 4.3.3.1, in addition to the current reference to the other resources of Article 4.3.3.1 referenced in this Clause 7.5.

Finally, LCH SA is proposing to modify Article 1.1.1 (*Terms defined in the CDS Clearing Rule Book*) to incorporate the defined term of ''ACPR'' to refer to one of the national competent authorities of LCH SA, the Autorité de Contrôle Prudentiel et de Résolution and any successor organization. Consequently, any reference to this competent authority in the Rule Book will be replaced by the new defined term of ''ACPR''.

2. Statutory Basis

LCH SA believes that the Proposed Rule Change is consistent with the requirements of Section 17A of the Exchange Act [9] and the regulations thereunder applicable to LCH SA. Section 17A(b)(3)(F) of the Act [10] requires, in part, that the rules of LCH SA be designed to protect investors and the public interest.

The Proposed Rule Change is designed to enhance LCH SA's ability to achieve the goals of its recovery process by amending the Rule Book to provide greater flexibility for LCH SA to carry out its recovery plan. The Proposed Rule would amend the Rule Book to add a new Article 2.4.4 that states LCH SA may (1) take measures provided for in its recovery plan despite the fact that the relevant indicators (of the recovery plan) have not been met, or (2) refrain from taking measures provided for in its recovery plan despite the fact that the relevant indicators have been met. The Proposed Rule would also amend the Rule Book to state that should LCH SA take such measures provided for in its recovery plan despite the fact that the relevant indicators have not been met or refrain from taking such measures provided for in its recovery plan despite the fact that the relevant indicators have been met, the LCH SA Board of Directors would be required to approve such a decision. Furthermore, the Proposed Rule would amend the Rule Book to state that LCH SA will notify the ACPR of its decision and rationale for taking such measures. The amendment to the Rule Book to add new Article 2.4.4 is designed to provide LCH SA greater flexibility to utilize discretion in executing certain measures of its recovery plan. LCH SA's recovery plan is intended, in part, to address default and/or non-default losses to continue to provide critical functions to its clearing members. To that end, LCH SA has established various indicators that identify the circumstances under which certain measures contained in the recovery plan are to be executed. These indicators may be quantitative or qualitative, or a combination of both and are monitored and reviewed on a periodic basis. A quantitative indicator may include a default event causing a liquidity shortfall and a qualitative indicator may include a loss resulting from a cyber-attack which results in a discontinuity of critical services. A significant change to LCH SA risk profile, with a potential impact on scenarios or indicators may trigger a review between periodic reviews (which could be driven by new products or services, identification of a new scenario due to an emerging risk or in the context of incident management for instance) or new regulatory requirement. LCH SA may require flexibility in the measures that it takes or refrains from taking without being in violation of its own rules. The amendment to the Rule Book to add

[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78q–1(b)(3)(F).

Article 2.4.4 is designed to provide the needed flexibility to execute its recovery plan to address default and/or non-default losses to continue to provide critical functions to its clearing members.

The Proposed Rule will also amend Article 4.3.3.1 of the Rule Book to include a reference to the second skin-in-the-game financial resource to be used to cover the losses resulting from the implementation of the CDS Default Management Process. The current default waterfall provides for LCH's contribution to the default losses, prior to applying a pro rata percentage of the collateral deposited by Non Bidders as a Contribution and prior to applying a pro rata Contribution amount of Collateral deposited by all other clearing members. The Proposed Rule will add an additional pre-funded financial resource to be provided by LCH SA following the pro rata Contributions by Non Bidders and other clearing members, and prior to any pro rata Additional Contribution Amounts called by LCH SA, in accordance with the default waterfall. The Proposed Rule will also amend the penultimate paragraph of Article 4.3.3.1 by clarifying the meaning of the LCH SA Contribution and the LCH SA additional dedicated own resources as applied in the default waterfall described earlier in the Rule Book. LCH SA is proposing other clarifying changes to Clause 7.5 of Appendix 1 of the Rule Book by revising the last sentence of the first paragraph to include reference to the addition of the second skin-in-the-game for purposes of the application of any recoveries. The Proposed Rule to amend Article 4.3.3.1 of the Rule Book and conforming amendments to Article 7.5 of Appendix 1 are designed to provide an additional pre-funded financial resource by LCH SA prior to utilizing Additional Contribution amounts from non-defaulting clearing members. This additional financial resource provided by LCH SA further aligns the interests of LCH SA and its clearing members by ensuring LCH SA continues its practice of maintaining robust risk management practices and reduces the impact on non-defaulting clearing member financial resources.

The Proposed Rule would also make non-substantive amendments to the Rule Book to add a new defined term in Article 1.1.1 for ''CCP Recovery and Resolution Regulation'' and for ''Autorité de Contrôle Prudentiel et de Résolution'' for purposes of conforming to other amendments to the Rule Book.

Based on the foregoing, LCH SA believes the Proposed Rule Change is designed to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.[11]

LCH SA also believes the Proposed Rule Change is consistent with Rule 17Ad–22(e)(1),[12] which requires LCH SA to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.

In addition to being registered as a Clearing Agency with the SEC, LCH SA is authorized to offer clearing services in the European Union pursuant to rules established under EMIR for CCPs. As a result of the CCP Recovery and Resolution Regulation authorized under EMIR, LCH SA is required to amend its rules to remain in compliance with the adoption of the CCP Recovery and Resolution Regulation. Specifically, LCH SA is proposing to amend its Rule Book to comply with Article 9(6) [13] and Article 9(14) [14] of the CCP Recovery and Resolution Regulation. The Proposed Rule Change will ensure LCH SA's rules are consistent with the relevant laws and regulations authorized under EMIR, including the CCP Recovery and Resolution Regulation. LCH SA also believes that the legal basis for the Proposed Rule Change is clear and understandable to the relevant authorities, participants, and participants' customers as proposed, and the public disclosure of the amendments to the Rule Book are transparent.

Based on the foregoing, LCH SA believes the Proposed Rule Change is consistent with Rule 17Ad–22(e)(1).[15]

LCH SA also believes the Proposed Rule Change is consistent with Rule 17Ad–22(e)(3)(ii),[16] which requires LCH SA to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by LCH SA, which include plans for the recovery and orderly wind-down of LCH SA necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.

The Proposed Rule Change would amend the Rule Book to enhance LCH SA's recovery plan by providing greater flexibility to execute its recovery plan. As previously noted, LCH SA's recovery plan is intended, in part, to address default and/or non-default losses to continue to provide critical functions to its clearing members and particular circumstances, including deteriorating market conditions may require LCH SA to deviate from executing certain measures established in its recovery plan. The flexibility to adapt to particular circumstances in order to achieve the intended goals of the recovery plan is a proactive risk management tool for comprehensively managing risk. In addition, the required review and approval by the LCH SA Board of Directors and subsequent notification to the ACPR provides the necessary governance to ensure any deviation from the plan aligns with intended goals of the recovery plan.

The Proposed Rule Change would also further align the interests of LCH SA and its clearing members by ensuring LCH SA continues its practice of maintaining robust risk management practices and reduces the impact on non-defaulting clearing member financial resources. As previously noted, LCH SA is proposing to amend its Rule Book to provide for an additional pre-funded financial resource to be provided by LCH SA in the event of a CDS clearing member default. This pre-funded financial resource would be sized in proportion to the CDS Default Fund and utilized prior to Additional Contribution Amounts provided by non-defaulting clearing members per the CDS default management waterfall. This amendment to the Rule Book further enhances LCH SA's recovery plan by adding an additional pre-funded financial resource and supports LCH SA's ongoing efforts to comprehensively manage risks.

Based on the foregoing, LCH SA believes the Proposed Rule Change is consistent with Rule 17Ad–22(e)(3)(ii).[17]

LCH SA also believes the Proposed Rule Change is consistent with Rule 17Ad–22(e)(23)(i),[18] which requires LCH SA to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for publicly disclosing all relevant rules and material procedures,

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 240.17Ad–22(e)(1).

[13] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade reporting, Title III, Chapter 1, Section 1, Article 9 (''Recovery Plans'').

[14] *Id.*

[15] 17 CFR 240.17Ad–22(e)(1).

[16] 17 CFR 240.17Ad–22(e)(3)(ii).

[17] *Id.*

[18] 17 CFR 240.17Ad–22(e)(23)(i).

including key aspects of its default rules and procedures.

As previously noted, LCH SA is proposing to amend the CDS default waterfall provisions of its Rule Book by adding an additional pre-funded financial resource to be provided by LCH SA in the event of a CDS clearing member default. The Proposed Rule will also amend the penultimate paragraph of Article 4.3.3.1 by clarifying the meaning of the LCH SA Contribution and the LCH SA additional dedicated own resources as applied in the default waterfall described earlier in the Rule Book. These proposed amendments to the Rule Book will publicly disclose key aspects of LCH SA's default rules and procedures. Based on the foregoing, LCH SA believes the Proposed Rule Change is consistent with 17Ad–22(e)(23)(i).[19]

The proposed rule change is not inconsistent with the existing rules of LCH SA, including any other rules proposed to be amended.

B. Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act[20] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. LCH SA does not believe that the Proposed Rule Change would impose any burden on competition. The purpose of the Proposed Rule Change is for LCH SA to amend its Rule Book to make conforming changes necessary to implement certain provisions of the CCP Recovery and Resolution Regulation that are applicable to CCPs authorized under EMIR. Specifically, LCH SA is codifying in its Rule Book the regulatory requirements under the CCP Recovery and Resolution Regulation, which establish guidance on LCH SA's recovery process, including with respect to governance and notification to regulatory authorities. LCH SA is also codifying in its Rule Book the CCP Recovery and Resolution Regulation and Commission Delegated Regulation requirements with respect to the default waterfall that LCH SA apply the second skin-in-the-game prior to the requirement of non-defaulting clearing members to make a contribution to LCH SA up to at least each clearing member's contribution to the default fund. This requirement is in addition to the first skin-in-the-game, which is to be used by LCH SA before the use of each non-defaulting clearing member's initial contribution to the default fund. These amendments to the Rule Book, and subsequent conforming changes, would not burden any Clearing Members or other market participants and will be applied equally for all Clearing Members. LCH SA is codifying the CCP Recovery and Resolution Regulation and Commission Delegated Regulation, which are designed to further enhance risk management practices for CCPs to comprehensively manage risks related to a Clearing Member default. Therefore, LCH SA does not believe that the Proposed Rule Change would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the Proposed Rule Change have not been solicited or received. LCH SA will notify the Commission of any written comments received by LCH SA.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve or disapprove such proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

- 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–LCH SA–2023–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–LCH SA–2023–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of LCH SA and on LCH SA's website at *http://www.lch.com/resources/rules-and-regulations/proposed-rule-changes-0.*

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–LCH SA–2023–008 and should be submitted on or before January 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27272 Filed 12–12–23; 8:45 am]

BILLING CODE 8011–01–P

[19] *Id.*

[20] 15 U.S.C. 78q–1(b)(3)(I).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99106; File No. SR–PHLX–2023–54]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Monthly Options Series and the Nonstandard Expirations Program

December 7, 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 4, 2023, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (i) adopt a Monthly Options Series and (ii) amend its Nonstandard Expirations Program.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (i) adopt Monthly Options Series and (ii) amend its Nonstandard Expirations Program in Options 4A, Options Index Rules. Each change is discussed in detail below.

Monthly Options Series

The Exchange proposes to amend its Rules to accommodate the listing of option series that would expire at the close of business on the last business day of a calendar month (''Monthly Options Series'').[3] Of note, Nasdaq ISE, LLC (''ISE'') will separately file a rule change to adopt a Monthly Options Series for ETFs. Phlx's Options 4 rules, which govern the ability to transact options on ETFs, incorporate by reference ISE's Options 4 rules. This rule change proposes to amend Phlx's index options rules to adopt a Monthly Options Series program. Pursuant to proposed Options 4A, Section 12(b)(5), the Exchange may list Monthly Options Series for up to five currently listed option classes that are either index options or options on ETFs.[4] 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.[5] 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.[6]

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.[9] 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 customer 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 customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market-Makers trading for their own account will not be considered when

Other expirations in the same class are not counted as part of the maximum numbers of Monthly Options Series expirations for a class.[7] Monthly Options Series will be P.M.-settled.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange proposes to define a ''Monthly Options Series'' in Options 4A, Section 2(a)(14) to mean, for the purposes of Options 4A, a series in an options class that is approved for listing and trading on the Exchange in which the series is opened for trading on any business day and that expires at the close of business on the last business day of a calendar month. The Exchange proposes to renumber the subsequent definitions in Options 4A, Section 2.

[4] As provided in proposed Options 4A, Section 12(b)(5)(a), the Exchange may list Monthly Options Series for up to five currently listed option classes that are either index options or options on ETFs; the five Monthly Options Series include both index options and options on ETFs.

[5] *See* Securities Exchange Act Release No. 98915 (November 13, 2023), 88 FR 80356 (November 17, 2023) (SR–Cboe–2023–049) (Order Approving a Proposed Rule Change To Adopt Monthly Options Series) (''Cboe Monthly Approval Order'').

[6] 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 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).

[7] *See* proposed Options 4A, Section 12(b)(5)(b).

[8] *See* proposed Options 4A, Section 12(b)(5)(c).

[9] *See* proposed Options 4A, Section 12(b)(5)(d). The Exchange notes this proposed provision is consistent with the initial series provision for the Quarterly Options Series program in Options 4A, Section 12(b)(3)(C).

determining customer 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 as a standard expiration series (which expire on the third Friday of a month) in the same class expires. The same, however, is not the case with regards to Short Term Option Series [12] or Quarterly Options Series. Therefore, to avoid any confusion in the marketplace, the Exchange proposes to amend Options 4A Section 12(b)(5)(b) to provide the Exchange will not list a Short Term Option Series in a class on a date on which a Monthly Options Series or Quarterly Options Series expires.[13] Similarly, proposed Options 4A, Section 12(b)(5)(b) provide 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. In other words, the Exchange will not list a Short Term Option Series on an index if a Monthly Options Series on that index were to expire on the same date, nor will the Exchange list a Monthly Options Series on an index if a Quarterly Options Series on that index were to expire on the same date to prevent the listing of series with concurrent expirations.[14]

With respect to Monthly Options Series added pursuant to proposed Options 4A, Section 12(b)(5)(a) through (f), 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: (i) strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month pursuant to Options 4A, Section 12(b)(5)(g)(1). Notwithstanding this delisting policy, customer 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.[15]

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 option 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 Exchange's and the Options Price Reporting Authority's (''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 notes that Options 4A, Section 6, Position Limits for Broad-Based Index Options, will apply to Monthly Options Series. In Options 4A, Section 6(e), Monthly Options Series will be aggregated with positions in options contracts on the same underlying security or index.[16] This is consistent with how position (and exercise) limits are currently imposed on series with other expirations (Short Term Option Series and Quarterly Options Series). Therefore, positions in options within class of index, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. The Exchange believes this will address potential manipulative schemes and adverse market impacts surrounding the use of options.

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 pursuant to Options 4, Section 5, 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 currently in place to support and properly monitor trading in these Quarterly Options Series, as well as Short Term Option 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) and reporting requirements—would continue to apply.

Nonstandard Expirations Program

The Exchange proposes to amend Options 4A, Section 12(b)(6), as renumbered in this proposal,[17] which governs its Nonstandard Expirations Program (''Program''), to permit P.M.-settled options on any broad-based index eligible for standard options trading that expire on Tuesday or Thursday.[18] Currently under the

[10] *See* proposed Options 4A, Section 12(b)(5)(e).

[11] *See* proposed Options 4A, Section 12(b)(5)(f) (permissible strike prices for index options).

[12] Today, Options 4A, Section 12(a)(4) provides that index options may have expiration months and weeks, which expirations may occur in consecutive weeks. The Exchange proposes to add ''as specified below'' to this rule text.

[13] The Exchange also proposes to make non-substantive changes to Options 4A, Section 12(b)(4) and Options 4A, Section 12(b)(4)(B) to reference standard options series and 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.

[14] 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 Option Series on the same index, both of which may expire on a Friday. In other words, the Exchange may list a P.M-settled Monthly Options Series on an index concurrent with an A.M.-settled Short Term Option Series on that index and both of which 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).

[15] *See* Options 4A, Section 12(b)(5)(g)(3).

[16] Pursuant to Options 4A, Section 10, exercise limits for index option contracts shall be equivalent to the position limits described in Options 4A, Section 6.

[17] The Exchange proposes to renumber current Options 4A, Section 12(b)(5), titled Nonstandard Expiration Pilot Program, Options 4A, Section 12(b)(6). Additionally, the Exchange proposes to remove the word ''Pilot'' as the program is no longer a pilot. *See* Securities Exchange Act Release No. 98451 (September 20, 2023), 88 FR 66088 (September 26, 2023) (SR–Phlx–2023–07) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Make Permanent Certain P.M.-Settled Pilots).

[18] The Exchange's proposal is based on a recently approved rule change by Cboe Options. See Securities Exchange Act Release No. 98957 (November 15, 2023), 88 FR 81130 (November 21, 2023) (SR–CBOE–2023–054) (order Approving a Proposed Rule Change To Amend Rule 4.13 To

Program, the Exchange is permitted to list P.M.-settled options on any broad-based index eligible for standard trading that expire on: (1) any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration (as defined below) and, with respect to options on the Nasdaq–100 Index (''NDX options'') and the Nasdaq 100 Micro Index (''XND options'') any Tuesday or Thursday (''Weekly Expirations'') and (2) the last trading day of the month (''End of Month Expirations'' or ''EOMs'').[19] The Exchange notes that permitting Tuesday and Thursday expirations for all broad-based indexes, as proposed, would be in addition to the options with Monday, Wednesday and Friday expirations that the Exchange may (and does) already list on those indexes, as they are permissible Weekly Expirations for options on a broad-based index pursuant to Options 4A, Section 12(b)(6). The proposal merely expands the availability of Tuesday and Thursday Weekly Expirations, and thus all Weekly Expirations available under the Program, to all broad-based indexes eligible for standard options trading, on which the Exchange may currently list Monday, Wednesday, and Friday Weekly expirations under the Program.

The Program for Weekly Expirations will apply to any broad-based index option with Tuesday and Thursday expirations in the same manner as it currently applies to all other P.M.-settled broad-based index options with Monday, Wednesday, and Friday expirations and to NDX and XND options with Tuesday and Thursday expirations. Specifically, as set forth in Options 4A, Section 12(b)(6), Weekly Expirations, including the proposed Tuesday and Thursday expirations, are subject to all provisions of Options 4A, Section 12 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month; provided, however, that Weekly Expirations are P.M.-settled, and new series in Weekly Expirations may be added up to and including on the expiration date for an expiring Weekly Expiration.

The maximum number of expirations that may be listed for each Weekly Expiration (*i.e.,* a Monday expiration, Tuesday expiration, Wednesday expiration, Thursday expiration, or Friday expiration, as applicable) in a given class is the same as the maximum number of expirations permitted in Options 4A, Section 12(a)(3) for standard options on the same broad-based index. Weekly Expirations need not be for consecutive Monday, Tuesday, Wednesday, Thursday, or Friday expirations as applicable; 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. Weekly Expirations that are first listed in a given class may expire up to four weeks from the actual listing date. If the Exchange lists EOMs and Weekly Expirations as applicable in a given class, the Exchange will list an EOM instead of a Weekly Expiration that expires on the same day in the given class. Other expirations in the same class are not counted as part of the maximum number of Weekly Expirations for an applicable broad-based index class. If the Exchange is not open for business on a respective Monday, the normally Monday expiring Weekly Expirations will expire on the following business day. If the Exchange is not open for business on a respective Tuesday, Wednesday, Thursday, or Friday, the normally Tuesday, Wednesday, Thursday, or Friday expiring Weekly Expirations will expire on the previous business day. If two different Weekly Expirations on a broad-based index would expire on the same day because the Exchange is not open for business on a certain weekday, the Exchange will list only one of such Weekly Expirations. In addition, like all Weekly Expirations, Options 4A, Section 12(b)(6), transactions in expiring broad-based index options with Tuesday and Thursday expirations may be effected on the Exchange between the hours of 9:30 a.m. and 4:00 p.m. on their last trading day (Eastern Time).

The Exchange believes that that the introduction of Tuesday and Thursday expirations for all broad-based index options (rather than offering those expirations for just two indexes) will expand hedging tools available to market participants while also providing greater trading opportunities, regardless of in which index option market they participate. By offering expanded Tuesday and Thursday expirations along with the current Monday, Wednesday and Friday expirations, the proposed rule change will allow market participants to purchase options on all broad-based index options available for trading on the Exchange in a manner more aligned with specific timing needs and more effectively tailor their investment and hedging strategies and manage their portfolios. In particular, the proposed rule change will allow market participants to roll their positions on more trading days, thus with more precision, spread risk across more trading days and incorporate daily changes in the markets, which may reduce the premium cost of buying protection.

The Exchange believes there is sufficient investor interest and demand in Tuesday and Thursday expirations for broad-based index options beyond NDX and XND to warrant inclusion in the Program and that the Program, as amended, will continue to provide investors with additional means of managing their risk exposures and carrying out their investment objectives.[20] With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it believes that the Exchange and OPRA have the necessary systems capacity to handle any potential additional traffic associated with trading of broad-based index options with Tuesday and Thursday expirations. The Exchange does not believe that its Members will experience any capacity issues as a result of this proposal and represents that it will monitor the trading volume associated with any possible additional options series listed as a result of this proposal and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[21] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[22] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and

Expand the Nonstandard Expirations Program To Include P.M.-Settled Options on Broad-Based Indexes That Expire on Tuesday or Thursday) (''Cboe Nonstandard Approval Order'').

[19] *See* Supplementary Material .07 to Options 4A, Section 12.

[20] The Exchange currently lists Tuesday and Thursday expirations in NDX and XND options pursuant to the Program. The Exchange also already allows options on broad-based indexes to expire on Tuesdays for normally Monday or Wednesday expiring options when the Exchange is not open for business on a respective Monday or Wednesday (as applicable), and already allows options on broad-based indexes to expire on Thursdays for normally Friday expiring options when the Exchange is not open for business on a respective Friday. Also, EOM options in any broad-based indexes may currently be listed to expire on a Tuesday or Thursday.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

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) [23] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Monthly Options Series

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 options listed pursuant to the proposed rule change based on their timing 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 months' ends 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 Option Series, which 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 list up to five options classes that are either index options or options on ETFs, are substantively the same as the current terms of Quarterly Options Series for ETF classes.[24] 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 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.[25] As is the case with Quarterly Options Series, no Short Term Option 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 investors confusion and thus protect investors and the public interest. Given that the Exchange currently lists Quarterly Options Series in certain ETF classes pursuant to Options 4, Section 5, which expire at the close of business at the end of four calendar months (*i.e.,* the end of each calendar quarter), 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's 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 further believes the proposed rule change regarding the treatment of Monthly Options Series with respect to determining compliance with position and exercise limits is designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade. Monthly Options Series will be aggregated with options overlying the same index for purposes of compliance with position (and exercise) limits, which is consistent with how position (and exercise) limits are currently imposed on series with other expirations (Short Term Option Series, and Quarterly Options Series).[26] Therefore, options positions within index option classes for which Monthly Options Series are listed, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. The Exchange believes this will address potential manipulative schemes and adverse market impacts surrounding the use of options. 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 trades Quarterly Options Series in certain index classes, 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 currently in place to support and properly monitor trading in these Quarterly Options Series, as well as Short Term Option 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) and reporting requirements—would continue to apply.

Nonstandard Expirations Program

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes

[23] *Id.*

[24] *See* Options 4, Section 5. As noted herein, ISE will file a rule change to amend Options 4, Section 5 and Phlx's Options 4 rules are incorporated by reference to ISE's Options 4 rules.

[25] The Exchange notes the proposed maximum number of expirations is consistent with the maximum number of expirations permitted for end-of-month series in index classes. See Options 4A, Section 12(a)(4) which permits up to 12 standard monthly expirations at any one time for any class that the Exchange (as the Reporting Authority) uses to calculate a volatility index; and (iii) up to 12 standard (monthly) expirations in NDX options, Nasdaq-100 ESG Index Options, and XND options).

[26] *See* Cboe Monthly Approval Order; *see also* Options 4A, Section 6 regarding position limits for broad-based index options). Pursuant to Options 4A, Section 10, exercise limits for index option contracts shall be equivalent to the position limits described in Options 4A, Section 6.

that the introduction of Tuesday and Thursday expirations for all broad-based index options (rather than offering those expirations for just two indexes) will provide investors with expanded hedging tools and greater trading opportunities and flexibility, regardless of in which index option market they participate. As a result, investors will have additional means to manage their risk exposures and carry out their investment objectives. By offering expanded Tuesday and Thursday expirations along with the current Monday, Wednesday and Friday expirations, the proposed rule change will allow market participants to purchase options on all broad-based index options available for trading on the Exchange in a manner more aligned with specific timing needs and more effectively tailor their investment and hedging strategies and manage their portfolios. For example, the proposed rule change will allow market participants to roll their positions on more trading days, thus with more precision, spread risk across more trading days and incorporate daily changes in the markets, which may reduce the premium cost of buying protection. The Exchange represents that it believes that it has the necessary systems capacity to support any additional traffic associated with trading of options on all broad-based index options with Tuesday and Thursday expirations and does not believe that its Members will experience any capacity issues as a result of this proposal.

The Commission previously recognized that listing Tuesday and Thursday expirations for NDX and XND options was consistent with the Act.[27] The Exchange noted that Tuesday and Thursday expirations in these index options would offer additional investment options to investors and may be useful for their investment or hedging objectives.[28] The Exchange also notes it previously listed P.M.-settled broad-based index options with weekly expirations pursuant to a pilot program, so the Commission could monitor the impact of P.M. settlement of cash-settled index derivatives on the underlying cash markets (while recognizing that these risks may have been mitigated given enhanced closing procedures in use in the primary equity markets); however, the Commission recently approved a proposed rule change to make that pilot program permanent.[29] The Commission noted that the data it reviewed in connection with the pilot demonstrated that these options (including SPX and XSP options with Tuesday and Thursday expirations) ''benefitted investors and other market participants by providing more flexible trading and hedging opportunities while also having no disruptive impact on the market'' and were thus consistent with the Act.[30] The proposed rule change is consistent with these findings, as it will benefit investors and other market participants that participate in the markets for broad-based index options other than NDX and XND options in the same manner by providing them with more flexible trading and hedging opportunities. Additionally, the Exchange does not believe the listing of additional P.M.-settled options on other broad-based indexes will have any significant economic impact on the underlying component securities surrounding the close as a result of expiring p.m.-settled options or impact market quality, based on the data provided to and reviewed by the Commission (and the Commission's own conclusions based on that review, as noted above) and due to the significant changes in closing procedures in the decades since index options moved to a.m.-settlement.[31]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Monthly Options Series

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 Monthly Options Series, including the limitation to list up to five options classes that are either index options or options on ETFs, are substantively the same as the current terms of Quarterly Options Series.[32] 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 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.[33] 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.[34] As discussed above, the proposed rule change would permit listing Monthly Options Series in up to five options classes that are either index options or options on ETFs, 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 Option 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.

The Exchange does not believe the proposed rule change regarding aggregation of positions for purposes of determining compliance with position (and exercise) limits will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will apply in the same manner to all market participants. The Exchange proposes to apply position

[27] *See* Securities Exchange Act Release Nos. 96411 (November 30, 2022), 87 FR 74688 (December 6, 2022) (SR–Phlx–2022–38) (''XND Options Rule Change''); and 95391 (July 29, 2022), 87 FR 47797 (August 4, 2022) (SR–Phlx–2022–22) (''NDX Rule Change'').

[28] *See* XND Options Rule Change at 74689; and NDX Options Rule Change at 47798.

[29] *See supra* note 17.

[30] *See supra* note 17.

[31] *See id.*

[32] *See* proposed Options 4A, Section 12(b)(5)(a).

[33] *See supra* note 25.

[34] *See* Cboe Monthly Approval Order.

(and exercise) limits to Monthly Options Series in the same manner it applies position limits to series with other expirations (Short Term Option Series and Quarterly Options Series). Therefore, positions in options in a class of index options, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. Additionally, the Exchange does not believe this proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will address potential manipulative schemes and adverse market impacts surrounding the use of options.

Nonstandard Expirations Program

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because options on broad-based indexes with Tuesday and Thursday expirations will be available to all market participants. By listing options on all available broad-based indexes that expire on Tuesdays and Thursdays, the proposed rule change will provide all investors that participate in the markets for options on all broad-based indexes available for trading on the Exchange with greater trading and hedging opportunities and flexibility to meet their investment and hedging needs, which are already available for NDX and XND options. Additionally, Tuesday and Thursday expiring broad-based index options will trade in the same manner as Weekly Expirations currently trade, including Tuesday and Thursday expiring NDX and XND options.

The Exchange does not believe that the proposal to list options on all broad-based indexes with Tuesday and Thursday expirations will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because these options are proprietary Exchange products. Other exchanges offer nonstandard expiration programs for index options as well as short-term options programs for certain equity options (including options on certain exchange-traded funds that track broad-based indexes) that expire on Tuesdays and Thursdays [35] and are welcome to similarly propose to list Tuesday and Thursday options on those index or equity products. To the extent that the addition of options on additional broad-based indexes that expire on Tuesdays and Thursdays being available for trading on the Exchange makes the Exchange a more attractive marketplace to market participants at other exchanges, such market participants are free to elect to become market participants on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act [36] and Rule 19b–4(f)(6) thereunder.[37] 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 [38] and subparagraph (f)(6) of Rule 19b–4 thereunder.[39]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [40] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [41] 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 and options on all broad-based indexes with Tuesday and Thursday expirations close in time to Cboe Options, which the Exchange believes will benefit investors by promoting competition in both of these programs. The Exchange notes that its proposal is substantively identical to the proposals submitted by Cboe Options for its Monthly Options Series program [42] and Nonstandard Expirations Program.[43] 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.[44]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–PHLX–2023–54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–PHLX–2023–54. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the

[35] *See, e.g.,* ISE Options 4A, Section 12 (permitting nonstandard expirations, including expirations on Tuesdays and Thursdays, for NDX and XND options). *See also* Cboe Nonstandard Approval Order (permitting nonstandard expirations, including expirations on Tuesdays and Thursdays, for SPX and XSP options).

[36] 15 U.S.C. 78s(b)(3)(A)(iii).

[37] 17 CFR 240.19b–4(f)(6).

[38] 15 U.S.C. 78s(b)(3)(A)(iii).

[39] 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.

[40] 17 CFR 240.19b–4(f)(6).

[41] 17 CFR 240.19b–4(f)(6)(iii).

[42] *See* Cboe Monthly Approval Order, *supra* note 5.

[43] *See* Cboe Nonstandard Approval Order, *supra* note 18.

[44] 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).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–PHLX–2023–54 and should be submitted on or before January 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27274 Filed 12–12–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99115; File No. SR–ICC–2023–014]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the Clearance of Additional Credit Default Swap Contracts

December 7, 2023.

I. Introduction

On October 25, 2023, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(2) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to clear additional credit default swap (''CDS'') contracts. The proposed rule change was published for comment in the **Federal Register** on November 7, 2023.[3] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

ICC is registered with the Commission as a clearing agency for the purpose of clearing CDS contracts. Chapter 26 of ICC's Rulebook covers the CDS contracts that ICC clears, with each subchapter of Chapter 26 defining the characteristics and additional Rules applicable to the various specific categories of CDS contracts that ICC clears. Among other CDS contracts, ICC currently clears Standard Emerging Market Sovereign Single Name CDS (''SES'') contracts.

The purpose of the proposed rule change is to amend ICC's rules to permit ICC to clear additional SES contracts, specifically, SES contracts on the Kingdom of Morocco and the Federal Republic of Nigeria.

To carry out this change, the proposed rule change would amend Subchapter 26D of Chapter 26. In Rule 26D–102 (Definitions), ''Eligible SES Reference Entities,'' the proposed rule change would add the Kingdom of Morocco and the Federal Republic of Nigeria to the list of specific Eligible SES Reference Entities to be cleared by ICC.

As discussed below, these additional SES contracts have terms consistent with the other SES contracts that ICC is already clearing. Likewise, to clear these additional contracts, ICC will be able to rely on its existing Risk Management Framework and other policies and procedures without making any changes.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.[4] For the reasons given below, the proposed rule change is consistent with section 17A(b)(3)(F) of the Act[5] and Rule 17Ad–22(e)(1) thereunder.[6]

a. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.[7]

The proposed rule change is consistent with section 17A(b)(3)(F) of the Act.[8] The terms and conditions of the additional SES contracts proposed for clearing are substantially similar to the terms and conditions of the other contracts listed in Subchapter 26D of ICC's Rules, all of which ICC currently clears, with the key difference being the underlying reference obligations. The underlying reference obligations will be issuances by the Kingdom of Morocco and the Federal Republic of Nigeria.

A review of the Notice and ICC's Rules, policies, and procedures shows that ICC would be able to clear the additional SES contracts pursuant to its existing clearing arrangements and related financial safeguards, protections, and risk management procedures. Furthermore, a review of data on volume, open interest, and the number of ICC Clearing Participants (''CPs'') that currently trade in the SES contracts, as well as certain model parameters for the additional contracts, show that ICC's rules, policies, and procedures are reasonably designed to price and measure the potential risk presented by the additional SES contracts, collect financial resources in proportion to such risk, and liquidate the additional contracts in the event of a CP default. This should help ensure ICC's ability to maintain the financial resources it needs to provide its critical services and function as a central counterparty, thereby promoting the prompt and accurate settlement of the additional SES contracts and other credit default swap transactions.

Therefore, clearance of the additional SES contracts would promote the prompt and accurate clearance and settlement of securities transactions, consistent with section 17A(b)(3)(F) of the Act.[9]

b. Consistency With Rule 17Ad–22(e)(1)

Rule 17Ad–22(e)(1) requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of

[45] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the Clearance of Additional Credit Default Swap Contracts; Exchange Act Release No. 98833 (Nov. 1, 2023), 88 FR 76870 (Nov. 7, 2023) (File No. SR–ICC–2023–014) (''Notice'').

[4] 15 U.S.C. 78s(b)(2)(C).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 240.17Ad–22(e)(1).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1(b)(3)(F).

its activities in all relevant jurisdictions.[10]

The proposed rule change would help provide a well-founded, clear, transparent, and enforceable legal basis for ICC's clearance of SES contracts on the Kingdom of Morocco and the Federal Republic of Nigeria. By amending Rule 26D–102 to add both the Kingdom of Morocco and the Federal Republic of Nigeria to the list of specific Eligible SES Reference Entities to be cleared by ICC, the proposed rule change would help to ensure that ICC can clear SES contracts on those countries pursuant to its existing rules in Subchapter 26D. The revised Subchapter 26D would provide a well-founded, clear, transparent, and enforceable legal basis for ICC to clear these contracts, consistent with the requirements of Rule 17Ad–22(e)(1).[11]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of section 17A(b)(3)(F) of the Act[12] and Rule 17Ad–22(e)(1) thereunder.[13]

It is therefore ordered pursuant to section 19(b)(2) of the Act[14] that the proposed rule change (SR–ICC–2023–014), be, and hereby is, approved.[15]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27275 Filed 12–12–23; 8:45 am]

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[10] 17 CFR 240.17Ad–22(e)(1).

[11] 17 CFR 240.17Ad–22(e)(1).

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(1).

[14] 15 U.S.C. 78s(b)(2).

[15] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99116; File No. SR–C2–2023–024]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Fees Schedule

December 7, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 2023, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') proposes to amend its Fee Schedule. The text of the proposed rule change is in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule, effective December 1, 2023.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 17 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than approximately 16% of the market share and currently the Exchange represents approximately 3% of the market share.[3] Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Fee Code Updates

First, the Exchange proposes to amend the transaction fee for Public Customer orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that remove liquidity. Currently, public customer orders in equity, multiply-listed index, ETF and ETN penny options classes (except SPY, AAPL, QQQ, IWM and SLV) that remove liquidity are assessed a standard transaction fee of $0.43 per contract and yield fee code ''PC''. The Exchange proposes to remove orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF from fee code PC and, instead, assess fee code ''SC'' for Public Customer orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that remove liquidity. Fee code SC is currently appended to Public Customer orders in SPY, AAPL, QQQ, IWM and

[3] *See* Cboe Global Markets U.S. Options Market Volume Summary by Month (November 29, 2023), available at *https://markets.cboe.com/us/options/market_statistics/*.

SLV that remove liquidity and assesses a reduced fee (from that of fee code PC) of $0.37 per contract.

The Exchange next proposes to amend the rebate for C2 Market Maker orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that add liquidity, including if they are a National Best Bid or Offer (''NBBO'') Joiner or NBBO Setter. Currently, such C2 Market Makers orders are provided a rebate of $0.41 per contract and yield fee code ''PM''. Fee code SL is currently appended to C2 Market Maker orders in SPY, AAPL, QQQ, IWM and SLV that add liquidity and are a National Best Bid or Offer (''NBBO'') Joiner or NBBO Setter and offers a rebate of $0.31 per contract for such orders. Particularly, to qualify as a NBBO Joiner, a C2 market-maker order must improve the C2 Best Bid or Offer (''BBO'') and result in C2 joining an existing NBBO. Only the first order received that results in C2 BBO joining the NBBO at a new price level will qualify for the enhanced rebate. If C2 is at the NBBO, the order will not qualify. Alternatively, C2 Market Makers may receive the enhanced rebate if they are a NBBO Setter. To qualify as a NBBO Setter and receive the enhanced rebate, a C2 Market Maker order must set the NBBO. The Exchange now proposes to add C2 Market Maker orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that add liquidity and are a National Best Bid or Offer (''NBBO'') Joiner or NBBO Setter to fee code SL. The Exchange also proposes to amend the rebate for orders yielding fee code SL, from $0.31 to $0.32. The Exchange believes assessing fee code SL and the corresponding enhanced rebate for C2 Market Makers in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that are NBBO Joiners or Setters will continue to incentivize liquidity providers to provide more aggressively priced liquidity in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF options. Further, the Exchange believes that the increased rebate for orders yielding fee code SL will also incentivize liquidity providers to provide more aggressively priced liquidity in SPY, AAPL, QQQ, IWM and SLV options.

The Exchange next proposes to amend the rebate for C2 Market Maker orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that add liquidity. As noted above, currently, C2 Market Makers orders in equity, multiply-listed index, ETF and ETN penny options classes (except SPY, AAPL, QQQ, IWM and SLV) that add liquidity are provided a rebate of $0.41 per contract and yield fee code ''PM''. The Exchange proposes to remove orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF from fee code PM and, instead, assess existing fee code ''SM'' for C2 Market Maker orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF. Fee code SM is currently appended to C2 Market Maker orders in SPY, AAPL, QQQ, IWM and SLV that add liquidity and offer a reduced rebate (from that of fee code PM) of $0.20 per contract.

The Exchange also proposes to amend the rebate for non-Market Maker, non-Customer orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that add liquidity. Currently, non-Market Maker, non-Customer orders (*i.e.,* Professional Customer, Firm, Broker/Dealer, non-C2 Market Maker, JBO, etc.) in equity, multiply-listed index, ETF and ETN penny options classes (except SPY, AAPL, QQQ, IWM and SLV) that add liquidity are provided a rebate of $0.36 per contract and yield fee code ''PN''. The Exchange proposes to remove orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF from fee code PN and, instead, assess existing fee code ''SN'' on non-Market Maker, non-Customer orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that add liquidity. Fee code SN is currently appended to such orders in SPY, AAPL, QQQ, IWM and SLV and assesses a reduced rebate (from that of fee code PN) of $0.20 per contract.

The Exchange also proposes to add AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF to the table in the Fee Schedule that currently sets forth SPY, AAPL, QQQ, IWM and SLV-specific pricing. Like with SPY, AAPL, QQQ, IWM and SLV, the Exchange also proposes to clarify that the first transaction fee table, which does not apply to RUT, DJX, SPY, AAPL, QQQ, IWM and SLV, also does not apply to AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF. The Exchange notes that transaction fees and rebates that apply to (1) Public Customer orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that add liquidity (existing fee code ''PY'') (2) C2 Market Maker orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that remove liquidity (existing fee code ''PR''), (3) non-Market Maker, non-Customer orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that remove liquidity (existing fee code ''PP), (4) orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that trade at the open (existing fee code ''OO'') and (5) resting orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that trade with resting complex orders (existing fee code ''CA'') are not changing, nor are the associated fee codes.

Market Maker Volume Tiers

The Exchange also proposes to amend Footnote 1 (Market Maker Volume Tiers), applicable to qualifying C2 Market Maker orders yielding fee code SM. Pursuant to Footnote 1 of the Fee Schedule, the Exchange currently offers two Market Maker Volume Tiers, which provide enhanced rebates between $0.26 and $0.30 per contract for qualifying Market Maker orders yielding fee code SM where a TPHTPH [sic] meets required criteria. Specifically, Tier 1 provides an enhanced rebate of $0.26 per contract where a TPH: (1) has an ADAV [4] in Market-Maker orders in SPY, AAPL, QQQ, IWM and SLV (*i.e.,* yielding fee codes SM or SL) greater than or equal to 50,000 contracts; or (2) has a Step-Up ADAV [5] in Market-Maker orders in SPY, AAPL, QQQ, IWM and SLV (*i.e.,* yielding fee codes SM or SL) greater than or equal to 15,000 contracts from March 2021. Tier 2 provides a higher rebate of $0.30 per contract where a TPH meets the more stringent criteria of having an ADAV in Market-Maker orders in SPY, AAPL, QQQ, IWM and SLV (*i.e.,* yielding fee codes SM or SL) greater than or equal to 130,000 contracts.

The Exchange proposes to amend the required criteria for Tiers 1 and 2. Specifically, the Exchange proposes to amend Tier 1 criteria to state that a TPHTPH [sic] must have (1) an ADAV in Market-Maker orders in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF (*i.e.,* yielding fee codes SM or SL) greater than or equal to 0.15% of Average OCV.[6] The Exchange proposes to amend Tier 2 criteria to state that a TPHTPH [sic] must have an ADAV in Market-Maker orders in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF (*i.e.,* yielding fee codes SM or SL) greater than or equal to 0.35% of Average OCV. Additionally, the Exchange proposes to change the enhanced rebate for Tier 2 from $0.30 per contract to $0.28 per contract.

The Exchange also proposes to add new Market Maker Volume Tier 3 to provide a rebate of $0.31 per contract if a TPH has an ADAV in Market-Maker orders in SPY, AAPL, QQQ, IWM, SLV,

[4] ''ADAV'' means average daily added volume calculated as the number of contracts added, per day.

[5] ''Step-Up ADAV'' means ADAV in the relevant baseline month subtracted from current ADAV.

[6] ''OCV'' means, the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation (''OCC'') for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF (*i.e.,* yielding fee codes SM or SL) greater than or equal to 0.60% of Average OCV. Finally, the Exchange propose to add new Market Maker Volume Tier 4 to provide an enhanced rebate of $0.32 per contract if a TPH has an ADAV in Market-Maker orders in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF (*i.e.,* yielding fee codes SM or SL) greater than or equal to 0.70% of Average OCV.

The Exchange notes that other exchanges offer tiered product-specific pricing incentives.[7] The proposed changes are designed to encourage Market-Makers to increase or grow their order flow on the Exchange in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF, which facilitates tighter spreads, signaling increased activity from other market participants, and thus ultimately contributes to deeper and more liquid markets and provides greater execution opportunities on the Exchange to the benefit of all market participants.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [9] 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) [10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. In particular, the proposed changes to Exchange execution fees and rebates for certain orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF are intended to attract order flow to the Exchange by continuing to offer competitive pricing while also creating additional incentives to providing aggressively priced displayed liquidity, which the Exchange believes would enhance market quality to the benefit of all market participants.

The Exchange believes its proposed changes are reasonable as they are competitive and in line with the Exchange's current pricing for the same orders in SPY, AAPL, QQQ, IWM, and SLV. The Exchange believes that it is reasonable to reduce the transaction fee for Public Customer orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that remove liquidity because market participants will be subject to lower fees for such orders and thus may be encouraged to increase retail AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF order flow to the Exchange. The Exchange believes that it is reasonable to reduce the rebates for both C2 Market Maker and non-Market Maker, non-Customer orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that add liquidity because such market participants will still receive rebates for such orders, albeit at a lower amount, which are already in place for such orders in SPY, AAPL, QQQ, IWM and SLV. Additionally, Market Makers that are NBBO Joiners or Setters in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF would be eligible to receive the same rebate, as amended, that is currently offered for joining or setting an NBBO in SPY, AAPL, QQQ, IWM and SLV. The Exchange believes that offering the NBBO Joiner and Setter rebate for Market Maker orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF is reasonable as it is designed to continue to incentivize C2 Market Makers to improve the C2 BBO resulting in C2 joining an existing NBBO or setting a new NBBO to receive the rebate, ultimately encouraging C2 Market Makers to submit more aggressive AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF orders that will maintain tight spreads, benefitting both TPHs and public investors. Further, the Exchange believes it is reasonable to increase the current rebate for the NBBO Joiner and Setter rebate for Market Maker orders in SPY, AAPL, QQQ, IWM and SLV, as such market participants will still receive a rebate for such orders.

The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to adopt pricing specific to certain orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF as the Exchange already maintains the same pricing for such orders in SPY, AAPL, QQQ, IWM and SLV, as well as similar product-specific pricing for certain orders in other products, such as RUT and DJX.[12] Additionally, as noted above, other exchanges similarly provide for product-specific pricing.[13]

The Exchange also believes that it is equitable and not unfairly discriminatory to assess a lower fee for Public Customer orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF as compared to other market participants because customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Moreover, the options industry has a long history of providing preferential pricing to customers, and the Exchange's current Fee Schedule currently does so in many places, as do the fees structures of multiple other exchanges.[14] The Exchange notes that the proposed fee change will be applied equally to all Public Customers.

The Exchange believes it is equitable and not unfairly discriminatory to provide C2 Market-Makers that are NBBO Joiners or Setters in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF an enhanced rebate (compared to the proposed rebate for other C2 Market-Makers) because such market participants are providing more

[7] *See, e.g.,* MIAX Pearl Fee Schedule, Section 1 Transaction Rebates/Fees, which provides for product-specific pricing for SPY, QQQ, and IWM; and Nasdaq ISE Pricing Schedule, Section 3, Footnote 5, which provides for tiered rebates for market maker IWM and QCC orders that add liquidity between $0.10 and $0.26 per contract, as well as tired rebates for market maker orders in similar, single-name options (AMZN, FB, and NVDA) between $0.15 and $0.22.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] 15 U.S.C. 78f(b)(4).

[12] *See* Cboe C2 Options Exchange Fee Schedule, Transaction Fees.

[13] *See supra* note 8.

[14] *See* Cboe C2 Options Exchange Fee Schedule, Transaction Fees; *see also* BZX Options Fee Schedule, Fee Codes and Associated Fees.

aggressively priced liquidity in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF options. Additionally, increased add volume order flow, particularly by liquidity providers, contributes to a deeper, more liquid market, which, in turn, provides for increased execution opportunities and thus overall enhanced price discovery and price improvement opportunities on the Exchange. As such, this benefits all market participants by contributing towards a robust and well-balanced market ecosystem, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange believes the proposed changes to the rebates for non-Market Maker, non-Customer and C2 Market Maker AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF orders are also equitable and not unfairly discriminatory because they will be applied equally to all non-market-makers, non-customers and Market-Makers, respectively.

The Exchange believes amending Market Maker Volume Tiers for C2 Market Maker orders yielding fee code SM or SL is reasonable because they provide additional opportunities for TPHs to receive enhanced rebates on qualifying orders in a manner that incentivizes increased Market Maker order flow in certain multiply-listed options on the Exchange. The Exchange believes the Market Maker Volume Tiers, as amended, are reasonable means to encourage Market Makers to increase their order flow to specific multiply-listed options on the Exchange (*i.e.,* SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF). The Exchange notes that increased Market Maker activity, particularly, facilitates tighter spreads and an increase in overall liquidity provider activity, both of which signal additional corresponding increase in order flow from other market participants, contributing towards a robust, well-balanced market ecosystem, particularly in multiply-listed options on the Exchange. The Exchange also believes that the amended enhanced rebate offered under Tier 2 and the proposed enhanced rebates offered under proposed Tiers 3 and 4 are reasonably based on the difficulty of satisfying the proposed tiers' criteria and ensures the proposed rebate and thresholds appropriately reflect the incremental difficulty in achieving the Market-Maker Volume Tier. The Exchange believes that the proposed enhanced rebates are also in line with the enhanced rebates currently offered by another exchange for similar products.[15] The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to adopt pricing specific to certain orders in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF as the Exchange already offers product-specific pricing for these orders and, and as noted above, other exchanges similarly provide for product-specific tiered pricing.[16]

The Exchange believes that the Market Maker Volume Tiers, as amended, represent an equitable allocation of fees and is not unfairly discriminatory because it applies uniformly to all Market Makers, in that all Market Makers have the opportunity to compete for and achieve the proposed tiers. The enhanced rebates will apply automatically and uniformly to all Market Makers that achieve the proposed corresponding criteria. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Market Maker qualifying for the proposed tiers, the Exchange believes that approximately two Market Makers will reasonably be able to achieve the amended criteria in Tier 1; approximately five Market Makers will be able to achieve the amended criteria in Tier 2; approximately two Market Makers will be able to achieve the criteria in proposed Tier 3; and approximately one Market Maker will be able to achieve the criteria in proposed Tier 4. The Exchange notes, however, that the tiers are open to any Market Maker that satisfies the tiers' criteria.

The Exchange lastly notes that it does not believe the tiers, as amended, will adversely impact any TPH's pricing. Rather, should a TPH not meet the proposed criteria, the TPH will merely not receive the enhanced rebates corresponding to the tiers, and will instead receive the standard rebate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed changes will encourage the submission of additional liquidity in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all TPHs. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all similarly situated TPHs equally. The proposed change to reduce the transaction fee for Public Customer orders in AMC, AMD, AMXN, HYG, PLTR, TSLA, and XLF is designed to attract additional AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF Public Customer orders that remove liquidity. As noted above, the changes to the rebates for non-Market Maker, non-Customer and C2 Market Maker AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF orders will be applied equally to all non-market-makers, non-customers and Market Makers, respectively. Further, the Exchange believes that the proposed change to increase the C2 Market Maker rebate for orders in SPY, AAPL, QQQ, and IWM and provide C2 Market-Makers that are NBBO Joiners or Setters in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF an enhanced rebate (compared to the proposed rebate for other C2 Market-Makers) will incentivize entry on the Exchange of more aggressive SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF orders that will maintain tight spreads, benefitting both TPHs and public investors criteria and, as a result, provide for deeper levels of liquidity, increasing trading opportunities for other market participants, thus signaling further trading activity, ultimately incentivizing more overall order flow and improving price transparency on the Exchange. Finally, as noted above, the changes to the Market Maker Volume Tiers apply uniformly to all Market Makers, in that all Market Makers have the opportunity to compete for and achieve the proposed tiers; the enhanced rebates will apply automatically and uniformly to all Market Makers that achieve the proposed corresponding criteria.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. TPHs have numerous alternative venues

[15] *See supra* note 8.

[16] *Id.*

that they may participate on and director their order flow, including 16 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 16% of the market share.[17] Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in 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.'' The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .''. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and paragraph (f) of Rule 19b–4[19] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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–C2–2023–024 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–C2–2023–024. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–C2–2023–024 and should be submitted on or before January 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

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[17] *See supra* note 3.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99104; File No. SR–ISE–2023–32]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Monthly Options Series and Amend the Nonstandard Expirations Program

December 7, 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 November 29, 2023, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Monthly Options Series and (ii) amend its Nonstandard Expirations Program.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 (i) adopt Monthly Options Series and (ii) amend its Nonstandard Expirations Program. Each change is discussed in detail below.

Monthly Options Series

The Exchange proposes to amend its Rules 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'').[3] Pursuant to proposed Supplementary Material .08(a) to Options 4, Section 5 and Supplementary Material .06(a) to Options 4A, Section 12, 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'').[4] 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.[5] 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.[6] Other expirations in the same class are not counted as part of the maximum numbers of Monthly Options Series expirations for a class.[7] Monthly Options Series will be P.M.-settled.[8]

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.[9] 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 customer 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 customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market Makers trading for their own account will not be considered when determining customer 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 as a standard expiration series (which expire on the third Friday of a month) in the same class expires. The same, however, is not the case with regards to Short

[3] The proposed rule change defines the term ''Monthly Options Series'' in Options 4A, Section 2(l) (and re-letters current paragraphs (l) through (p) as (m) through (q)) as a series in an options class that is approved for listing and trading on the Exchange in which the series is opened for trading on any business day and that expires at the close of business on the last business day of a calendar month. The Exchange also proposes to fix an incorrect cross cite to the definition of broad-based index in Options 4A, Section 3(d)(1).

[4] The Exchange proposes to amend Options 4, Section 5(a) to provide that proposed Supplementary Material .08 to Options 4, Section 5 will describe how the Exchange will fix a specific expiration date and exercise price for Monthly Options Series. This is consistent with language in current Options 4, Section 5(a) for other Short Term Option Series and Quarterly Options Series.

[5] The Commission recently approved a Cboe Options proposed rule change to adopt substantively identical Monthly Options Series. *See* Securities Exchange Act Release No. 98915 (November 13, 2023), 88 FR 80356 (November 17, 2023) (SR–CBOE–2023–049) (''Cboe Monthly Approval Order'').

[6] 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 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).

[7] *See* proposed Supplementary Material .08(b) to Options 4, Section 5 and proposed Supplementary Material .06(b) to Options 4A, Section 12.

[8] *See* proposed Supplementary Material .08(c) to Options 4, Section 5 and proposed Supplementary Material .06(c) to Options 4A, Section 12.

[9] *See* proposed Supplementary Material .08(d) to Options 4, Section 5 and proposed Supplementary Material .06(d) to Options 4A, Section 12. The Exchange notes these proposed provisions are consistent with the initial series provision for the Quarterly Options Series program in Supplementary Material .02(d) to Options 4A, Section 12. While different than the initial strike listing provision for the Quarterly Options Series program in current Supplementary Material .04(c) to Options 4, Section 5, the Exchange believes the proposed provision is appropriate, as it contemplates classes that may have strike intervals of $5 or greater. For consistency, the Exchange also proposes to amend Supplementary Material .04(c) to Options 4, Section 5 to incorporate the same provision for initial series. The Exchange also proposes a non-substantive punctuation changes in the Quarterly Options Series header in Supplementary Material .04 to Options 4, Section 5 and Supplementary Material .02 to Options 4A, Section 12.

[10] *See* proposed Supplementary Material .08(e) to Options 4, Section 5 and proposed Supplementary Material .06(e) to Options 4A, Section 12.

[11] *See* proposed Supplementary Material .08(f) to Options 4, Section 5 and proposed Supplementary Material .06(f) to Options 4A, Section 12. *See also* Options 4, Section 5(d), (e), Supplementary Material .01, .02, .05, .06 (permissible strikes prices for ETF classes) and Options 4, Section 5(f) and Options 4A, Section 12(c) (permissible strike prices for index options).

Term Options Series [12] or Quarterly Options Series. Therefore, to avoid any confusion in the marketplace, the Exchange proposes to amend Supplementary Material .03 to Options 4, Section 5 and Supplementary Material .01 to Options 4A, Section 12 [13] to provide 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.[14] Similarly, proposed Supplementary Material .08(b) to Options 4, Section 5 and Supplementary Material .06(b) to Options 4A, Section 12 provide 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 Term 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 ETF or index if a Quarterly Options Series on that index or ETF were to expire on the same date to prevent the listing of series with concurrent expirations.[15]

With respect to Monthly Options Series added pursuant to proposed Options 4, Section 5, Supplementary Material .08(a) through (f) and proposed Options 4A, Section 12, Supplementary Material .06(a) through (f), 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: (i) strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike 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, customer 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.[16]

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 option 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 Exchange's and the Options Price Reporting Authority's (''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 proposes to amend Options 4A, Sections 6 and 7 to provide that positions in Monthly Options Series will be aggregated with positions in options contracts on the same underlying security or index. This is consistent with how position (and exercise) limits are currently imposed on series with other expirations (Short Term Options Series, and Quarterly Options Series). Therefore, positions in options within class of index or ETF options, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. The Exchange believes this will address potential manipulative schemes and adverse market impacts surrounding the use of options.

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 index and ETF classes, 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 currently in place to support and properly monitor trading in these Quarterly Options Series, as well as Short Term Option 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.

Nonstandard Expirations Program

The Exchange proposes to amend Options 4A, Section 12, Supplementary Material .07, which governs its Nonstandard Expirations Program (''Program''), to permit P.M.-settled options on any broad-based index eligible for standard options trading that expire on Tuesday or Thursday.[17] Currently under the Program, the Exchange is permitted to list P.M.-settled options on any broad-based index eligible for standard trading that expire on: (1) any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration (as defined below) and, with respect to options on the Nasdaq-100 Index (''NDX options'') and the Nasdaq 100 Micro Index (''XND options'') any Tuesday or Thursday (''Weekly Expirations'') and (2) the last trading day of the month (''End of Month Expirations'' or ''EOMs'').[18] The Exchange notes that permitting Tuesday and Thursday expirations for all broad-based indexes, as proposed, would be in

[12] The Exchange proposes non-substantive changes to clarify in Options 4A, Section 12(a)(3) that index options contracts may expire at three (3)-month intervals, in consecutive weeks or in consecutive months (as specified by class in Options 4A, Section 12). This is merely a clarification for punctuation and clarity.

[13] The Exchange also proposes a non-substantive punctuation change in Supplementary Material .01 to Options 4A, Section 12.

[14] The Exchange also proposes to make a non-substantive change to Supplementary Material .03 to Options 4, Section 5 and Supplementary Material .01 to Options 4A, Section 12 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.

[15] 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. In other words, the Exchange may list a P.M-settled Monthly Options Series on an index concurrent with an A.M.-settled Short Term Options Series on that index and both of which 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.

[16] *See* proposed Supplementary Material .08(g) to Options 4, Section 5 and proposed Supplementary Material .06(g) to Options 4A, Section 12.

[17] The Exchange's proposal is based on a recently approved rule change by Cboe Options. *See* SR–CBOE–2023–054 (''Cboe Nonstandard Approval Order'').

[18] *See* Supplementary Material .07 to Options 4A, Section 12.

addition to the options with Monday, Wednesday and Friday expirations that the Exchange may (and does) already list on those indexes, as they are permissible Weekly Expirations for options on a broad-based index pursuant to Supplementary Material .07(a) to Options 4A, Section 12. The proposal merely expands the availability of Tuesday and Thursday Weekly Expirations, and thus all Weekly Expirations available under the Program, to all broad-based indexes eligible for standard options trading, on which the Exchange may currently list Monday, Wednesday, and Friday Weekly expirations under the Program.

The Program for Weekly Expirations will apply to any broad-based index option with Tuesday and Thursday expirations in the same manner as it currently applies to all other P.M.-settled broad-based index options with Monday, Wednesday, and Friday expirations and to NDX and XND options with Tuesday and Thursday expirations. Specifically, as set forth in Options 4A, Section 12, Supplementary Material .07, Weekly Expirations, including the proposed Tuesday and Thursday expirations, are subject to all provisions of Options 4A, Section 12 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month; provided, however, that Weekly Expirations are P.M.-settled, and new series in Weekly Expirations may be added up to and including on the expiration date for an expiring Weekly Expiration.

The maximum number of expirations that may be listed for each Weekly Expiration (*i.e.,* a Monday expiration, Tuesday expiration, Wednesday expiration, Thursday expiration, or Friday expiration, as applicable) in a given class is the same as the maximum number of expirations permitted in Options 4A, Section 12(a)(3) for standard options on the same broad-based index. Weekly Expirations need not be for consecutive Monday, Tuesday, Wednesday, Thursday, or Friday expirations as applicable; 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. Weekly Expirations that are first listed in a given class may expire up to four weeks from the actual listing date. If the Exchange lists EOMs and Weekly Expirations as applicable in a given class, the Exchange will list an EOM instead of a Weekly Expiration that expires on the same day in the given class. Other expirations in the same class are not counted as part of the maximum number of Weekly Expirations for an applicable broad-based index class. If the Exchange is not open for business on a respective Monday, the normally Monday expiring Weekly Expirations will expire on the following business day. If the Exchange is not open for business on a respective Tuesday, Wednesday, Thursday, or Friday, the normally Tuesday, Wednesday, Thursday, or Friday expiring Weekly Expirations will expire on the previous business day. If two different Weekly Expirations on a broad-based index would expire on the same day because the Exchange is not open for business on a certain weekday, the Exchange will list only one of such Weekly Expirations. In addition, like all Weekly Expirations, pursuant to Supplementary Material .07(c) to Options 4A, Section 12, transactions in expiring broad-based index options with Tuesday and Thursday expirations may be effected on the Exchange between the hours of 9:30 a.m. and 4:00 p.m. on their last trading day (Eastern Time).

The Exchange believes that that the introduction of Tuesday and Thursday expirations for all broad-based index options (rather than offering those expirations for just two indexes) will expand hedging tools available to market participants while also providing greater trading opportunities, regardless of in which index option market they participate. By offering expanded Tuesday and Thursday expirations along with the current Monday, Wednesday and Friday expirations, the proposed rule change will allow market participants to purchase options on all broad-based index options available for trading on the Exchange in a manner more aligned with specific timing needs and more effectively tailor their investment and hedging strategies and manage their portfolios. In particular, the proposed rule change will allow market participants to roll their positions on more trading days, thus with more precision, spread risk across more trading days and incorporate daily changes in the markets, which may reduce the premium cost of buying protection.

The Exchange believes there is sufficient investor interest and demand in Tuesday and Thursday expirations for broad-based index options beyond NDX and XND to warrant inclusion in the Program and that the Program, as amended, will continue to provide investors with additional means of managing their risk exposures and carrying out their investment objectives.[19] With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it believes that the Exchange and OPRA have the necessary systems capacity to handle any potential additional traffic associated with trading of broad-based index options with Tuesday and Thursday expirations. The Exchange does not believe that its Members will experience any capacity issues as a result of this proposal and represents that it will monitor the trading volume associated with any possible additional options series listed as a result of this proposal and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[20] in general, and with Section 6(b)(5) of the Act,[21] 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.

Monthly Options Series

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 timing as needed and allow them to

[19] The Exchange currently lists Tuesday and Thursday expirations in NDX and XND options pursuant to the Program. The Exchange also already allows options on broad-based indexes to expire on Tuesdays for normally Monday or Wednesday expiring options when the Exchange is not open for business on a respective Monday or Wednesday (as applicable), and already allows options on broad-based indexes to expire on Thursdays for normally Friday expiring options when the Exchange is not open for business on a respective Friday. Also, EOM options in any broad-based indexes may currently be listed to expire on a Tuesday or Thursday.

[20] 15 U.S.C. 78f.

[21] 15 U.S.C. 78f(b)(5).

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 months' ends 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 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 that 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.[22] 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 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.[23] 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 investors 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's 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 further believes the proposed rule change regarding the treatment of Monthly Options Series with respect to determining compliance with position and exercise limits is designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade. Monthly Options Series will be aggregated with options overlying the same ETF or index for purposes of compliance with position (and exercise) limits, which is consistent with how position (and exercise) limits are currently imposed on series with other expirations (Short Term Options Series and Quarterly Options Series). Therefore, options positions within ETF or index option classes for which Monthly Options Series are listed, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. The Exchange believes this will address potential manipulative schemes and adverse market impacts surrounding the use of options. 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 trades Quarterly Options Series in certain index and ETF classes, 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 currently in place to support and properly monitor trading in these Quarterly Options Series, as well as Short Term Option 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.

Nonstandard Expirations Program

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the introduction of Tuesday and Thursday expirations for all broad-based index options (rather than offering those expirations for just two indexes) will provide investors with expanded hedging tools and greater trading opportunities and flexibility, regardless of in which index option market they participate. As a result, investors will have additional means to manage their risk exposures and carry out their investment objectives. By offering expanded Tuesday and Thursday expirations along with the current Monday, Wednesday and Friday expirations, the proposed rule change will allow market participants to purchase options on all broad-based index options available for trading on the Exchange in a manner more aligned with specific timing needs and more effectively tailor their investment and hedging strategies and manage their portfolios. For example, the proposed rule change will allow market participants to roll their positions on more trading days, thus with more precision, spread risk across more trading days and incorporate daily changes in the markets, which may reduce the premium cost of buying protection. The Exchange represents that it believes that it has the necessary systems capacity to support any additional traffic associated with trading of options on all broad-based index options with Tuesday and Thursday expirations and does not believe that its

[22] *Compare* proposed Supplementary Material .08 to Options 4, Section 5 and proposed Supplementary Material .06 to Options 4A, Section 12 *to* Supplementary Material .04 to Options 4, Section 5 and Supplementary Material .02 to Options 4A, Section 12.

[23] The Exchange notes the proposed maximum number of expirations is consistent with the maximum number of expirations permitted for end-of-month (''EOM'') series in index classes. *See* Supplementary Material .07(b) (which states that the maximum number of expirations that may be listed for EOMs in a given class is the same as the maximum number of expirations permitted for standard options on the same broad-based index back (*i.e.,* up to 12 standard monthly expirations on the majority of index options currently listed on the Exchange, as set forth in Options 4A, Section 12(a)(3)).

Members will experience any capacity issues as a result of this proposal.

The Commission previously recognized that listing Tuesday and Thursday expirations for NDX and XND options was consistent with the Act.[24] The Exchange noted that Tuesday and Thursday expirations in these index options would offer additional investment options to investors and may be useful for their investment or hedging objectives.[25] The Exchange also notes it previously listed P.M.-settled broad-based index options with weekly expirations pursuant to a pilot program, so the Commission could monitor the impact of P.M. settlement of cash-settled index derivatives on the underlying cash markets (while recognizing that these risks may have been mitigated given enhanced closing procedures in use in the primary equity markets); however, the Commission recently approved a proposed rule change to make that pilot program permanent. The Commission noted that the data it reviewed in connection with the pilot demonstrated that these options (including SPX and XSP options with Tuesday and Thursday expirations) ''benefitted investors and other market participants by providing more flexible trading and hedging opportunities while also having no disruptive impact on the market'' and were thus consistent with the Act.[26] The proposed rule change is consistent with these findings, as it will benefit investors and other market participants that participate in the markets for broad-based index options other than NDX and XND options in the same manner by providing them with more flexible trading and hedging opportunities. Additionally, the Exchange does not believe the listing of additional P.M.-settled options on other broad-based indexes will have any significant economic impact on the underlying component securities surrounding the close as a result of expiring p.m.-settled options or impact market quality, based on the data provided to and reviewed by the Commission (and the Commission's own conclusions based on that review, as noted above) and due to the significant changes in closing procedures in the decades since index options moved to A.M.-settlement.[27]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Monthly Options Series

The Exchange does not believe the proposed rule change to list Monthly Options Series will impose any burden on intra-market 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 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.[28] 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.[29] 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 inter-market 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.[30] 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 does not believe the proposed rule change to provide that positions in Monthly Options Series will be aggregated with positions in options contracts on the same underlying index or security for purposes of determining compliance with position (and exercise) limits will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as it will apply in the same manner to all market participants. The Exchange proposes to apply position (and exercise) limits to Monthly Options Series in the same manner it applies position limits to series with other expirations (Short Term Options Series and Quarterly Options Series). Therefore, positions in options in a class of ETF or index options, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. Additionally, the Exchange does not believe this proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will address potential manipulative schemes and adverse market impacts surrounding the use of options.

Nonstandard Expirations Program

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because options on broad-based indexes with Tuesday and Thursday expirations will be available to all market participants. By listing options on all available broad-based indexes that expire on Tuesdays and Thursdays, the proposed rule change will provide all investors that participate in the markets for options on all broad-based indexes available for trading on the Exchange with greater trading and hedging opportunities and flexibility to meet their investment and hedging needs, which are already available for NDX and XND options. Additionally, Tuesday and Thursday expiring broad-based index options will trade in the same manner as Weekly Expirations currently trade, including Tuesday and Thursday expiring NDX and XND options.

The Exchange does not believe that the proposal to list options on all broad-based indexes with Tuesday and Thursday expirations will impose any

[24] *See* Securities Exchange Act Release Nos. 95393 (July 29, 2022), 87 FR 47807 (August 4, 2022) (SR–ISE–2022–13) (''NDX Options Rule Change''); and 98886 (November 8, 2023), 88 FR 78417 (November 15, 2023) (SR–ISE–2023–24) (''XND Options Rule Change'')

[25] *See* NDX Options Rule Change at 47808; and XND Options Rule Change at 78421.

[26] *See* Securities Exchange Act Release No. 98450 (September 20, 2023), 88 FR 66111 (September 26, 2023) (SR–ISE–2023–08) at 66114.

[27] *See id.*

[28] *See* Supplementary Material .04 to Options 4, Section 5 and Supplementary Material .02 to Options 4A, Section 12.

[29] *See supra* note 23.

[30] As noted above, at least one other options exchange recently adopted a substantively identical Monthly Options Series program. *See* Cboe Monthly Approval Order.

burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because these options are proprietary Exchange products. Other exchanges offer nonstandard expiration programs for index options as well as short-term options programs for certain equity options (including options on certain exchange-traded funds that track broad-based indexes) that expire on Tuesdays and Thursdays [31] and are welcome to similarly propose to list Tuesday and Thursday options on those index or equity products. To the extent that the addition of options on additional broad-based indexes that expire on Tuesdays and Thursdays being available for trading on the Exchange makes the Exchange a more attractive marketplace to market participants at other exchanges, such market participants are free to elect to become market participants on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [32] and Rule 19b–4(f)(6) thereunder.[33] 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 [34] and subparagraph (f)(6) of Rule 19b–4 thereunder.[35]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [36] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [37] 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 and options on all broad-based indexes with Tuesday and Thursday expirations close in time to Cboe Options, which the Exchange believes will benefit investors by promoting competition in both of these programs. The Exchange notes that its proposal is substantively identical to the proposals submitted by Cboe Options for its Monthly Options Series program [38] and Nonstandard Expirations Program.[39] 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.[40]

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–ISE–2023–32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–ISE–2023–32. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–ISE–2023–32 and should be submitted on or before January 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Sherry R. Haywood,

Assistant Secretary.

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[31] *See, e.g.,* Phlx Options 4A, Section 12 (permitting nonstandard expirations, including expirations on Tuesdays and Thursdays, for NDX and XND options). *See also* Cboe Nonstandard Approval Order (permitting nonstandard expirations, including expirations on Tuesdays and Thursdays, for SPX and XSP options).

[32] 15 U.S.C. 78s(b)(3)(A)(iii).

[33] 17 CFR 240.19b–4(f)(6).

[34] 15 U.S.C. 78s(b)(3)(A)(iii).

[35] 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.

[36] 17 CFR 240.19b–4(f)(6).

[37] 17 CFR 240.19b–4(f)(6)(iii).

[38] *See* Cboe Monthly Approval Order, *supra* note 5.

[39] *See* Cboe Nonstandard Approval Order, *supra* note 17.

[40] 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).

[41] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99111; File No. SR–CBOE–2023–064]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Fees for the Cboe Silexx Platform

December 7, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 2023, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend fees for the Cboe Silexx platform. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend fees for the Cboe Silexx platform (''Silexx platform''),[3] effective December 1, 2023. By way of background, the Silexx platform consists of a ''front-end'' order entry and management trading platform (also referred to as the ''Silexx terminal'') for listed stocks and options that supports both simple and complex orders, and a ''back-end'' platform which provides a connection to the infrastructure network. From the Silexx platform (*i.e.,* the collective front-end and back-end platform), a Silexx user has the capability to send option orders to U.S. options exchanges, send stock orders to U.S. stock exchanges (and other trading centers), input parameters to control the size, timing, and other variables of their trades, and also includes access to real-time options and stock market data, as well as access to certain historical data. The Silexx platform is designed so that a user may enter orders into the platform to send to an executing broker (including Trading Permit Holders (''TPHs'')) of its choice with connectivity to the platform, which broker will then send the orders to Cboe Options (if the broker is a TPH) or other U.S. exchanges (and trading centers) in accordance with the user's instructions. The Silexx front-end and back-end platforms are a software application that is installed locally on a user's desktop. Silexx grants users licenses to use the platform, and a firm or individual does not need to be a TPH to license the platform.

The Exchange offers several versions of its Silexx platform. Originally, the Exchange offered the following versions of the Silexx platform: Basic, Pro, Sell-Side, Pro Plus Risk and Buy-Side Manager (''Legacy Platforms''). The Legacy Platforms are designed so that a User may enter orders into the platform to send to the executing broker, including TPHs, of its choice with connectivity to the platform. The executing broker can then send orders to Cboe Options (if the broker-dealer is a TPH) or other U.S. exchanges (and trading centers) in accordance with the User's instructions. Users cannot directly route orders through any of the Legacy Platforms to an exchange or trading center nor is the platform integrated into or directly connected to Cboe Option's System. In 2019, the Exchange made available a new version of the Silexx platform, Silexx FLEX, which supports the trading of FLEX Options and allows authorized Users with direct access to the Exchange to establish connectivity and submit orders directly to the Exchange.[4] In 2020, the Exchange made an additional version of the Silexx platform available, Cboe Silexx, which supports the trading of non-FLEX Options and allows authorized Users with direct access to the Exchange to establish connectivity and submit orders directly to the Exchange.[5] Cboe Silexx is essentially the same platform as Silexx FLEX, with the same applicable functionality, except that it additionally supports non-FLEX trading. Use of the Silexx platform is completely optional.

CAT Fees

The Exchange has adopted a fee for CAT Files.[6] Particularly, Silexx makes Consolidated Audit Trail (''CAT'')-formatted files available to Silexx users for orders processed by the user via Silexx applications. Users may also elect to have Silexx, which is a CAT Reporter Agent, submit these files to CAT on their behalf. The Exchange assesses a monthly fee of $250 per trading firm for CAT Files, payable by the trading firm for CAT files related to its own and its customers' executions. The Exchange proposes to increase the monthly fee for CAT Files for all Silexx users, from $250 per month to $500 per month.

Data Management Fee

The Exchange also proposes to introduce a Data Management fee for users of Legacy Platforms. This fee will cover the administrative costs of supporting and maintaining data feeds a Legacy user may have, as well as the cost of additional data provided in the terminal such as earnings and dividends. The Exchange proposes to assess $20 per month per Login ID.

[3] Cboe Silexx, Inc. (''Cboe Silexx''), which is a subsidiary of the Exchange's parent, Cboe Global Markets, Inc., offers the Silexx platform.

[4] *See* Securities Exchange Act Release No. 87028 (September 19, 2019) 84 FR 50529 (September 25, 2019) (SR–CBOE–2019–061). Only Users authorized for direct access and who are approved to trade FLEX Options may trade FLEX Options via Cboe Silexx. Only authorized Users and associated persons of Users may establish connectivity to and directly access the Exchange, pursuant to Rule 5.5 and the Exchange's technical specifications.

[5] *See* Securities Exchange Act Release No. 88741 (April 24, 2020) 85 FR 24045 (April 30, 2020) (SR–CBOE–2020–040). Only authorized Users and associated persons of Users may establish connectivity to and directly access the Exchange, pursuant to Rule 5.5 and the Exchange's technical specifications.

[6] *See* Securities Exchange Release No. 89285 (July 10, 2020) 85 FR 43284 (July 16, 2020) (SR–CBOE–2020–062).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[8] 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)[9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Additionally, the Exchange also believes the proposed rule change is consistent with section 6(b)(4) of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In particular, the Exchange believes the proposed monthly fee for CAT Files is reasonable, equitable, and not unfairly discriminatory because the CAT Files fee will apply to all users that elect to receive CAT Files. Further, the Exchange notes receipt of the CAT Files is completely voluntary and not compulsory. Indeed, all users of Silexx can extract the necessary data from Silexx to create a CAT report themselves to comply with their reporting obligations even if they choose not to purchase the optional CAT Files. The Exchange believes the CAT File fee, as proposed, remains reasonable, as the moderate increase is the first increase to the fee since its introduction in 2020.

The Exchange also believes the proposed Data Management fee is reasonable, equitable, and not unfairly discriminatory because the fee will apply to all users of the Legacy Platforms. Additionally, the Exchange believes the proposed fee is reasonable as it accounts for administrative costs that Cboe Silexx is incurring, but not charging users, to maintain support for Legacy Platforms while Cboe Silexx transitions away from the Legacy Platforms. Further, the Exchange believes the proposed rule change to waive the Data Management fee for Silexx FLEX and Cboe Silexx is reasonable because users of these newer platforms would do not need to receive the support for older platforms. As noted in previous filings, the Exchange is in the process of transitioning the Legacy Platforms to the current version of Cboe Silexx and Silexx FLEX.[10] The Exchange believes not assessing these fees for Silexx FLEX and Cboe Silexx also serves as an incentive to market participants to transition to the current version of Cboe Silexx from the Legacy Platforms.

Finally, the Exchange notes that use of the platform is discretionary and not compulsory, as users can choose to route orders, including to Cboe Options, without the use of the platform. The Exchange makes the platform available as a convenience to market participants, who will continue to have the option to use any order entry and management system available in the marketplace to send orders to the Exchange and other exchanges; the platform is merely an alternative offered by the Exchange.

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 proposed change will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change will apply to similarly situated participants uniformly, as described in detail above.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change applies only to Cboe Options. Additionally, Cboe Silexx is similar to types of products that are widely available throughout the industry, including from some exchanges, at similar prices. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants. Further, the proposed rule change relates to an optional platform. As discussed, the use of the platform continues to be completely voluntary and market participants will continue to have the flexibility to use any entry and management tool that is proprietary or from third-party vendors, and/or market participants may choose any executing brokers to enter their orders. The Cboe Silexx platform is not an exclusive means of trading, and if market participants believe that other products, vendors, front-end builds, etc. available in the marketplace are more beneficial than Cboe Silexx, they may simply use those products instead, including for routing orders to the Exchange (indirectly or directly if they are authorized Users). Use of the functionality is completely voluntary.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[11] and paragraph (f) of Rule 19b–4[12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

[10] *See* Securities Exchange Release No. 98722 (October 11, 2023) 88 FR 71619 (October 17, 2023) (SR–CBOE–2023–060). Only authorized Users and associated persons of Users will continue to be able to establish connectivity to and directly access the Exchange, pursuant to Rule 5.5 and the Exchange's technical specifications. Unauthorized Users will not be able to connect directly to the Exchange. The new Cboe Silexx platform will function in the same manner as the Legacy Platforms versions currently available to Users: it will be completely voluntary; orders entered through the platform will receive no preferential treatment as compared to orders electronically sent to Cboe Options in any other manner; orders entered through the platform will be subject to current trading rules in the same manner as all other orders sent to the Exchange, which is the same as orders that are sent through the Exchange's System today; the Exchange's System will not distinguish between orders sent from Silexx and orders sent in any other manner; and Silexx will provide technical support, maintenance and user training for the new platform version upon the same terms and conditions for all Users. The Exchange plans to decommission the Legacy Platforms at a future to-be-determined date, at which time the Legacy Platforms will be unavailable to users.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CBOE–2023–064 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–CBOE–2023–064. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CBOE–2023–064 and should be submitted on or before January 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27273 Filed 12–12–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99113; File No. SR–CBOE–2023–065]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a Low Priced Stock Strike Price Interval Program

December 7, 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 4, 2023, Cboe Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to adopt a Low Priced Stock Strike Price Interval Program. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 4.5. Miami International Securities Exchange, LLC (''MIAX'') recently received approval to amend its Rule 404 to implement a new strike interval program for stocks that are priced less than $2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the 3 preceding calendar months.[5] At this time, the Exchange proposes to adopt rules substantively identical to MIAX in proposed Rule 4.5, Interpretation and Policy .20 and amend Rule 4.5(d) to harmonize the table within that Rule to the proposed rule text.

Currently, Rule 4.5 describes the process and procedures for listing and trading series of options on the Exchange. Rule 4.5, Interpretation and Policy .04 provides for a $2.50 Strike Price Program, where the Exchange may select up to 60 option classes on individual stocks for which the interval of strike prices will be $2.50 where the strike price is greater than $25 but less than $50.[6] Rule 4.5, Interpretation and Policy .01 also provides for a $1 Strike Price Interval Program, where the interval between strike prices of series of options on individual stocks may be $1.00 or greater provided the strike price is $50.00 or less, but not less than $1.00.[7] Additionally, Rule 4.5, Interpretation and Policy .01 provides for a ''$0.50 Strike Program.'' The interval of strike prices of series of options on individual stocks may be $0.50 or greater beginning at $0.50 where the strike price is $5.50 or less, but only for options classes whose underlying security closed at or below $5.00 in its primary market on the previous trading day and which have national average daily volume that

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 98917 (November 13, 2023), 88 FR 80361 (November 17, 2023) (SR–MIAX–2023–36) (Order Approving a Proposed Rule Change To Amend Exchange Rule 404, Series of Option Contracts Open for Trading).

[6] *See* Rule 4.5, Interpretation and Policy .04.

[7] *See* Rule 4.5, Interpretation and Policy .01(a)(1).

equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation (''OCC'') during the preceding three calendar months. The listing of $0.50 strike prices is limited to options classes overlying no more than 20 individual stocks as specifically designated by the Exchange. The Exchange may list $0.50 strike prices on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar $0.50 Strike Program under their respective rules. A stock shall remain in the $0.50 Strike Program until otherwise designated by the Exchange.[8]

The Exchange proposes to adopt a new strike interval program for stocks that are not in the aforementioned $0.50 Strike Program (or the Short Term Option Series Program)[9] and that close below $2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the three preceding calendar months. The $0.50 Strike Program considers stocks that have a closing price at or below $5.00 whereas the Exchange's proposal will consider stocks that have a closing price below $2.50. Currently, there is a subset of stocks that are not included in the $0.50 Strike Program as a result of the limitations of that program which provides that the listing of $0.50 strike prices is limited to option classes overlying no more than 20 individual stocks as specifically designated by the Exchange and requires a national average daily volume that equals or exceeds 1,000 contracts per day as determined by OCC during the preceding three calendar months.[10] Therefore, the Exchange is proposing to implement a new strike interval program termed the ''Low Priced Stock Strike Price Interval Program.''

To be eligible for the inclusion in the Low Priced Stock Strike Price Interval Program, an underlying stock must (1) close below $2.50 in its primary market on the previous trading day; and (2) have an average daily trading volume of at least 1,000,000 shares per day for the three preceding calendar months. The Exchange notes that there is no limit to the number of classes that will be eligible for inclusion in the proposed program, provided, of course, that the underlying stocks satisfy both the price and average daily trading volume requirements of the proposed program.

The Exchange also proposes that after a stock is added to the Low Priced Stock Strike Price Interval Program, the Exchange may list $0.50 strike price intervals from $0.50 up to $2.00.[11] For the purpose of adding strikes under the Low Priced Stock Strike Price Interval Program, the ''price of the underlying stock'' is measured in the same way as ''the price of the underlying security'' is measured as set forth in the Options Listing Procedures Plan (''OLPP'') as reflected in Rule 4.7.[12] Further, no additional series in $0.50 intervals may be listed if the underlying stock closes at or above $2.50 in its primary market. Additional series in $0.50 intervals may not be added until the underlying stock again closes below $2.50.

The Exchange's proposal addresses a gap in strike coverage for low priced stocks. The $0.50 Strike Program considers stocks that close below $5.00 and limits the number of option classes listed to no more than 20 individual stocks (provided that the open interest criteria is also satisfied). Whereas, the Exchange's proposal has a narrower focus, with respect to the underlying's stock price, and is targeted on those stocks that close below $2.50 and does not limit the number of stocks that may participate in the program (provided that the average daily trading volume is also satisfied). The Exchange does not believe that any market disruptions will be encountered with the addition of these new strikes. The Exchange represents that it has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Low Priced Stock Strike Price Interval Program.

The Exchange believes that the program's average daily trading volume requirement of 1,000,000 shares is a reasonable threshold to ensure adequate liquidity in eligible underlying stocks as it is substantially greater than the thresholds used for listing options on equities, American Depository Receipts (''ADRs''), and broad-based indexes. Specifically, underlying securities with respect to which put or call option contracts are approved for listing and trading on the Exchange must meet certain criteria as determined by the Exchange. One of those requirements is that trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding 12 months.[13] Rule 4.3, Interpretation and Policy .03 provides the criteria for listing options on ADRs if they meet certain criteria and guidelines set forth in Rule 4.3. One of the requirements is that the average daily trading volume for the security in the U.S. markets over the three months preceding the selection of the ADR for options trading is 100,000 or more shares.[14] Finally, the Exchange may trade options on a broad-based index pursuant to Rule 19b–4(e) of the Securities Exchange Act of 1934 (the ''Act'') provided a number of conditions are satisfied. One of those conditions is that each component security that accounts for at least 1% of the weight of the index has an average daily trading volume of at least 90,000 shares during the last six-month period.[15]

Additionally, the Exchange proposes to amend the table in Rule 4.5(d) to insert a new column to harmonize the Exchange's proposal to the strike intervals for Short Term Options Series as described in Rule 4.5(d). The table in Rule 4.5(d)(6) is intended to limit the intervals between strikes for multiply listed equity options within the Short Term Options Series program that have an expiration date more than twenty-one days from the listing date. Specifically, the table defines the applicable strike intervals for options on underlying stocks given the closing price on the primary market on the last day of the calendar quarter, and a corresponding average daily volume of the total number of options contracts traded in a given security for the applicable calendar quarter divided by the number of trading days in the applicable calendar quarter.[16] However, the lowest share price column is titled ''less than $25.'' The Exchange now proposes to insert a column titled ''Less than $2.50'' and to set the strike interval at $0.50 for each average daily volume tier represented in the table. Also, the Exchange proposes to amend the heading of the column currently titled ''Less than $25,'' to ''$2.50 to less than $25'' as a result of the adoption of the new proposed column, ''Less than $2.50.'' The Exchange believes this

[8] *See* Rule 4.5, Interpretation and Policy .01(b).

[9] Rule 4.5(d).

[10] *See* Rule 4.5, Interpretation and Policy .01(b).

[11] While the Exchange may list new strikes on underlying stocks that meet the eligibility requirements of the new program, the Exchange will exercise its discretion and will not list strikes on underlying stocks the Exchange believes are subject to imminent delisting from their primary exchange.

[12] The Exchange notes this is the same methodology used in the $1 Strike Price Interval Program. *See* Rule 4.5, Interpretation and Policy .01(a)(1).

[13] *See* Rule 4.3, Interpretation and Policy .01(b)(1).

[14] *See* Rule 4.3, Interpretation and Policy .03(c)(2).

[15] *See* Rule 4.10(f)(7).

[16] *See* Securities Exchange Release Act No. 91456 (April 1, 2021), 86 FR 18090 (April 7, 2021) (SR–Cboe–2021–019) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 4.5 (Series of Option Contracts Open for Trading) in Connection With Limiting the Number of Strikes Listed for Short Term Option Series Which Are Available for Quoting and Trading on the Exchange).

change will remove any potential conflict between the strike intervals under the Short Term Options Series Program and those described herein under the Exchange's proposal.

The Exchange recognizes that its proposal will introduce new strikes in the marketplace and further acknowledges that there has been significant effort to curb strike proliferation. For example, the Exchange filed a proposal focused on the removal, and prevention of the listing, of strikes which are extraneous and do not add value to the marketplace (the ''Strike Interval Proposal'').[17] The Strike Interval Proposal was intended to remove repetitive and unnecessary strike listings across the weekly expiries. Specifically, the Strike Interval Proposal aimed to reduce the density of strike intervals that would be listed in the later weeks, by creating limitations for intervals between strikes which have an expiration date more than twenty-one days from the listing date.[18] The Strike Interval Proposal took into account OCC customer-cleared volume, using it as an appropriate proxy for demand. The Strike Interval Proposal was designed to maintain strikes where there was customer demand and eliminate strikes where there was not demand. At the time of its proposal, the Exchange estimated that the Strike Interval Proposal would reduce the number of listed strikes in the options market by approximately 81,000 strikes.[19] The Exchange proposes to amend the table to define the strike interval at $0.50 for underlying stocks with a share price of less than $2.50. The Exchange believes this amendment will harmonize the Exchange's proposal with the Strike Interval Proposal described above.

The Exchange recognizes that its proposal will moderately increase the total number of option series available on the Exchange. However, the Exchange's proposal is designed to only add strikes where there is investor demand[20] which will improve market quality. Under the requirements for the Low Priced Stock Strike Price Interval Program as described herein, the Exchange determined that as of August 9, 2023, 106 symbols met the proposed criteria. Of those symbols, the Exchange notes that 36 were in the $1 Strike Price Interval Program with $1.00 and $2.00 strikes listed. Under the Exchange's proposal, the $0.50 and $1.50 strikes for these symbols would be added for the current expiration terms. The remaining 70 symbols eligible under the proposal would have $0.50, $1.00, $1.50 and $2.00 strikes added to their current expiration terms. Therefore, the Exchange note that for the 106 symbols eligible for the Low Priced Stock Strike Price Interval Program, a total of approximately 3,250 options would be added. As of August 9, 2023, the Exchange listed 1,106,550 options, and therefore, the additional options that would be listed under this proposal would represent a relatively minor increase of 0.294% in the number of options listed.

The Exchange does not believe that its proposal contravenes any previous efforts to curtail unnecessary strikes. The Exchange's proposal is targeted to only underlying stocks that close at less than $2.50 and that also meet the average daily trading volume requirement. Additionally, because the strike increment is $0.50 there are only a total of four strikes that may be listed under the program ($0.50, $1.00, $1.50, and $2.00) for an eligible underlying stock. Finally, if an eligible underlying stock is in another program (*e.g.,* the $0.50 Strike Program or the $1 Strike Price Interval Program) the number of strikes that may be added is further reduced if there are pre-existing strikes as part of another strike listing program. Therefore, the Exchange does not believe that it will list any unnecessary or repetitive strikes as part of its program, and that the strikes that will be listed will improve market quality and satisfy investor demand.

The Exchange further believes that the Options Price Reporting Authority (''OPRA''), has the necessary systems capacity to handle any additional messaging traffic associated with this proposed rule change. The Exchange also believes that Trading Permit Holders (''TPHs'') will not have a capacity issue as a result of the proposed rule change. Finally, the Exchange believes that the additional options will serve to increase liquidity, provide additional trading and hedging opportunities for all market participants, and improve market quality.

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.[21] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[22] 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)[23] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system as the Exchange has identified a subset of stocks that are trading under $2.50 and do not have meaningful strikes available. For example, on August 9, 2023, symbol SOND closed at $0.50 and had open interest of over 44,000 contracts and an average daily trading volume in the underlying stock of over 1,900,000 shares for the three preceding calendar months.[24] Currently the lowest strike listed is for $2.50, making the lowest strike 400% away from the closing stock price. Another symbol, CTXR, closed at $0.92 on August 9, 2023, and had open interest of 63,000 contracts and an average daily trading volume in the underlying stock of over 1,900,000 shares for the three preceding calendar months.[25] Similarly, the lowest strike listed is for $2.50, making the lowest strike more than 170% away from the closing stock price. Currently, such products have no at-the-money options, as well as no in-the-money calls or out-of-the-money puts. The Exchange's proposal will provide additional strikes in $0.50 increments from $0.50 up to $2.00 to provide more meaningful trading and hedging opportunities for this subset of stocks. Given the increased granularity of strikes as proposed under the

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *See* proposed Rule 4.5, Interpretation and Policy .20(a), which requires that *an* underlying stock must (1) close below $2.50 in its primary market on the previous trading day; and (2) have an average daily trading volume of at least 1,000,000 shares per day for the three preceding calendar months.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] *Id.*

[24] *See* Yahoo! Finance, *https://finance.yahoo.com/quote/SOND/history?p=SOND* (last visited August 10, 2023).

[25] *Id.*

Exchange's proposal out-of-the-money puts and in-the-money calls will be created. The Exchange believes this will allow market participants to tailor their investment and hedging needs more effectively.

The Exchange believes its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by adding strikes that improves market quality and satisfies investor demand. The Exchange does not believe that the number of strikes that will be added under the program will negatively impact the market. Additionally, the proposal does not run counter to any previous efforts to curb strike proliferation as those efforts focused on the removal and prevention of extraneous strikes where there was no investor demand. The Exchange's proposal requires the satisfaction of an average daily trading volume threshold in addition to the underlying stock closing at a price below $2.50 to be eligible for the program. The Exchange believes that the average daily trading volume threshold of the program ensures that only strikes with investor demand will be listed and fills a gap in strike interval coverage as described above. Further, being that the strike interval is $0.50, there are only a maximum of four strikes that may be added ($0.50, $1.00, $1.50, and $2.00). Therefore, the Exchange does not believe that its proposal will undermine any previous efforts to eliminate repetitive and unnecessary strikes in any fashion.

The Exchange believes that the proposed program's average daily trading volume threshold promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest as it is designed to permit only those stocks with demonstrably high levels of trading activity to participate in the program. The Exchange notes that the proposed program's average daily trading volume requirement is substantially greater than the average daily trading requirement currently in place on the Exchange for options on equity underlyings,[26] ADRs,[27] and broad-based indexes.[28]

The Exchange also believes the proposed rule change is consistent with section 6(b)(1) of the Act,[29] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's TPHs and persons associated with its TPHs with the Act, the rules and regulations thereunder, and the rules of the Exchange. The proposed rule change allows the Exchange to respond to customer demand to provide meaningful strikes for low priced stocks. The Exchange does not believe that the proposed rule would create any capacity issue or negatively affect market functionality. Additionally, the Exchange represents that it has the necessary systems capacity to support the new options series and handle additional messaging traffic associated with this proposed rule change. The Exchange also believes that its TPHs will not experience any capacity issues as a result of this proposal. In addition, the Exchange represents that it believes that additional strikes for low priced stocks will serve to increase liquidity available as well as improve price efficiency by providing more trading opportunities for all market participants. The Exchange believes that the proposed rule change will benefit investors by giving them increased opportunities to execute their investment and hedging decisions.

Finally, the Exchange believes its proposal is designed to prevent fraudulent and manipulative acts and practices as options may only be listed on underlyings that satisfy the listing requirements of the Exchange as described in 4.3. Specifically, Rule 4.3(a) requires that underlying securities for which put or call option contracts are approved for listing and trading on the Exchange must meet the following criteria: (1) the security must be duly registered (with the Commission) and be an ''NMS stock'' (as defined in Rule 600 of Regulation NMS under the Act); (2) the security shall be characterized by a substantial number of outstanding shares that are widely held and actively traded. Additionally, Rule 4.3, Interpretation and Policy .01(a) provides that absent exceptional circumstances, an underlying security will not be selected for options transactions unless: (1) there are a minimum of 7,000,000 shares of the underlying security which are owned by persons other than those required to report their stock holdings under section 16(a) of the Act; (2) there are a minimum of 2,000 holders of the underlying security; (3) the issuer is in compliance with any applicable requirements of the Act; and (4) trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding 12 months. The Exchange's proposal does not impact the eligibility of an underlying stock to have options listed on it, but rather addresses only the listing of new additional option classes on an underlying listed on the Exchange in accordance with the Exchange's listings rules. As such, the Exchange believes that the listing requirements described in Rule 4.3 address potential concerns regarding possible manipulation. Additionally, in conjunction with the proposed average daily volume requirement described herein, the Exchange believes any possible market manipulation is further mitigated.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that its proposed rule change will impose any burden on intramarket competition as the Rules of the Exchange apply equally to all TPHs and all TPHs may trade the new proposed strikes if they so choose. Specifically, the Exchange believes that investors and market participants will significantly benefit from the availability of finer strike price intervals for stocks priced below $2.50, which will allow them to tailor their investment and hedging needs more effectively. The Exchange's proposal is substantively identical to MIAX Interpretations and Policies .11 and .12 to Rule 404.

The Exchange does not believe that its proposed rule change will impose any burden on intermarket competition, as nothing prevents other options exchanges from proposing similar rules to list and trade options on low priced stocks. Rather the Exchange believes that its proposal will promote intermarket competition, as the Exchange's proposal will result in additional opportunities for investors to achieve their investment and trading objectives, to the benefit of investors, market participants, and the marketplace in general.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

[26] *See supra* note 13.

[27] *See supra* note 14.

[28] *See supra* note 15.

[29] 15 U.S.C. 78f(b)(1).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to section 19(b)(3)(A) of the Act[30] and Rule 19b–4(f)(6)[31] thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[32]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[33] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes it has approved a proposed rule change substantially identical to the one proposed by the Exchange.[34] The proposed change raises no novel legal or regulatory issues. Therefore, the Commission believes 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 30-day operative delay and designates the proposed rule change operative upon filing.[35]

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–CBOE–2023–065 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–CBOE–2023–065. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CBOE–2023–065 and should be submitted on or before January 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Sherry R. Haywood,

Assistant Secretary.

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[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f)(6).

[32] In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[33] 17 CFR 240.19b–4(f)(6)(iii).

[34] *See supra* note 5.

[35] 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).

[36] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99112; File No. SR–MEMX–2023–31]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule To Adopt a Temporary Options Regulatory Fee

December 7, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 24, 2023, MEMX LLC (''MEMX'' 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 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 with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members[3] (the ''Fee Schedule'') pursuant to Exchange Rules 15.1(a) and (c) relating to the Options Regulatory Fee. The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on November 24, 2023. The text of the proposed rule change is provided in Exhibit 5.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 1.5(p).

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 the Fee Schedule to revise the ORF charged solely for the dates of November 24 through November 30, 2023.

Background

By way of background, the per-contract ORF is collected by the Options Clearing Corporation (''OCC'') on behalf of the Exchange for each options transaction, cleared or ultimately cleared by an Exchange member in the ''customer'' range, regardless of the exchange on which the transaction occurs. The ORF is collected from either: (1) a Member that was the ultimate clearing firm [4] for the transaction; or (2) a non-Member that was the ultimate clearing firm where a Member was the executing clearing firm [5] for the transaction.

To illustrate how the ORF is assessed and collected, the Exchange provides the following set of examples.

1. For all transactions executed on the Exchange, if the ultimate clearing firm is a Member of the Exchange, the ORF is assessed to and collected from that Member. If the ultimate clearing firm is not a Member of the Exchange, the ORF is collected from that non-Member clearing firm but assessed to the executing clearing firm.

2. If the transaction is executed on an away exchange, the ORF is only assessed and collected if either the executing clearing firm or ultimate clearing firm are Members of the Exchange. If the ultimate clearing firm is a Member of the Exchange, the ORF is assessed to and collected from that ultimate clearing firm. If the ultimate clearing firm is not a Member of the Exchange, the ORF is assessed to the executing clearing firm (again, only if that executing clearing firm is a Member of the Exchange), and collected from the ultimate clearing firm. Thus, to reiterate, if neither the executing clearing firm nor the ultimate clearing firm are members of the Exchange, no ORF is assessed or collected.

Finally, the Exchange will not assess the ORF on outbound linkage trades. ''Linkage trades'' are tagged in the Exchange's system, so the Exchange can distinguish them from other trades. A customer order routed to another exchange results in the appearance of two customer trades, one from the originating exchange and one from the recipient exchange. Charging ORF on both trades could result in double-billing of ORF for a single customer order, thus the Exchange will not assess ORF on outbound linkage trades in a linkage scenario.[6]

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Members' customer options business, including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs. Regulatory costs include direct regulatory expenses and certain indirect expenses for work allocated in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillance, investigations and examinations. The indirect expenses include support from personnel in such areas as human resources, legal, information technology, facilities and accounting as well as shared costs necessary to operate the Exchange and to carry out its regulatory function, such as hardware, data center costs and connectivity. The Exchange acknowledges that these indirect expenses are also allocated towards other business operations, such as providing connectivity and market data services, for which the Exchange has also conducted a cost-based analysis. As such, when analyzing the indirect expenses associated with its regulatory program, the Exchange did not double-count any expenses, but instead, allocated a portion of the cost not already allocated to other fees imposed by the Exchange. Indirect expenses are anticipated to be approximately 24% of the total regulatory costs for 2023 and 2024. Thus, direct expenses are anticipated to be approximately 76% of the total regulatory costs for 2023 and 2024.

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. More specifically, the Exchange will ensure that revenue generated from ORF not exceed more than 75% of total annual regulatory costs. The Exchange will monitor regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange will also notify Members of adjustments to the ORF via regulatory circular, including for the change being proposed herein.[7] In preparation for the launch of the Exchange's options market (''MEMX Options''),[8] the Exchange proposed to establish an ORF in the amount of $0.0015 per contract side, effective September 27, 2023.[9] The amount of the proposed fee was based on historical industry volume, projected volumes on the Exchange, and projected Exchange regulatory costs. Additionally, the Exchange proposed that the ORF would automatically sunset on September 30, 2024.

[4] The Exchange takes into account any CMTA transfers when determining the ultimate clearing firm for a transaction. CMTA or Clearing Member Trade Assignment is a form of ''give up'' whereby the position will be assigned to a specific clearing firm at the OCC.

[5] Throughout this filing, ''executing clearing firm'' means the clearing firm through which the entering broker indicated that the transaction would be cleared at the time it entered the original order which executed, and that clearing firm could be a designated ''give up'', if applicable. The executing clearing firm may be the ultimate clearing firm if no CMTA transfer occurs. If a CMTA transfer occurs, however, the ultimate clearing firm would be the clearing firm that the position was transferred to for clearing via CMTA.

[6] To clarify, as stated previously, the Exchange will assess and collect the ORF for each customer options transaction that is cleared by a Member of the Exchange, regardless of where the transaction occurs. As such, transactions may fall into this category that originated from customer orders entered on the Exchange that were routed to and executed on an away market pursuant to the Options Linkage Plan. However, the Exchange will not assess the ORF in this instance on the original entering broker on MEMX Options, which would result in a potential double billing. Instead, the Exchange will only assess and collect from the ultimate clearing firm, and only if the ultimate clearing firm or the executing clearing firm is a MEMX Options Member (because the transaction ultimately occurs on an away market).

[7] *See* Exchange Regulatory Notice 23–22, located at: *https://info.memxtrading.com/category/alerts-notices/reg/*.

[8] On August 8, 2022, the Commission approved SR–MEMX–2022–10, which proposed rules for the trading of options on the Exchange. *See* Securities Exchange Act Release No. 95445 (August 8, 2022), 87 FR 49894 (August 12, 2022) (SR–MEMX–2022–010). The Exchange launched MEMX Options on September 27, 2023.

[9] *See* Securities Exchange Act Release No. 98585 (September 28, 2023), 88 FR 68692 (October 4, 2023) (SR–MEMX–2023–25).

OIP and Current Proposal

As noted above, on September 27, 2023, the Exchange filed to establish an ORF in the amount of $0.0015 per contract side (the ''initial ORF filing'') and began assessing and collecting the ORF as proposed in the initial ORF filing. However, on November 24, 2023, the Commission issued the Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fee Schedule to Establish an Options Regulatory Fee (''the OIP'').[10] As a result of the OIP, on November 24, 2023, the Exchange would revert back to not charging the ORF.

To ensure consistency of ORF assessments for the full month of November 2023, the Exchange proposes to modify the Fee Schedule to specify that the amount of the ORF that will be collected by the Exchange through November 30, 2023 (*i.e.,* the last trading day of the month of November), will be $0.0015 per contract side (the ''Initial ORF Rate'').[11] The Exchange believes that revenue generated from the ORF as adopted on September 27, 2023 will continue to cover a material portion, but not all, of the Exchange's regulatory costs.

In general, the Exchange endeavors to notify Members of any change in the amount of the ORF at least 30 calendar days prior to the effective date of the change via regulatory notice; however, the Exchange notes that as a result of the OIP, such notice in this instance could not be given 30 days in advance. Lastly, since the proposed ORF will only be charged up through November 30, 2023, the Exchange proposes to delete the bullet point on the Fee Schedule that indicates that the ORF will automatically sunset on September 30, 2024, given that this sunset provision no longer applies and conflicts with the proposal herein.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with section 6(b) of the Act[12] in general, and furthers the objectives of section 6(b)(4) of the Act[13] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of section 6(b)(5) of the Act[14] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Proposal Is Reasonable

The Exchange believes that the proposed Initial ORF Rate of $0.0015 is reasonable because it would help maintain fair and orderly markets and benefit investors and the public interest because it would ensure transparency and consistency of the ORF for the entire month of November 2023. Specifically, the proposal would ensure that the amount of ORF collected by the Exchange for the trading days of November 24th, 27th, 28th, 29th, and 30th, 2023 will be the same rate collected on every other trading day since the ORF was implemented. The Exchange's by-laws state in Section 17.4(b): ''[a]ny Regulatory Funds shall not be used for non-regulatory purposes or distributed, advanced or allocated to any Company Member, but rather, shall be applied to fund regulatory operations of the Company (including surveillance and enforcement activities) . . .''.[15] In this regard, the Exchange believes that the amount of the fee is reasonable. The Exchange also believes the proposal to delete the bullet point in the Fee Schedule that indicates the ORF will automatically sunset on September 24, 2024 is reasonable because such sunset provision is no longer applicable and conflicts with the proposal herein that the ORF apply up through November 30, 2023.

The Proposed Fee Is an Equitable Allocation of Fees

The Exchange believes its proposal is an equitable allocation of fees among its market participants. The Exchange believes that the proposed Initial ORF Rate would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. Because the ORF is collected from Member clearing firms by the OCC on behalf of the Exchange, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such Members. In addition, the Exchange notes that the regulatory costs relating to monitoring Members with respect to Customer trading activity are generally higher than the regulatory costs associated with Members that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating Members that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the Member's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* Member proprietary transactions) of its regulatory program. Thus, the Exchange believes the Initial ORF Rate would be equitably allocated in that it is charged to all Members on all their transactions that clear in the Customer range at the OCC.

The Proposed Fee Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes that the Initial ORF Rate would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. Because the ORF is collected from Member clearing firms by the OCC on behalf of the Exchange, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such Members. In addition, the Exchange notes that the regulatory costs relating to monitoring Members with respect to Customer trading activity are generally higher than the regulatory costs associated with Members that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating Members that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading

[10] *See* Securities Exchange Act Release No. 99017 (November 24, 2023) (SR–MEMX–2023–25).

[11] This proposal is not intended to be responsive to any issues that may be raised in the OIP, but to instead address the immediate issue of billing for November 24–30th.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* MEMX LLC—LLC Agreement at *https://info.memxtrading.com/regulation/governance/.*

activity on behalf of Customers, but also the Member's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* Member proprietary transactions) of its regulatory program. Thus, the Exchange believes the Initial ORF Rate (like the rate assessed for every other day since the ORF was implemented), is not unfairly discriminatory because it is charged to all Members on all their transactions that clear in the Customer range at the OCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange believes the proposed change will change will not impose an undue burden on competition as it is charged to all Members on all their transactions that clear in the Customer range at the OCC; thus, the amount of ORF imposed is based on the amount of Customer volume transacted. The Exchange believes that the proposed ORF would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. In addition, because the ORF is collected from Member clearing firms by the OCC on behalf of the Exchange, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such Members.

Intermarket Competition

The proposed fee change is not designed to address any competitive issues. Rather, the proposed change is designed to help the Exchange adequately fund its regulatory activities while seeking to ensure that total regulatory revenues do not exceed total regulatory costs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [16] and Rule 19b–4(f)(2) [17] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MEMX–2023–31 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–MEMX–2023–31. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MEMX–2023–31 and should be submitted on or before January 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27261 Filed 12–12–23; 8:45 am]

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[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 240.19b–4(f)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99114; File No. SR-CboeBZX–2023–100]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a Low Priced Stock Strike Price Interval Program

December 7, 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 4, 2023, Cboe BZX Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX Options'') proposes to adopt a Low Priced Stock Strike Price Interval Program. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 19.6. Miami International Securities Exchange, LLC (''MIAX'') recently received approval to amend its Rule 404 to implement a new strike interval program for stocks that are priced less than $2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the 3 preceding calendar months.[5] At this time, the Exchange proposes to adopt rules substantively identical to MIAX in proposed Rule 19.6, Interpretation and Policy .08 and amend Rule 19.6, Interpretation and Policy .05(f) to harmonize the table within that Rule to the proposed rule text.

Currently, Rule 19.6 describes the process and procedures for listing and trading series of options on the Exchange. Rule 19.6 provides for a $2.50 Strike Price Program, where the Exchange may select up to 200 option classes on individual stocks for which the interval of strike prices will be $2.50 where the strike price is greater than $25 but less than $50.[6] Rule 19.6, Interpretation and Policy .02 also provides for a $1 Strike Price Program, where the interval between strike prices of series of options on individual stocks may be $1.00 or greater provided the strike price is $50.00 or less, but not less than $1.00.[7] Additionally, Rule 19.6, Interpretation and Policy .06 provides for a ''$0.50 Strike Program.'' The interval of strike prices of series of options on individual stocks may be $0.50 or greater beginning at $0.50 where the strike price is $5.50 or less, but only for options classes whose underlying security closed at or below $5.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation (''OCC'') during the preceding three calendar months. The listing of $0.50 strike prices is limited to options classes overlying no more than 20 individual stocks as specifically designated by the Exchange. The Exchange may list $0.50 strike prices on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar $0.50 Strike Program under their respective rules. A stock shall remain in the $0.50 Strike Program until otherwise designated by the Exchange.[8]

The Exchange proposes to adopt a new strike interval program for stocks that are not in the aforementioned $0.50 Strike Program (or the Short Term Option Series Program) [9] and that close below $2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the three preceding calendar months. The $0.50 Strike Program considers stocks that have a closing price at or below $5.00 whereas the Exchange's proposal will consider stocks that have a closing price below $2.50. Currently, there is a subset of stocks that are not included in the $0.50 Strike Program as a result of the limitations of that program which provides that the listing of $0.50 strike prices is limited to option classes overlying no more than 20 individual stocks as specifically designated by the Exchange and requires a national average daily volume that equals or exceeds 1,000 contracts per day as determined by OCC during the preceding three calendar months.[10] Therefore, the Exchange is proposing to implement a new strike interval program termed the ''Low Priced Stock Strike Price Interval Program.''

To be eligible for the inclusion in the Low Priced Stock Strike Price Interval Program, an underlying stock must (1) close below $2.50 in its primary market on the previous trading day; and (2) have an average daily trading volume of at least 1,000,000 shares per day for the three preceding calendar months. The Exchange notes that there is no limit to the number of classes that will be eligible for inclusion in the proposed program, provided, of course, that the underlying stocks satisfy both the price and average daily trading volume requirements of the proposed program.

The Exchange also proposes that after a stock is added to the Low Priced Stock Strike Price Interval Program, the Exchange may list $0.50 strike price intervals from $0.50 up to $2.00.[11] For the purpose of adding strikes under the Low Priced Stock Strike Price Interval Program, the ''price of the underlying stock'' is measured in the same way as ''the price of the underlying security'' is measured as set forth in Section 3(g) of the Options Listing Procedures Plan (''OLPP''). Further, no additional series in $0.50 intervals may be listed if the underlying stock closes at or above $2.50 in its primary market. Additional series in $0.50 intervals may not be added until the underlying stock again closes below $2.50.

The Exchange's proposal addresses a gap in strike coverage for low priced stocks. The $0.50 Strike Program considers stocks that close below $5.00 and limits the number of option classes listed to no more than 20 individual stocks (provided that the open interest criteria is also satisfied). Whereas, the Exchange's proposal has a narrower focus, with respect to the underlying's stock price, and is targeted on those stocks that close below $2.50 and does not limit the number of stocks that may participate in the program (provided that the average daily trading volume is also satisfied). The Exchange does not believe that any market disruptions will be encountered with the addition of these new strikes. The Exchange

[5] *See* Securities Exchange Act Release No. 98917 (November 13, 2023), 88 FR 80361 (November 17, 2023) (SR–MIAX–2023–36) (Order Approving a Proposed Rule Change To Amend Exchange Rule 404, Series of Option Contracts Open for Trading).

[6] *See* Rule 19.6, Interpretation and Policy .03(a).

[7] *See* Rule 19.6, Interpretation and Policy .02(a).

[8] *See* Rule 19.6, Interpretation and Policy .06.

[9] Rule 19.6, Interpretation and Policy .05.

[10] *See* Rule 19.6, Interpretation and Policy .06.

[11] While the Exchange may list new strikes on underlying stocks that meet the eligibility requirements of the new program, the Exchange will exercise its discretion and will not list strikes on underlying stocks the Exchange believes are subject to imminent delisting from their primary exchange.

represents that it has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Low Priced Stock Strike Price Interval Program.

The Exchange believes that the program's average daily trading volume requirement of 1,000,000 shares is a reasonable threshold to ensure adequate liquidity in eligible underlying stocks as it is substantially greater than the thresholds used for listing options on equities, American Depository Receipts (''ADRs''), and broad-based indexes. Specifically, underlying securities with respect to which put or call option contracts are approved for listing and trading on the Exchange must meet certain criteria as determined by the Exchange. One of those requirements is that trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding 12 months.[12] Rule 19.3(f) provides the criteria for listing options on ADRs if they meet certain criteria and guidelines set forth in Rule 19.3. One of the requirements is that the average daily trading volume for the security in the U.S. markets over the three months preceding the selection of the ADR for options trading is 100,000 or more shares.[13] Finally, the Exchange may trade options on a broad-based index pursuant to Rule 19b–4(e) of the Securities Exchange Act of 1934 (the ''Act'') provided a number of conditions are satisfied. One of those conditions is that each component security that accounts for at least 1% of the weight of the index has an average daily trading volume of at least 90,000 shares during the last six-month period.[14]

Additionally, the Exchange proposes to amend the table in Rule 19.6, Interpretation and Policy .05(f) to insert a new column to harmonize the Exchange's proposal to the strike intervals for Short Term Options Series as described in Rule 19.6, Interpretation and Policy .05. The table in Rule 19.6, Interpretation and Policy .05(f) is intended to limit the intervals between strikes for multiply listed equity options within the Short Term Options Series program that have an expiration date more than twenty-one days from the listing date. Specifically, the table defines the applicable strike intervals for options on underlying stocks given the closing price on the primary market on the last day of the calendar quarter, and a corresponding average daily volume of the total number of options contracts traded in a given security for the applicable calendar quarter divided by the number of trading days in the applicable calendar quarter.[15] However, the lowest share price column is titled ''less than $25.'' The Exchange now proposes to insert a column titled ''Less than $2.50'' and to set the strike interval at $0.50 for each average daily volume tier represented in the table. Also, the Exchange proposes to amend the heading of the column currently titled ''Less than $25,'' to ''$2.50 to less than $25'' as a result of the adoption of the new proposed column, ''Less than $2.50.'' The Exchange believes this change will remove any potential conflict between the strike intervals under the Short Term Options Series Program and those described herein under the Exchange's proposal.

The Exchange recognizes that its proposal will introduce new strikes in the marketplace and further acknowledges that there has been significant effort to curb strike proliferation. For example, the Exchange filed a proposal focused on the removal, and prevention of the listing, of strikes which are extraneous and do not add value to the marketplace (the ''Strike Interval Proposal'').[16] The Strike Interval Proposal was intended to remove repetitive and unnecessary strike listings across the weekly expiries. Specifically, the Strike Interval Proposal aimed to reduce the density of strike intervals that would be listed in the later weeks, by creating limitations for intervals between strikes which have an expiration date more than twenty-one days from the listing date.[17] The Strike Interval Proposal took into account OCC customer-cleared volume, using it as an appropriate proxy for demand. The Strike Interval Proposal was designed to maintain strikes where there was customer demand and eliminate strikes where there was not demand. At the time of its proposal, the Exchange estimated that the Strike Interval Proposal would reduce the number of listed strikes in the options market by approximately 81,000 strikes.[18] The Exchange proposes to amend the table to define the strike interval at $0.50 for underlying stocks with a share price of less than $2.50. The Exchange believes this amendment will harmonize the Exchange's proposal with the Strike Interval Proposal described above.

The Exchange recognizes that its proposal will moderately increase the total number of option series available on the Exchange. However, the Exchange's proposal is designed to only add strikes where there is investor demand[19] which will improve market quality. Under the requirements for the Low Priced Stock Strike Price Interval Program as described herein, the Exchange determined that as of August 9, 2023, 106 symbols met the proposed criteria. Of those symbols, the Exchange notes that 36 were in the $1 Strike Price Interval Program with $1.00 and $2.00 strikes listed. Under the Exchange's proposal, the $0.50 and $1.50 strikes for these symbols would be added for the current expiration terms. The remaining 70 symbols eligible under the proposal would have $0.50, $1.00, $1.50 and $2.00 strikes added to their current expiration terms. Therefore, the Exchange notes that for the 106 symbols eligible for the Low Priced Stock Strike Price Interval Program, a total of approximately 3,250 options would be added. As of August 9, 2023, the Exchange listed 1,106,550 options, and therefore, the additional options that would be listed under this proposal would represent a relatively minor increase of 0.294% in the number of options listed.

The Exchange does not believe that its proposal contravenes any previous efforts to curtail unnecessary strikes. The Exchange's proposal is targeted to only underlying stocks that close at less than $2.50 and that also meet the average daily trading volume requirement. Additionally, because the strike increment is $0.50 there are only a total of four strikes that may be listed under the program ($0.50, $1.00, $1.50, and $2.00) for an eligible underlying stock. Finally, if an eligible underlying stock is in another program (*e.g.,* the $0.50 Strike Program or the $1 Strike Price Interval Program) the number of strikes that may be added is further reduced if there are pre-existing strikes as part of another strike listing program. Therefore, the Exchange does not believe that it will list any unnecessary or repetitive strikes as part of its program, and that the strikes that will be listed will improve market quality and satisfy investor demand.

[12] *See* Rule 19.3(b)(4).

[13] *See* Rule 19.3(f)(3)(B).

[14] *See* Rule 29.3(b)(7).

[15] *See* Securities Exchange Release Act No. 91455 (April 1, 2021), 86 FR 18099 (April 7, 2021) (SR–CboeBZX–2021–022) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 19.6 (Series of Options Contracts Open for Trading) in Connection With Limiting the Number of Strikes Listed for Short Term Option Series Which Are Available for Quoting and Trading on the Exchange).

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *See* proposed Rule 19.6, Interpretation and Policy .08(a), which requires that an underlying stock must (1) close below $2.50 in its primary market on the previous trading day; and (2) have an average daily trading volume of at least 1,000,000 shares per day for the three preceding calendar months.

The Exchange further believes that the Options Price Reporting Authority (''OPRA''), has the necessary systems capacity to handle any additional messaging traffic associated with this proposed rule change. The Exchange also believes that Members will not have a capacity issue as a result of the proposed rule change. Finally, the Exchange believes that the additional options will serve to increase liquidity, provide additional trading and hedging opportunities for all market participants, and improve market quality.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[20] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[21] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[22] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system as the Exchange has identified a subset of stocks that are trading under $2.50 and do not have meaningful strikes available. For example, on August 9, 2023, symbol SOND closed at $0.50 and had open interest of over 44,000 contracts and an average daily trading volume in the underlying stock of over 1,900,000 shares for the three preceding calendar months.[23] Currently the lowest strike listed is for $2.50, making the lowest strike 400% away from the closing stock price. Another symbol, CTXR, closed at $0.92 on August 9, 2023, and had open interest of 63,000 contracts and an average daily trading volume in the underlying stock of over 1,900,000 shares for the three preceding calendar months.[24] Similarly, the lowest strike listed is for $2.50, making the lowest strike more than 170% away from the closing stock price. Currently, such products have no at-the-money options, as well as no in-the-money calls or out-of-the-money puts. The Exchange's proposal will provide additional strikes in $0.50 increments from $0.50 up to $2.00 to provide more meaningful trading and hedging opportunities for this subset of stocks. Given the increased granularity of strikes as proposed under the Exchange's proposal out-of-the-money puts and in-the-money calls will be created. The Exchange believes this will allow market participants to tailor their investment and hedging needs more effectively.

The Exchange believes its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by adding strikes that improves market quality and satisfies investor demand. The Exchange does not believe that the number of strikes that will be added under the program will negatively impact the market. Additionally, the proposal does not run counter to any previous efforts to curb strike proliferation as those efforts focused on the removal and prevention of extraneous strikes where there was no investor demand. The Exchange's proposal requires the satisfaction of an average daily trading volume threshold in addition to the underlying stock closing at a price below $2.50 to be eligible for the program. The Exchange believes that the average daily trading volume threshold of the program ensures that only strikes with investor demand will be listed and fills a gap in strike interval coverage as described above. Further, being that the strike interval is $0.50, there are only a maximum of four strikes that may be added ($0.50, $1.00, $1.50, and $2.00). Therefore, the Exchange does not believe that its proposal will undermine any previous efforts to eliminate repetitive and unnecessary strikes in any fashion.

The Exchange believes that the proposed program's average daily trading volume threshold promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest as it is designed to permit only those stocks with demonstrably high levels of trading activity to participate in the program. The Exchange notes that the proposed program's average daily trading volume requirement is substantially greater than the average daily trading requirement currently in place on the Exchange for options on equity underlyings,[25] ADRs,[26] and broad-based indexes.[27]

The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[28] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Members and persons associated with its Members with the Act, the rules and regulations thereunder, and the rules of the Exchange. The proposed rule change allows the Exchange to respond to customer demand to provide meaningful strikes for low priced stocks. The Exchange does not believe that the proposed rule would create any capacity issue or negatively affect market functionality. Additionally, the Exchange represents that it has the necessary systems capacity to support the new options series and handle additional messaging traffic associated with this proposed rule change. The Exchange also believes that its Members will not experience any capacity issues as a result of this proposal. In addition, the Exchange represents that it believes that additional strikes for low priced stocks will serve to increase liquidity available as well as improve price efficiency by providing more trading opportunities for all market participants. The Exchange believes that the proposed rule change will benefit investors by giving them increased opportunities to execute their investment and hedging decisions.

Finally, the Exchange believes its proposal is designed to prevent fraudulent and manipulative acts and practices as options may only be listed on underlyings that satisfy the listing requirements of the Exchange as described in 19.3. Specifically, Rule 19.3(a) requires that underlying securities for which put or call option contracts are approved for listing and trading on the Exchange must meet the

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] *Id.*

[23] *See* Yahoo! Finance, *https://finance.yahoo.com/quote/SOND/history?p=SOND* (last visited August 10, 2023).

[24] *Id.*

[25] *See supra* note 12.

[26] *See supra* note 13.

[27] *See supra* note 14.

[28] 15 U.S.C. 78f(b)(1).

following criteria: (1) the security must be registered with the Commission and be an ''NMS stock'' as defined in Rule 600 of Regulation NMS under the Act; (2) the security shall be characterized by a substantial number of outstanding shares that are widely held and actively traded. Additionally, Rule 19.3(b) provides that, subject to other factors the Exchange may consider, an underlying security will not be selected for options transactions unless: (1) there are a minimum of 7,000,000 shares of the underlying security which are owned by persons other than those required to report their stock holdings under Section 16(a) of the Act; (2) there are a minimum of 2,000 holders of the underlying security; (3) the issuer is in compliance with any applicable requirements of the Act; and (4) trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding 12 months. The Exchange's proposal does not impact the eligibility of an underlying stock to have options listed on it, but rather addresses only the listing of new additional option classes on an underlying listed on the Exchange in accordance with the Exchange's listings rules. As such, the Exchange believes that the listing requirements described in Rule 19.3 address potential concerns regarding possible manipulation. Additionally, in conjunction with the proposed average daily volume requirement described herein, the Exchange believes any possible market manipulation is further mitigated.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that its proposed rule change will impose any burden on intramarket competition as the Rules of the Exchange apply equally to all Members and all Members may trade the new proposed strikes if they so choose. Specifically, the Exchange believes that investors and market participants will significantly benefit from the availability of finer strike price intervals for stocks priced below $2.50, which will allow them to tailor their investment and hedging needs more effectively. The Exchange's proposal is substantively identical to MIAX Interpretations and Policies .11 and .12 to Rule 404.

The Exchange does not believe that its proposed rule change will impose any burden on intermarket competition, as nothing prevents other options exchanges from proposing similar rules to list and trade options on low priced stocks. Rather the Exchange believes that its proposal will promote intermarket competition, as the Exchange's proposal will result in additional opportunities for investors to achieve their investment and trading objectives, to the benefit of investors, market participants, and the marketplace in general.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act [29] and Rule 19b–4(f)(6) [30] thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[31]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [32] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes it has approved a proposed rule change substantially identical to the one proposed by the Exchange.[33] The proposed change raises no novel legal or regulatory issues. Therefore, the Commission believes 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 30-day operative delay and designates the proposed rule change operative upon filing.[34]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–100 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–CboeBZX–2023–100. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 17 CFR 240.19b–4(f)(6).

[31] In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[32] 17 CFR 240.19b–4(f)(6)(iii).

[33] *See supra* note 5.

[34] 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).

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–CboeBZX–2023–100 and should be submitted on or before January 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27271 Filed 12–12–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99102; File No. SR–NASDAQ–2023–051]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 4A To Adopt Monthly Options Series

December 7, 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 November 29, 2023, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rules at Options 4A (Options Index Rules) to adopt Monthly Options Series.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 4A (Options Index Rules), identical to the rules recently approved for Cboe Exchange, Inc. (''Cboe''),[3] to accommodate the listing of option series that would expire at the close of business on the last business day of a calendar month (''Monthly Options Series''). Cboe's recently approved rule change[4] introduces Monthly Options Series for indexes and exchange-traded funds (''ETFs''). This rule change proposes to adopt Monthly Options Series for indexes in Options 4A. Nasdaq ISE, LLC (''ISE'') will separately file a rule change to proposes to adopt Monthly Options Series for ETFs in ISE Options 4. The Exchange's Options 4 rules, which govern the ability to transact options on ETFs, incorporate ISE Options 4 by reference.

The Exchange proposes to define ''Monthly Options Series'' in Options 4A, Section 2(l) to mean a series in an options class that is approved for listing and trading on the Exchange in which the series is opened for trading on any business day and that expires at the close of business on the last business day of a calendar month. The Exchange proposes to re-letter the subsequent definitions in Options 4A, Section 2.[5]

Pursuant to proposed Options 4A, Section 12(i)(1)(A), the Exchange may list Monthly Options Series for up to five currently listed option classes that are index options or options on ETFs.[6] 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.[7] 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.[8] Other expirations in the same class are not counted as part of the maximum numbers of Monthly Options Series expirations for a class.[9] Monthly Options Series will be P.M.-settled.[10]

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

[35] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98915 (November 13, 2023), 88 FR 80356 (November 17, 2023) (SR–Cboe–2023–049) (''Cboe Approval Order'').

[4] *Id.*

[5] The Exchange also proposes to fix an incorrect cross cite to the definition of broad-based index in Options 4A, Section 3(b)(1).

[6] As provided in the proposed Options 4A, Section 12(i)(1)(A), the Exchange may list Monthly Options Series for up to five currently listed option classes that are index options or options on ETFs; the five Monthly Options Series include both index options and ETF options in the aggregate.

[7] *See* Cboe Approval Order.

[8] 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 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).

[9] *See* proposed Options 4A, Section 12(i)(1)(B).

[10] *See* proposed Options 4A, Section 12(i)(1)(C).

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.[11] 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 customer 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 customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market Makers trading for their own account will not be considered when determining customer 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.[12] 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.[13]

By definition, Monthly Options Series can never expire in the same week as a standard expiration series (which expire on the third Friday of a month) in the same class expires. The same, however, is not the case with regards to Short Term Option Series [14] or Quarterly Options Series. Therefore, to avoid any confusion in the marketplace, the Exchange proposes to amend Options 4A, Section 12(h)(1)(B) to provide the Exchange will not list a Short Term Option Series in a class on a date on which a Monthly Options Series or Quarterly Options Series expires.[15] Similarly, proposed Options 4A, Section 12(i)(1)(B) provide 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 Term Option Series on an index if a Monthly Options Series on that index were to expire on the same date, nor will the Exchange list a Monthly Options Series on an index if a Quarterly Options Series on that index were to expire on the same date to prevent the listing of series with concurrent expirations.[16]

With respect to Monthly Options Series added pursuant to proposed Options 4A, Section 12(i)(1)(A) through (F), 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: (i) strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month pursuant to Options 4A, Section 12(i)(1)(G)(i). Notwithstanding this delisting policy, customer 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.[17]

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 option 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 Exchange's and the Options Price Reporting Authority's (''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 notes that Options 4A, Section 6 (Position Limits for Broad-Based Index Options) and Options 4A, Section 7 (Position Limits for Industry and Micro-Narrow Based Index Options) will apply to Monthly Options Series. In Options 4A, Section 6(c) and Options 4A, Section 7(c), Monthly Options Series will be aggregated with positions in options contracts on the same underlying security or index.[18] This is consistent with how position (and exercise) limits are currently imposed on series with other expirations (Short Term Option Series and Quarterly Options Series). To that end, the Exchange proposes to make this clear by adding a sentence to Options 4A, Sections 6(c) and 7(c) that provides: ''Positions in Short Term Options Series, Monthly Options Series and Quarterly Options Series shall be aggregated with positions in options contracts of the same index.'' [19] Therefore, positions in options within class of index, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. The Exchange believes this will address potential manipulative schemes and adverse market impacts surrounding the use of options.

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 index and ETF

[11] *See* proposed Options 4A, Section 12(i)(1)(D). The Exchange notes this proposed provision is consistent with the initial series provision for the Quarterly Options Series program in Options 4A, Section 12(g).

[12] *See* proposed Options 4A, Section 12(i)(1)(E).

[13] *See* proposed Options 4A, Section 12(i)(1)(F) (permissible strike prices for index options).

[14] The Exchange proposes non-substantive changes to clarify in Options 4A, Section 12(a)(3) that index options have expiration months and weeks, and that index options contracts may expire at three (3)-month intervals, in consecutive months or in consecutive weeks (as specified by class in Options 4A, Section 12). This is merely a clarification, as Options 4A, Section 12(h) currently permits weekly expirations.

[15] The Exchange also proposes to make non-substantive changes to Options 4A, Section 12(h)(1) and Options 4A, Section 12(h)(1)(B) to reference standard options series and 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.

[16] 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 Option Series on the same index, both of which may expire on a Friday. In other words, the Exchange may list a P.M-settled Monthly Options Series on an index concurrent with an A.M.-settled Short Term Option Series on that index and both of which 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).

[17] *See* Options 4A, Section 12(i)(1)(G)(iii).

[18] Pursuant to Options 4A, Section 10, exercise limits for index option contracts shall be equivalent to the position limits prescribed for options contracts with the nearest expiration date in Options 4A, Section 6 or Section 7.

[19] This additional rule text will further clarify the current rule text for the existing Short Term Option Series and Quarterly Options Series programs in Options 4A, Section 12.

classes, 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 currently in place to support and properly monitor trading in these Quarterly Options Series, as well as Short Term Option 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) and reporting requirements—would continue to apply.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[20] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[21] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[22] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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 options listed pursuant to the proposed rule change based on their timing 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 months' ends 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 Option Series, which 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 that 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.[23] 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 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. As is the case with Quarterly Options Series, no Short Term Option 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 investors confusion and thus protect investors and the public interest. Given that the 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's 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 further believes the proposed rule change regarding the treatment of Monthly Options Series with respect to determining compliance with position and exercise limits is designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade. Monthly Options Series will be aggregated with options overlying the same index for purposes of compliance with position (and exercise) limits, which is consistent with how position (and exercise) limits are currently imposed on series with other expirations (Short Term Option Series, and Quarterly Options Series).[24] Therefore, options positions within index option classes for which Monthly Options Series are listed, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. The Exchange believes this will address potential manipulative schemes and adverse market impacts surrounding the use of options. 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 trades Quarterly Options Series in certain index classes, 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

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] *Id.*

[23] *Compare* proposed Options 4A, Section 12(i) *to* Options 4A, Section 12(g).

[24] *See* Cboe Approval Order; *see also* Options 4A, Section 6 regarding position limits for broad-based index options and Options 4A, Section 7, Position Limits for Industry and Micro-Narrow Based Index Options. Pursuant to Options 4A, Section 10, exercise limits for index option contracts shall be equivalent to the position limits prescribed for options contracts with the nearest expiration date in Options 4A, Section 6 or Section 7.

Exchange's surveillance programs currently in place to support and properly monitor trading in these Quarterly Options Series, as well as Short Term Option 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) and reporting requirements—would continue to apply.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. 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 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.[25] 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 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.[26] 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.[27] As discussed above, the proposed rule change would permit listing of Monthly Options Series in five index and 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 Option 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.

The Exchange does not believe the proposed rule change regarding aggregation of positions for purposes of determining compliance with position (and exercise) limits will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will apply in the same manner to all market participants. The Exchange proposes to apply position (and exercise) limits to Monthly Options Series in the same manner it applies position limits to series with other expirations (Short Term Option Series and Quarterly Options Series). Therefore, positions in options in a class of index options, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. Additionally, the Exchange does not believe this proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will address potential manipulative schemes and adverse market impacts surrounding the use of options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[28] and Rule 19b–4(f)(6) thereunder.[29] Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[30] and subparagraph (f)(6) of Rule 19b–4 thereunder.[31]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[32] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[33] 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 for its Monthly Options Series program.[34] 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

[25] *See supra* note 23.

[26] *See supra* note 11.

[27] *See* Cboe Approval Order.

[28] 15 U.S.C. 78s(b)(3)(A)(iii).

[29] 17 CFR 240.19b–4(f)(6).

[30] 15 U.S.C. 78s(b)(3)(A)(iii).

[31] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[32] 17 CFR 240.19b–4(f)(6).

[33] 17 CFR 240.19b–4(f)(6)(iii).

[34] *See* Cboe Approval Order, *supra* note 3.

designates the proposed rule change operative upon filing.[35]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NASDAQ–2023–051 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NASDAQ–2023–051. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2023–051 and should be submitted on or before January 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27259 Filed 12–12–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–135, OMB Control No. 3235–0176]

Proposed Collection; Comment Request; Extension: Rule 8b–1 to 8b–5; 8b–10 to 8b–22; and 8b–25 to 8b–31

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rules 8b–1 to 8b–5; 8b–10 to 8b–22; and 8b–25 to 8b–31 (''rules under Section 8(b)'') (17 CFR 270.8b–1 to 8b–33) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') set forth the procedures for preparing and filing a registration statement under the Investment Company Act. These procedures are intended to facilitate the registration process. These rules generally do not require respondents to report information.[1]

The Commission believes that it is appropriate to estimate the total respondent burden associated with preparing each registration statement form rather than attempt to isolate the impact of the procedural instructions under Section 8(b) of the Investment Company Act, which impose burdens only in the context of the preparation of the various registration statement forms. Accordingly, the Commission is not submitting a separate burden estimate for the rules under Section 8(b), but instead will include the burden for these rules in its estimates of burden for each of the registration forms under the Investment Company Act. The Commission is, however, submitting an hourly burden estimate of one hour for administrative purposes.

The collection of information under the rules under Section 8(b) is mandatory. The information provided under the rules under Section 8(b) is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by February 12, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

[35] 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).

[36] 17 CFR 200.30–3(a)(12), (59).

[1] Although the rules under Section 8(b) of the Investment Company Act are generally procedural in nature, two of the rules require respondents to disclose some limited information. Rule 8b–3 (17 CFR 270.8b–3) provides that whenever a registration form requires the title of securities to be stated, the registrant must indicate the type and general character of the securities to be issued. Rule 8b–22 (17 CFR 270.8b–22) provides that if the existence of control is open to reasonable doubt, the registrant may disclaim the existence of control, but it must state the material facts pertinent to the possible existence of control. The information required by both of these rules is necessary to ensure that investors have clear and complete information upon which to base an investment decision.

Dated: December 8, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27325 Filed 12–12–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99108; File No. SR–DTC–2023–012]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Clearing Agency Risk Management Framework

December 7, 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 1, 2023, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change of The Depository Trust Company (''DTC'') is provided hereto [sic] as Exhibit 5 and amends the Clearing Agency Risk Management Framework (''Risk Management Framework'', or ''Framework'') of DTC and its affiliates, Fixed Income Clearing Corporation (''FICC'') and National Securities Clearing Corporation (''NSCC,'' and together with FICC and DTC, the ''Clearing Agencies'').[5] The proposed rule change would amend the Risk Management Framework to clarify and revise the descriptions of certain matters within the Framework, as further described below. The proposed changes would update and clarify the Risk Management Framework but do not reflect changes to how the Clearing Agencies comply with the applicable requirements of Rule 17Ad–22(e), as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Clearing Agencies adopted the Risk Management Framework[6] to provide an outline for how each of the Clearing Agencies (i) maintains a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities; (ii) comprehensively manages legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by it; (iii) identifies, monitors, and manages risks related to links it establishes with one or more clearing agencies, financial market utilities, or trading markets; (iv) meets the requirements of its participants and the markets it serves efficiently and effectively; (v) uses, or at a minimum accommodates, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing and settlement; and (vi) publicly discloses certain information, including market data. In this way, the Risk Management Framework currently supports the Clearing Agencies' compliance with Rules 17Ad–22(e)(1), (3), (20), (21), (22) and (23) of the Standards,[7] as described in the Framework Filings. In addition to setting forth the way each of the Clearing Agencies addresses these requirements, the Risk Management Framework also contains a section titled ''Framework Ownership and Change Management'' that, among other matters, describes the Framework ownership and the required governance process for review and approval of changes to the Framework. In connection with the annual review and approval of the Framework by the Board of Directors of NSCC, DTC and FICC (each a ''Board'' and collectively, the ''Boards''), the Clearing Agencies are proposing to make certain revisions to the Framework.

The proposed changes would clarify and enhance the descriptions in the Risk Management Framework, for example, (i) clarify the cadence of publication of disclosure frameworks; (ii) clarify the description of the Clearing Agencies recovery and wind-down processes and procedures; and (iii) make other non-substantive clarifying and clean-up changes to the Framework. Each of these categories of changes are discussed in further detail below.

i. Proposed Amendment To Clarify the Cadence of Publication of Disclosure Frameworks

Section 4.1 of the Framework describes certain tools provided to Clearing Agency participants to assist participants in understanding the Clearing Agencies' products and services and their use. One such tool is the publication of disclosure frameworks to the DTCC website. The proposed change would enhance the description in the third bullet of Section 4.1, to add that although each of the Clearing Agencies publish to the DTCC website disclosure frameworks that are updated on a biennial basis, such frameworks are also updated more frequently for material changes.

ii. Proposed Amendment To Clarify the Description of Recovery and Wind-Down

Section 5 of the Framework describes the Clearing Agencies identification of scenarios that may potentially prevent them from being able to provide critical operations and services, and assessment of options for recovery and orderly wind-down, and maintenance of appropriate plans for recovery and orderly wind-down. The proposed changes to Section 5 are primarily rephrasing and grammatical choices that clarify the Framework and conform the language in the Framework to the Clearing Agencies' stand-alone Recovery and Wind-Down Plans.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] *See* Securities Exchange Act Release Nos. 81635 (September 15, 2017), 82 FR 44224 (September 21, 2017) (SR–DTC–2017–013; SR–FICC–2017–016; SR–NSCC–2017–012) (''Initial Filing'') and Securities Exchange Act Release Nos. 89271 (July 09, 2020), 85 FR 42933 (July 15, 2020) (SR–NSCC–2020–012); Securities Exchange Act Release No. 89269 (July 09, 2020), 85 FR 42954 (July 15, 2020) (SR–DTC–2020–009); and Securities Exchange Act Release No. 89270 (July 09, 2020), 85 FR 42927 (July 15, 2020) (SR–FICC–2020–007) (together with the Initial Filing, the ''Framework Filings'')

[6] *Supra* note 5.

[7] 17 CFR 240.17Ad–22(e)(1), (3), (20), (21), (22) and (23).

iii. Proposed Amendment To Make Other Non-Substantive Clarifying Changes

These proposed changes consist of rephrasing for clarity and removal of unnecessary language in the Framework. These changes include: (i) changes to Section 1 to simplify the description of other documentation of the Clearing Agencies that support the activities described in the Framework by removing statements regarding the maintenance of those documents that are not relevant to the operation of this Framework and removing redundant sentences; (ii) add ''and'' for grammatical purposes in the second sentence of the last paragraph of Section 3.2 as well as the words ''when required'' as clarifying language; (3) remove the words ''Market Risk'' from the heading ''*Clearing Agency Stress Testing Framework*'' in Section 3.3.3 and add ''liquidity resources'' to align with other documentation of the Clearing Agencies; (4) deletion of the word ''all'' in various sentences in Section 4.2.2, as unnecessary.

2. Statutory Basis

The Clearing Agencies believe that the proposed changes are consistent with section 17A(b)(3)(F) of the Act [8] for the reasons described below. Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[9] The proposed changes would clarify the descriptions of certain matters within the Framework to improve comprehensiveness and align with other documentation of the Clearing Agencies, as described above. By creating clearer, updated descriptions, the Clearing Agencies believe that the proposed changes would make the Risk Management Framework more effective in providing an overview of the important risk management activities of the Clearing Agencies, as described therein.

As described in the Framework Filings, the risk management functions described in the Risk Management Framework allow the Clearing Agencies to continue to promote the prompt and accurate clearance and settlement of securities transactions and continue to assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible notwithstanding the default of a member of an affiliated family. The proposed changes to improve the clarity and accuracy of the descriptions of risk management functions within the Framework would assist the Clearing Agencies in carrying out these risk management functions. Therefore, the Clearing Agencies believe these proposed changes are consistent with the requirements of section 17A(b)(3)(F) of the Act.[10]

(B) Clearing Agency's Statement on Burden on Competition

The Clearing Agencies do not believe that the proposed changes to the Framework described above would have any impact, or impose any burden, on competition. As described above, the proposed rule changes would improve the comprehensiveness of the Framework by creating clearer, updated descriptions, thereby making the Risk Management Framework more effective in providing an overview of the important risk management activities of the Clearing Agencies. As such, the Clearing Agencies do not believe that the proposed rule changes would have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at https://www.sec.gov/regulatory-actions/how-to-submitcomments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

DTC reserves the right not to respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) [11] of the Act and paragraph (f) [12] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–DTC–2023–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to file number SR–DTC–2023–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change 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

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] *Id.*

[10] *Id.*

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

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 DTC and on DTCC's website (*https://dtcc.com/legal/sec-rule-filings.aspx*). 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–DTC–2023–012 and should be submitted on or before January 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27267 Filed 12–12–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99103; File No. SR–BX–2023–032]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Monthly Options Series

December 7, 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 November 29, 2023, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rules at Options 4A (Options Index Rules) to adopt Monthly Options Series.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 4A (Options Index Rules) to accommodate the listing of option series that would expire at the close of business on the last business day of a calendar month (''Monthly Options Series'').[3] Of note, Nasdaq ISE, LLC (''ISE'') will separately file a rule change to adopt a Monthly Options Series for ETFs. BX's Options 4 rules, which govern the ability to transact options on ETFs, incorporate by reference ISE's Options 4 rules. This rule change proposes to amend BX's index options rules to adopt a Monthly Options Series program. Pursuant to proposed Options 4A, Section 12(h)(2)(i), the Exchange may list Monthly Options Series for up to five currently listed option classes that are either index options or options on ETFs.[4] 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.[5] 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.[6] Other expirations in the same class are not counted as part of the maximum numbers of Monthly Options Series expirations for a class.[7] Monthly Options Series will be P.M.-settled.[8]

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.[9] Additional Monthly Options Series of the same class may be

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange proposes to define a ''Monthly Options Series'' in Options 4A, Section 2(l) to mean, for the purposes of Options 4A, a series in an options class that is approved for listing and trading on the Exchange in which the series is opened for trading on any business day and that expires at the close of business on the last business day of a calendar month. The Exchange proposes to re-letter the subsequent definitions in Options 4A, Section 2.

[4] As provided in proposed Options 4A, Section 12(h)(2)(i), the Exchange may list Monthly Options Series for up to five currently listed option classes that are either index options or options on ETFs; the five Monthly Options Series include both index options and options on ETFs.

[5] *See* Securities Exchange Act Release No. 98915 (November 13, 2023), 88 FR 80356 (November 17, 2023) (SR–Cboe–2023–049) (Order Approving a Proposed Rule Change To Adopt Monthly Options Series) (''Cboe Monthly Approval Order'').

[6] 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 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).

[7] *See* proposed Options 4A, Section 12(h)(2)(ii).

[8] *See* proposed Options 4A, Section 12(h)(2)(iii).

[9] *See* proposed Options 4A, Section 12(h)(2)(iv). The Exchange notes this proposed provision is consistent with the initial series provision for the Quarterly Options Series program in Options 4A, Section 12(g).

open for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer 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 customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market-Makers trading for their own account will not be considered when determining customer 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 as a standard expiration series (which expire on the third Friday of a month) in the same class expires. The same, however, is not the case with regards to Short Term Option Series [12] or Quarterly Options Series. Therefore, to avoid any confusion in the marketplace, the Exchange proposes to amend Options 4A, Section 12(h)(2)(ii) to provide the Exchange will not list a Short Term Option Series in a class on a date on which a Monthly Options Series or Quarterly Options Series expires.[13] Similarly, proposed Options 4A, Section 12(b)(5)(b) provide 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. In other words, the Exchange will not list a Short Term Option Series on an index if a Monthly Options Series on that index were to expire on the same date, nor will the Exchange list a Monthly Options Series on an index if a Quarterly Options Series on that index were to expire on the same date to prevent the listing of series with concurrent expirations.[14]

With respect to Monthly Options Series added pursuant to proposed Options 4A, Section 12(h)(2)(i) through (vi), 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: (i) strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month pursuant to Options 4A, Section 12(h)(2)(vii)(A). Notwithstanding this delisting policy, customer 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.[15]

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 option 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 Exchange's and the Options Price Reporting Authority's (''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 notes that Options 4A, Section 6, Position Limits for Broad-Based Index Options, and Options 4A, Section 7, Position Limits for Industry and Micro-Narrow Based Index Options, will apply to Monthly Options Series. In Options 4A, Section 6(c) and Options 4A, Section 7(c), Monthly Options Series will be aggregated with positions in options contracts on the same underlying security or index.[16] This is consistent with how position (and exercise) limits are currently imposed on series with other expirations (Short Term Option Series and Quarterly Options Series). To that end, the Exchange proposes to make this clear by adding a sentence to Options 4A, Sections 6(c) and 7(c) that provides that ''Positions in Short Term Options Series, Monthly Options Series and Quarterly Options Series shall be aggregated with positions in options contracts of the same index.'' [17] Therefore, positions in options within class of index, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. The Exchange believes this will address potential manipulative schemes and adverse market impacts surrounding the use of options.

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 pursuant to Options 4, Section 5, 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 currently in place to support and properly monitor trading in these Quarterly Options Series, as well as Short Term Option Series and standard expiration series, will apply to the proposed Monthly Options Series. The Exchange believes its surveillances

[10] *See* proposed Options 4A, Section 12(h)(2)(v).

[11] *See* proposed Options 4A, Section 12(h)(2)(vi) (permissible strike prices for index options).

[12] The proposed rule change clarifies in Options 4A, Section 12(a)(3) that index options have expiration months and weeks, which expirations may occur in consecutive weeks as specified in Options 3, Section 4A(h). This is merely a clarification, as Options 3, Section 4A(h) currently permits weekly expirations.

[13] The Exchange also proposes to make non-substantive changes to Options 4A, Section 12(h)(1) and Options 4A, Section 12(h)(1)(ii) to reference standard options series and 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.

[14] 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 Option Series on the same index, both of which may expire on a Friday. In other words, the Exchange may list a P.M-settled Monthly Options Series on an index concurrent with an A.M.-settled Short Term Option Series on that index and both of which 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).

[15] *See* Options 4A, Section 12(h)(2)(vii)(C).

[16] Pursuant to Options 4A, Section 10, exercise limits for index option contracts shall be equivalent to the position limits prescribed for options contracts with the nearest expiration date in Options 4A, Section 6 or Section 7.

[17] This additional rule text will further clarify the current rule text for the existing Short Term Option Series and Quarterly Options Series programs in Options 4A, Section 12.

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) and reporting requirements—would continue to apply.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (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 customers, 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 options listed pursuant to the proposed rule change based on their timing 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 months' ends 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 Option Series, which 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 option classes, are substantively the same as the current terms of Quarterly Options Series for ETF classes.[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 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. As is the case with Quarterly Options Series, no Short Term Option 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 investors confusion and thus protect investors and the public interest. Given that the Exchange currently lists Quarterly Options Series in certain ETF classes pursuant to Options 4, Section 5, which expire at the close of business at the end of four calendar months (*i.e.,* the end of each calendar quarter), 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's 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 further believes the proposed rule change regarding the treatment of Monthly Options Series with respect to determining compliance with position and exercise limits is designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade. Monthly Options Series will be aggregated with options overlying the same index for purposes of compliance with position (and exercise) limits, which is consistent with how position (and exercise) limits are currently imposed on series with other expirations (Short Term Option Series, and Quarterly Options Series).[22] Therefore, options positions within index option classes for which Monthly Options Series are listed, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. The Exchange believes this will address potential manipulative schemes and adverse market impacts surrounding the use of options. 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 trades Quarterly Options Series in certain index classes, 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 currently in place to support and properly monitor trading in these Quarterly Options Series, as well as Short Term Option Series and standard expiration series, will apply to the

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] *Id.*

[21] *See* Options 4, Section 5. As noted herein, ISE will file a rule change to amend Options 4, Section 5 and BX's Options 4 rules are incorporated by reference to ISE's Options 4 rules.

[22] *See* Cboe Monthly Approval Order; *see also* Options 4A, Section 6 regarding position limits for broad-based index options) and Options 4A, Section 7, Position Limits for Industry and Micro-Narrow Based Index Options. Pursuant to Options 4A, Section 10, exercise limits for index option contracts shall be equivalent to the position limits prescribed for options contracts with the nearest expiration date in Options 4A, Section 6 or Section 7.

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) and reporting requirements—would continue to apply.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. 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 Monthly Options Series, including the limitation to list up to five options classes that are either index options or options on ETFs, are substantively the same as the current terms of Quarterly Options Series.[23] 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 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.[24] 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.[25] As discussed above, the proposed rule change would permit listing Monthly Options Series in up to five options classes that are either index options or options on ETFs, 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 Option 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.

The Exchange does not believe the proposed rule change regarding aggregation of positions for purposes of determining compliance with position (and exercise) limits will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will apply in the same manner to all market participants. The Exchange proposes to apply position (and exercise) limits to Monthly Options Series in the same manner it applies position limits to series with other expirations (Short Term Option Series and Quarterly Options Series). Therefore, positions in options in a class of index options, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. Additionally, the Exchange does not believe this proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will address potential manipulative schemes and adverse market impacts surrounding the use of options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[26] and Rule 19b–4(f)(6) thereunder.[27] 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[28] and subparagraph (f)(6) of Rule 19b–4 thereunder.[29]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[30] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[31] 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.[32] 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

[23] *See* proposed Options 4A, Section 12(h)(2)(i).

[24] *See supra* note 5.

[25] *See* Cboe Monthly Approval Order.

[26] 15 U.S.C. 78s(b)(3)(A)(iii).

[27] 17 CFR 240.19b–4(f)(6).

[28] 15 U.S.C. 78s(b)(3)(A)(iii).

[29] 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.

[30] 17 CFR 240.19b–4(f)(6).

[31] 17 CFR 240.19b–4(f)(6)(iii).

[32] *See* Cboe Monthly Approval Order, *supra* note 5.

designates the proposed rule change operative upon filing.[33]

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–BX–2023–032 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–BX–2023–032. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–BX–2023–032 and should be submitted on or before January 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27260 Filed 12–12–23; 8:45 am]

BILLING CODE 8011–01–P

[33] 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).

[34] 17 CFR 200.30–3(a)(12), (59).

DEPARTMENT OF STATE

[Public Notice: 12285]

Cultural Property Advisory Committee; Notice of Meeting

SUMMARY: The Department of State announces the location, dates, times, and agenda for the next meeting of the Cultural Property Advisory Committee (''the Committee'').

DATES: The Committee will meet from January 30 to February 1, 2024, from 9:00 a.m. to 5:00 p.m. (EST). The public may participate in, or observe, the virtual open session on January 30, 2024, from 2:00 p.m. to 3:00 p.m. (EST). More information below.

ADDRESSES: The Committee will meet at 2201 C Street NW, Washington, DC 20520. The public will participate via videoconference.

FOR FURTHER INFORMATION CONTACT: Allison Davis, Cultural Heritage Center, Bureau of Educational and Cultural Affairs (telephone: 771–204–4765; email: *culprop@state.gov*).

SUPPLEMENTARY INFORMATION: The Assistant Secretary of State for Educational and Cultural Affairs calls a meeting of the Cultural Property Advisory Committee (''the Committee'') in accordance with the Convention on Cultural Property Implementation Act (19 U.S.C. 2601–2613) (''the Act''). A portion of this meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Meeting Agenda: The Committee will review a request from the Government of the Republic of India seeking import restrictions on archaeological and ethnological materials and will review the proposed extension of an agreement with the Government of the People's Democratic Republic of Algeria. In addition, the Committee will undertake a continuing review of the effectiveness of other cultural property agreements and emergency actions currently in force.

The Open Session: The public can observe the virtual open session on January 30, 2024. Registered participants may provide oral comments for a maximum of five (5) minutes each. The Department provides specific instructions on how to observe or provide oral comments at the open session at *https://eca.state.gov/highlight/cultural-property-advisory-committee-meeting-january-30-february-1-2024.*

Oral Comments: Register to speak at the open session by sending an email with your name and organizational affiliation, as well as any requests for reasonable accommodation, to *culprop@state.gov* by January 22, 2024. Written comments are not required to make an oral comment during the open session.

Written Comments: The Committee will review written comments if received by 11:59 p.m. (EST) on January 22, 2024. Written comments may be submitted in two ways, depending on whether they contain confidential information:

☐ *General Comments:* For general comments, use *http://www.regulations.gov,* enter the docket [DOS–2023–0040], and follow the prompts.

☐ *Confidential Comments:* For comments that contain privileged or confidential information (within the meaning of 19 U.S.C. 2605(i)(1)), please email submissions to *culprop@state.gov.* Include ''India'' and/or ''Algeria'' in the subject line.

☐ *Disclaimer:* The Cultural Heritage Center website contains additional information about each agenda item, including categories of archaeological and ethnological material that may be included in import restrictions: *https://eca.state.gov/highlight/cultural-property-advisory-committee-meeting-january-30-february-1-2024.* Comments should relate specifically to the determinations specified in the Act at 19 U.S.C. 2602(a)(1). Written comments submitted via *regulations.gov* are not private and are posted at *https://www.regulations.gov.* Because written comments cannot be edited to remove any personally identifying or contact information, we caution against including any such information in an electronic submission without appropriate permission to disclose that

information (including trade secrets and commercial or financial information that are privileged or confidential within the meaning of 19 U.S.C. 2605(i)(1)). We request that any party soliciting or aggregating written comments from other persons inform those persons that the Department will not edit their comments to remove any identifying or contact information and that they therefore should not include any such information in their comments that they do not want publicly disclosed.

Allison R. Davis Lehmann,

Executive Director, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–27320 Filed 12–12–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12284]

Proposal To Extend the Cultural Property Agreement Between the United States and Algeria

ACTION: Public notice.

SUMMARY: Proposal to extend the Memorandum of Understanding between the Government of the United States of America and the Government of the People's Democratic Republic of Algeria Concerning the Imposition of Import Restrictions on Categories of Cultural Property of Algeria.

FOR FURTHER INFORMATION CONTACT: Virginia Herrmann, Cultural Heritage Center, Bureau of Educational and Cultural Affairs (telephone: 202–632–6301; email: *culprop@state.gov*). Include ''Algeria'' in the subject line.

SUPPLEMENTARY INFORMATION: Pursuant to the authority vested in the Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), an extension of the Memorandum of Understanding between the Government of the United States of America and the Government of the People's Democratic Republic of Algeria Concerning the Imposition of Import Restrictions on Categories of Cultural Property of Algeria is hereby proposed.

A copy of the Memorandum of Understanding, the Designated List of categories of material currently restricted from import into the United States, and related information can be found at the Cultural Heritage Center website: *http://culturalheritage.state.gov.*

Allison R. Davis Lehmann,

Executive Director, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–27323 Filed 12–12–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12283]

Notice of Receipt of Request From the Government of the Republic of India Under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

ACTION: Public notice.

SUMMARY: Notice of receipt of request from India for cultural property protection.

FOR FURTHER INFORMATION CONTACT: Anne Compton, Cultural Heritage Center, Bureau of Educational and Cultural Affairs (telephone: 202–632–6301; e-mail: *culprop@state.gov*). Include ''India'' in the subject line.

SUPPLEMENTARY INFORMATION: The Government of the Republic of India made a request to the Government of the United States on September 12, 2023, under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. India's request seeks U.S. import restrictions on archaeological and ethnological materials representing India's cultural patrimony. The Cultural Heritage Center website provides instructions for public comment and additional information on the request, including categories of material that may be included in import restrictions: *https://eca.state.gov/highlight/cultural-property-advisory-committee-meeting-january-30-february-1-2024.* This notice is published pursuant to authority vested in the Assistant Secretary of State for Educational and Cultural Affairs and pursuant to 19 U.S.C. 2602(f)(1).

Allison R. Davis Lehmann,

Executive Director, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–27322 Filed 12–12–23; 8:45 am]

BILLING CODE 4710–05–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Minor Modifications

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the minor modifications approved for a previously approved project by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: August 1, 2023–November 30, 2023.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists previously approved projects, receiving approval of minor modifications, described below, pursuant to 18 CFR 806.18 or to Commission Resolution Nos. 2013–11 and 2015–06 for the time period specified above.

1. Coal Mountain Development and Recreation LLC—Eagles Ridge Golf Course, Docket No. 20230605, Ferguson Township, Clearfield County, Pa.; correction to Special Condition 17(b); Correction Issue Date: August 25, 2023.

2. Lancaster County Solid Waste Management Authority—Frey Farm Landfill, Docket No. 20230920, Manor Township, Lancaster County, Pa.; modification to add INASHCO Well MW–2 as an additional source of consumptive use; Approval Date: November 1, 2023.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: December 8, 2023.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2023–27346 Filed 12–12–23; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Approvals by Rule for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: November 1–30, 2023.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.gov*. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above.

Water Source Approval—Issued Under 18 CFR 806.22(f)

1. RENEWAL—BKV Operating, LLC; Pad ID: Reimiller 1; ABR–201110001.R2; Meshoppen Township, Wyoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: November 6, 2023.

2. RENEWAL—Blackhill Energy LLC; Pad ID: WALLACE Pad; ABR–201110032.R2; Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: November 6, 2023.

3. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Alkan; ABR–201110021.R2; Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 6, 2023.

4. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Cook; ABR–201111001.R2; Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 6, 2023.

5. RENEWAL—Inflection Energy (PA) LLC; Pad ID: Hillegas Well Pad; ABR–201308017.R2; Upper Fairfield Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 6, 2023.

6. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Knapp; ABR–201111003.R2; Burlington Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 13, 2023.

7. RENEWAL—Coterra Energy Inc.; Pad ID: FoltzJ P1; ABR–201311002.R2; Brooklyn Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.2500 mgd; Approval Date: November 13, 2023.

8. RENEWAL—Range Resources—Appalachia, LLC; Pad ID: Sechrist, Mark –#1H–#3H; ABR–201111005.R2; Anthony Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 13, 2023.

9. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: BIM; ABR–201311006.R2; Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 17, 2023.

10. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Coyle; ABR–201111009.R2; Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 17, 2023.

11. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Krise; ABR–201111022.R2; Leroy Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 17, 2023.

12. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Lines; ABR–201111017.R2; Monroe Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 17, 2023.

13. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Madigan Farms A Drilling Pad #1; ABR–201111016.R2; Burlington Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 17, 2023.

14. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Richard; ABR–201111010.R2; Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 17, 2023.

15. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Robbins; ABR–201111018.R2; Ulster Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 17, 2023.

16. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Williamson; ABR–201111019.R2; Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 17, 2023.

17. RENEWAL—Coterra Energy Inc.; Pad ID: AckerC P1; ABR–201311004.R2; Bridgewater Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: November 17, 2023.

18. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: DCNR 594 (02–201); ABR–201811001.R1; Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: November 17, 2023.

19. RENEWAL—Blackhill Energy LLC; Pad ID: ASHBY Pad; ABR–201110031.R2; Athens Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: November 22, 2023.

20. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Kupscznk B Drilling Pad; ABR–201311007.R2; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 22, 2023.

21. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Loch Drilling Pad; ABR–201311001.R2; Nicholson Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 22, 2023.

22. RENEWAL—Coterra Energy Inc.; Pad ID: AndersonR P1; ABR–201311009.R2; Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: November 22, 2023.

23. RENEWAL—EQT ARO LLC; Pad ID: Terry D. Litzelman Pad A; ABR–201211005.R2; Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 22, 2023.

24. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: CLDC (02 177); ABR–201811002.R1; Ward Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: November 22, 2023.

25. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Bodolus; ABR–201111028.R2; Litchfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 26, 2023.

26. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Garrison West Drilling Pad; ABR–201311010.R2; Lemon Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 26, 2023.

27. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Gregerson; ABR–201111025.R2; Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 26, 2023.

28. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Pond Family; ABR–201811004.R1; Colley Township, Sullivan County; and Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 26, 2023.

29. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Kupetsky; ABR–201211010.R2; Nicholson Township, Wyoming County, Pa.;

Consumptive Use of Up to 7.5000 mgd; Approval Date: November 29, 2023.

30. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Kupscznk D Drilling Pad; ABR–201311003.R2; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 29, 2023.

31. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Nelson Drilling Pad #1; ABR–201111031.R2; Forks Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 29, 2023.

32. RENEWAL—Coterra Energy Inc.; Pad ID: PowersM P1; ABR–201811003.R1; Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: November 29, 2023.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: December 8, 2023.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2023–27344 Filed 12–12–23; 8:45 am]

BILLING CODE 7040–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations of Trade Surplus in Certain Sugar and Syrup Goods and Sugar-Containing Products of Chile, Morocco, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Peru, Colombia and Panama

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: In accordance with the Harmonized Tariff Schedule of the United States (HTSUS), the Office of the United States Trade Representative (USTR) is providing notice of its determinations of the trade surplus in certain sugar and syrup goods and sugar-containing products of Chile, Morocco, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Peru, Colombia and Panama. The level of a country's trade surplus in these goods relates to the quantity of sugar and syrup goods and sugar-containing products for which the United States grants preferential tariff treatment under the United States-Chile Free Trade Agreement (Chile FTA); the United States-Morocco Free Trade Agreement (Morocco FTA); the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR); the United States-Peru Trade Promotion Agreement (Peru TPA); the United States-Colombia Trade Promotion Agreement (Colombia TPA); and the United States-Panama Trade Promotion Agreement (Panama TPA).

DATES: This notice is applicable on January 1, 2024.

FOR FURTHER INFORMATION CONTACT: Erin Nicholson, Office of Agricultural Affairs, at (202) 395–9419 or *Erin.H.Nicholson@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION:

I. Chile FTA

Pursuant to section 201 of the United States-Chile Free Trade Agreement Implementation Act (Pub. L. 108–77; 19 U.S.C. 3805 note), Presidential Proclamation No. 7746 of December 30, 2003 (68 FR 75789) implemented the Chile FTA on behalf of the United States and modified the HTSUS to reflect the tariff treatment provided for in the Chile FTA.

Note 3(a) to subchapter XXII of HTSUS chapter 98 requires USTR to publish annually a determination of the amount of Chile's trade surplus, by volume, with all sources for goods in Harmonized System (HS) subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.20, 1702.30, 1702.40, 1702.60, 1702.90, 1806.10, 2101.12, 2101.20, and 2106.90, except that Chile's imports of goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the Chile FTA are not included in the calculation of Chile's trade surplus.

Note 3(b) to subchapter XXII of HTSUS chapter 98 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of Chile entered under subheading 9822.02.01 in any calendar year (CY) (beginning in CY2016) in the quantity of goods equal to the amount of Chile's trade surplus in subdivision (a) of the note.

During CY2022, the most recent year for which data are available, Chile's imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 677,267 metric tons according to data published by its customs authority, the *Servicio Nacional de Aduana.* Based on this data, USTR has determined that Chile's trade surplus is negative. Therefore, in accordance with U.S. Note 3(b) to subchapter XXII of HTSUS chapter 98, goods of Chile are not eligible to enter the United States duty-free under subheading 9822.02.01 in CY2024.

II. Morocco FTA

Pursuant to section 201 of the United States-Morocco Free Trade Agreement Implementation Act (Pub. L. 108–302; 19 U.S.C. 3805 note), Presidential Proclamation No. 7971 of December 22, 2005 (70 FR 76651) implemented the Morocco FTA on behalf of the United States and modified the HTSUS to reflect the tariff treatment provided for in the Morocco FTA.

Note 6(a) to subchapter XXII of HTSUS chapter 98 requires USTR to publish annually a determination of the amount of Morocco's trade surplus, by volume, with all sources for goods in HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40, and 1702.60, except that Morocco's imports of U.S. goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the Morocco FTA are not included in the calculation of Morocco's trade surplus.

Note 6(b) to subchapter XXII of HTSUS chapter 98 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of Morocco entered under subheading 9822.03.01 in any CY in the quantity of goods equal to the amount of Morocco's trade surplus in subdivision (a) of the note.

During CY2022, the most recent year for which data are available, Morocco's imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 813,832 metric tons according to data published by its customs authority, *the Office des Changes.* Based on this data, USTR has determined that Morocco's trade surplus is negative. Therefore, in accordance with U.S. Note 6(b) to subchapter XXII of HTSUS chapter 98, goods of Morocco are not eligible to enter the United States duty-free under subheading 9822.03.01 in CY2024.

III. CAFTA–DR

Pursuant to section 201 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Pub. L. 109–53; 19 U.S.C. 4031), Presidential Proclamation No. 7987 of February 28, 2006 (71 FR 10827), Presidential Proclamation No. 7991 of March 24, 2006 (71 FR 16009), Presidential Proclamation No. 7996 of March 31, 2006 (71 FR 16971), Presidential Proclamation No. 8034 of June 30, 2006 (71 FR 38509), Presidential Proclamation No. 8111 of February 28, 2007 (72 FR 10025), Presidential Proclamation No. 8331 of December 23, 2008 (73 FR 79585), and Presidential Proclamation No. 8536 of

June 12, 2010 (75 FR 34311), implemented the CAFTA–DR on behalf of the United States and modified the HTSUS to reflect the tariff treatment provided for in the CAFTA–DR.

Note 25(b)(i) to subchapter XXII of HTSUS chapter 98 requires USTR to publish annually a determination of the amount of each CAFTA–DR country's trade surplus, by volume, with all sources for goods in HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40, and 1702.60, except that each CAFTA–DR country's exports to the United States of goods classified under HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, and 1701.99 and its imports of goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the CAFTA–DR are not included in the calculation of that country's trade surplus.

U.S. Note 25(b)(ii) to subchapter XXII of HTSUS chapter 98 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of each CAFTA–DR country entered under subheading 9822.05.20 in an amount equal to the lesser of that country's trade surplus or the specific quantity set out in that note for that country and that CY. In each successive year after CY2022, the aggregate quantity for each country increases, from the aggregate quantity permitted in the prior calendar year, by the quantity set out in that note.

Costa Rica

During CY2022, the most recent year for which data are available, Costa Rica's exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 80,351 metric tons according to data published by the *Costa Rican Customs Department, Ministry of Finance.* Based on this data, USTR has determined that Costa Rica's trade surplus is 80,351 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTSUS chapter 98 for Costa Rica for CY2024 is 14,960 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Costa Rica that may be entered duty-free under subheading 9822.05.20 in CY2024 is 14,960 metric tons (*i.e.,* the amount that is the lesser of Costa Rica's trade surplus and the specific quantity set out in that note for Costa Rica for CY2024).

IV. Peru TPA

Pursuant to section 201 of the United States-Peru Trade Promotion Agreement Implementation Act (Pub. L. 110–138; 19 U.S.C. 3805 note), Presidential Proclamation No. 8341 of January 16, 2009 (74 FR 4105) implemented the Peru TPA on behalf of the United States and modified the HTSUS to reflect the tariff treatment provided for in the Peru TPA.

Note 28(c) to subchapter XXII of HTSUS chapter 98 requires USTR to publish annually a determination of the amount of Peru's trade surplus, by volume, with all sources for goods in HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40, and 1702.60, except that Peru's imports of U.S. goods classified under HS subheadings 1702.40 and 1702.60 that are originating goods under the Peru TPA and Peru's exports to the United States of goods classified under HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, and 1701.99 are not included in the calculation of Peru's trade surplus.

Note 28(d) to subchapter XXII of HTSUS chapter 98 provides duty-free treatment for certain sugar goods of Peru entered under subheading 9822.06.10 in an amount equal to the lesser of Peru's trade surplus or the specific quantity set out in that note for that CY.

During CY2022, the most recent year for which data are available, Peru's imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 289,046 metric tons according to data published by the *National Superintendence of Customs and Tax Administration (SUNAT).* Based on this data, USTR has determined that Peru's trade surplus is negative. Therefore, in accordance with U.S. Note 28(d) to subchapter XXII of HTSUS chapter 98, goods of Peru are not eligible to enter the United States duty-free under subheading 9822.06.10 in CY2024.

V. Colombia TPA

Pursuant to section 201 of the United States-Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112–42; 19 U.S.C. 3805 note), Presidential Proclamation No. 8818 of May 14, 2012 (77 FR 29519) implemented the Colombia TPA on behalf of the United States and modified the HTSUS to reflect the tariff treatment provided for in the Colombia TPA.

Note 32(b) to subchapter XXII of HTSUS chapter 98 requires USTR to publish annually a determination of the amount of Colombia's trade surplus, by volume, with all sources for goods in HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40 and 1702.60, except that Colombia's imports of U.S. goods classified under subheadings 1702.40 and 1702.60 that are originating goods under the Colombia TPA and Colombia's exports to the United States of goods classified under subheadings 1701.12, 1701.13, 1701.14, 1701.91 and 1701.99 are not included in the calculation of Colombia's trade surplus.

Note 32(c)(i) to subchapter XXII of HTSUS chapter 98 provides duty-free treatment for certain sugar goods of Colombia entered under subheading 9822.08.01 in an amount equal to the lesser of Colombia's trade surplus or the specific quantity set out in that note for that CY.

During CY2022, the most recent year for which data are available, Colombia's exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 276,069 metric tons according to data published by the *Colombian National Tax and Customs Directorate (DIAN).* Based on this data, USTR has determined that Colombia's trade surplus is 276,069 metric tons. The specific quantity set out in U.S. Note 32(c)(i) to subchapter XXII of HTSUS chapter 98 for Colombia for CY2024 is 59,000 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Colombia that may be entered duty-free under subheading 9822.08.01 in CY2024 is 59,000 metric tons (*i.e.,* the amount that is the lesser of Colombia's trade surplus and the specific quantity set out in that note for Colombia for CY2024).

VI. Panama TPA

Pursuant to section 201 of the United States-Panama Trade Promotion Agreement Implementation Act (Pub. L. 112–43; 19 U.S.C. 3805 note), Presidential Proclamation No. 8894 of October 29, 2012 (77 FR 66505) implemented the Panama TPA on behalf of the United States and modified the HTSUS to reflect the tariff treatment provided for in the Panama TPA.

Note 35(a) to subchapter XXII of HTSUS chapter 98 requires USTR to publish annually a determination of the amount of Panama's trade surplus, by volume, with all sources for goods in HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40 and 1702.60, except that Panama's imports of U.S. goods classified under subheadings 1702.40 and 1702.60 that are originating goods under the Panama TPA and Panama's exports to the United States of goods classified under subheadings 1701.12, 1701.13, 1701.14, 1701.91 and 1701.99 are not included in the calculation of Panama's trade surplus.

Note 35(c) to subchapter XXII of HTSUS chapter 98 provides duty-free treatment for certain sugar goods of Panama entered under subheading 9822.09.17 in an amount equal to the lesser of Panama's trade surplus or the

specific quantity set out in that note for that CY.

During CY2022, the most recent year for which data are available, Panama's imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 413 metric tons according to data published by the National Institute of Statistics and Census, Office of the General Comptroller of Panama; and the Ministry of Commerce and Industry of Panama. Based on this data, USTR has determined that Panama's trade surplus is negative. Therefore, in accordance with that note, goods of Panama are not eligible to enter the United States duty-free under subheading 9822.09.17 in CY2024.

Douglas McKalip,

Chief Agricultural Negotiator, Office of the United States Trade Representative.

[FR Doc. 2023–27311 Filed 12–12–23; 8:45 am]

BILLING CODE 3390–F4–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Proposed Land Use Changes to Surplus Property at Page Field Airport, Fort Myers, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: Notice is being given that the FAA is considering a request from Lee County, Florida to change 24.4 acres of airport property from aeronautical use to non-aeronautical use for commercial development. The surplus property land is no longer required for aviation use. The land has been designated for non-aeronatucal use on the Airport Layout Plan. The County will have land lease agreements with commercial developers that will generate non-aerouatical revenue to be deposited in the airport operation and maintenance fund.

DATES: Comments are due on or before January 12, 2024.

ADDRESSES: Documents are available for review at the Lee County Port Authority, 11000 Terminal Access Road, Fort Myers, FL 33913, and the FAA Airports District Office, 8427 SouthPark Circle, Suite 524, Orlando, FL 32819. Written comments on the Sponsor's request must be delivered or mailed to: Marisol Elliott, Community Planner, Orlando Airports District Office, 8427 Southark Circle, Suite 524, Orlando, FL 32819.

FOR FURTHER INFORMATION CONTACT: Marisol Elliott, Community Planner, Orlando Airports District Office, 8427 SouthPark Circle, Suite 524, Orlando, FL 32819, (407) 487–7231.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires the FAA to provide an opportunity for public notice and comment prior to the ''waiver'' or ''modification'' of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

Revision Date: August 23, 2022.

Bartholomew Vernace,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 2023–27203 Filed 12–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2016–0833; Summary Notice No. 2023–51]

Petition for Exemption; Summary of Petition Received; The Boeing Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before January 2, 2024.

ADDRESSES: Send comments identified by docket number FAA–2016–0833 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael H. Harrison, AIR–646, Federal Aviation Administration, phone 206–231–3368, email *michael.harrison@faa.gov*.

This notice is published pursuant to 14 CFR 11.85.

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

Daniel J. Commins,

Manager, Integration and Performance.

Petition for Exemption

Docket No.: FAA–2016–0833.

Petitioner: The Boeing Company.

Section(s) of 14 CFR Affected: § 21.9(a)(2).

Description of Relief Sought: The Boeing Company (Boeing) is seeking relief from 14 CFR 21.9(a)(2), which requires if a person knows, or should know, that a replacement or modification article is reasonably likely to be installed on a type-certificated product, the person may not produce that article unless it is produced under an FAA production approval. Specifically, Boeing is proposing the FAA grant an amendment to Exemption No. 16637B to produce, represent for sale, and sell new replacement parts for installation on Model CH–47D and CH–47F rotorcraft that commercial operators procured from United States allies, not just from the U.S. Army. United States allies, such as the Royal Netherlands Air Force, Royal Canadian Air Force, and United Kingdom Royal Air Force procured both CH–47D and CH–47F

rotorcraft from Boeing, through direct commercial and foreign military sales.

[FR Doc. 2023–27277 Filed 12–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–0975]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Experimental Permits for Reusable Suborbital Rockets

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 17, 2023. The FAA collects information from applicants for experimental permits in order to determine whether they satisfy the requirements for obtaining an experimental permit.

DATES: Written comments should be submitted by January 12, 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 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Charles Huet by email at: *Charles.huet@faa.gov;* phone: 202–267–7427.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0722.

Title: Experimental Permits for Reusable Suborbital Rockets.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 17, 2023, (88 FR 23491). There were no comments. 14 CFR part 437 established requirements for the FAA's authority to issue experimental permits for reusable suborbital rockets to authorize launches for the purpose of research and development, crew training and showing compliance with the regulations. The information collected includes data required for performing a safety review, which includes a technical assessment to determine if the applicant can launch a reusable suborbital rocket without jeopardizing public health and safety and the safety of property. This information collection requirement is intended for incorporating acquired data into the experimental permit, which then becomes binding on the launch or reentry operator. The applicant is required to submit information that enables FAA to determine, before issuing a permit, if issuance of the experimental permit would jeopardize the foreign policy or national security interests of the U.S.

Respondents: Approximately 10 applicants for experimental permits.

Frequency: On occasion.

Estimated Average Burden per Response: 18.6 hours.

Estimated Total Annual Burden: 2,567 hours per year.

Issued in Washington, DC.

James A. Hatt,

Space Policy Division Manager, Office of Commercial Space Transportation.

[FR Doc. 2023–27353 Filed 12–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Availability for a Joint Draft Environmental Impact Report/Environmental Impact Statement for the Last Chance Grade Permanent Restoration Project on U.S. Highway 101 in Del Norte County, California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (USDOT).

ACTION: Notice of availability (NOA) of a draft environmental impact report/environmental impact statement (Draft EIR/EIS) for the Last Chance Grade Permanent Restoration Project.

SUMMARY: The FHWA, on behalf of the California Department of Transportation (Caltrans), is issuing this notice to advise the public that a joint Draft EIR/EIS is available for review for the Last Chance Grade Permanent Restoration Project (project), a proposed roadway improvement project on U.S. Highway 101 in Del Norte County, California. A separate Notice of Availability of the joint Draft EIR/EIS has been issued by Caltrans to meet the requirements of the California Environmental Quality Act (CEQA).

DATES: This notice will be accompanied by a 60-day public comment period from December 15, 2023, to February 13, 2024. The deadline for public comments is 5:00 p.m. (PST) on February 13, 2024. Caltrans will be holding a Virtual Public Open House from 5:30 p.m. to 7:00 p.m. PST on January 24, 2024. The Virtual Open House link and a downloadable version of the Draft EIR/EIS can be found at the project website: *www.lastchancegrade.com.* Questions and comments during the virtual meeting will not be considered public comments on the Draft EIR/EIS. Public comments on the Draft EIR/EIS must be submitted in writing to the email or address listed below. Comments received in writing during the public comment period will become part of the project administrative record and will be addressed in the Final EIR/EIS, scheduled for Winter 2025.

The Draft EIR/EIS discloses the range of alternatives considered, those that were eliminated from further study, and the Build Alternatives being considered along with the No-Build Alternative. The Draft EIR/EIS details the public scoping process and provides a summary of the scoping comments received including information relative to the comments. The Draft EIR/EIS also discloses potential impacts, including cumulative impacts to environmental resources; avoidance and minimization measures to reduce potential impacts; and proposed mitigation measures to offset environmental impacts.

A public Notice of Availability for the Draft EIR/EIS will be printed in a local newspaper, a copy of which will also be available on the project website. In addition, notifications will be distributed to the public based on information collected during the Notice of Intent (NOI) public scoping process and on other previous outreach efforts. The newspaper ad, email notifications to interested parties, and project website will provide information on the Virtual Public Open House.

The public can submit formal comments on the Draft EIR/EIS through

email at *DEDcomments@lastchancegrade.com,* or via USPS letter to P.O. Box 3700, Eureka, CA 95502–3700 with Attention to Steve Croteau, Senior Environmental Scientist.

To request the Draft EIR/EIS in alternative formats or alternative language translation services, please call or leave a voicemail message with Myles Cochrane, Public Information Officer, at (707) 498–4272.

ADDRESSES: The Draft EIR/EIS is available for review on the project website, *www.lastchancegrade.com,* and at the following locations:

- California Department of Transportation (Caltrans) District 1 Office, 1656 Union Street, Eureka, CA 95501 between 8:00 a.m. and 5:00 p.m.
- Main Library—Crescent City Branch, 190 Price Mall, Crescent City, CA 95531.

FOR FURTHER INFORMATION CONTACT: Jaime Matteoli, Project Manager, Caltrans District 1, P.O. Box 3700, Eureka, CA 95502–3700, telephone 707–498–0961, or email *jaime.matteoli@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Caltrans, as the assigned National Environmental Policy Act (NEPA) agency and CEQA lead agency, prepared a joint Draft EIR/EIS on a proposal for improvements along a portion of U.S. Highway 101 (U.S. 101) in Del Norte County, California known as ''Last Chance Grade''.

Last Chance Grade is the 3.5-mile-long section of U.S. 101 (post miles [PMs] 12.7 to 16.5) located approximately 10 miles south of Crescent City. The project area is almost entirely within portions of Redwood National and State Parks.

The project would realign the highway in response to landslide and roadway failures which have caused damage for decades. The purpose of the project is to:

- Provide a more reliable connection.
- Reduce maintenance costs.
- Protect the economy, natural resources, and cultural resources.

Last Chance Grade is located in an area of geologic instability; there is a landslide complex that is approximately 3 miles long with more than 30 active landslides. This instability has required significant expenditures of tax dollars on emergency construction projects and maintenance activities to keep the highway open and safe. Between 1997 and 2021, landslide mitigation efforts, including retaining walls, drainage improvements, and roadway repairs, cost more than $85 million. There is no foreseeable end to such expenditures, and effects of climate change may exacerbate conditions. A long-term sustainable solution at Last Chance Grade is needed to address:

- Economic ramifications of a long-term failure and closure.
- Risk of delay/detour to traveling public.
- Increasing maintenance and emergency project costs.
- Increase in frequency and severity of large storm events caused by climate change.

Over the past several years, with input from numerous project partners, Caltrans has considered multiple alignment alternatives in seeking a long-term feasible and sustainable solution suitable for the unique geologic and natural features of the project area. As a result of these past alternatives screening processes, Caltrans has elected to move forward with the environmental review of two action alternatives. The Draft EIR/EIS evaluates either taking no action (No-Build Alternative) or proceeding with one of the two build alternatives (X and F).

Alternative X would involve reengineering and partially realigning a 1.6-mile-long section of the existing highway to minimize the risk of landslides. Main project components would include 1.6 miles of retaining walls along the roadway, an underground drainage system to help reduce landslide risk by capturing groundwater, and strategic eastward retreats from the existing roadway.

Alternative F would involve constructing a 1.1-mile-long tunnel east of the existing highway to avoid the most intense areas of known landslides and geologic instability. Main components would include a tunnel and associated portals, a bridge from the northern portal to reconnect to existing U.S. 101, and an on-site Operations and Maintenance Center (OMC) for tunnel support.

Notifications describing the proposed action and soliciting comments will be sent to the appropriate federal, state, participating agencies, tribal governments, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal.

To ensure interested parties have the opportunity to comment and provide suggestions on the full range of potential issues related to this proposed action, the Draft EIR/EIS will be available for public and agency review and comment over a 60-day circulation period, starting on December 15, 2023. Caltrans will respond in the Final EIR/EIS (expected in winter 2025) to all the public comments received in writing during the public comment period.

Following circulation for public review and consideration of comments received, Caltrans will issue a combined Final EIR/EIS and Record of Decision document unless statutory criteria or practicability considerations preclude such issuance.

Comments or questions concerning this proposed action and the Draft EIR/EIS should be directed to Caltrans at the address indicated above (under *Further Information*).

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Antonio Johnson,

Director of Planning, Environment and Right of Way, Federal Highway Administration, California Division.

[FR Doc. 2023–27287 Filed 12–12–23; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2023–0002–N–40]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR) summarized below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On October 2, 2023, FRA published a notice providing a 60-day period for public comment on the ICR. FRA received no comments in response to the notice.

DATES: Interested persons are invited to submit comments on or before January 12, 2024.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the particular ICR by selecting

''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: (757) 897–9908 or *arlette.mussington@dot.gov* or telephone: (571) 609–1285.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On October 2, 2023, FRA published a 60-day notice in the **Federal Register** soliciting public comment on the ICR for which it is now seeking OMB approval. *See* 88 FR 67865. FRA received no comments related to the proposed collection of information.

Before OMB decides whether to approve the proposed collection of information, it must provide 30 days for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983 Aug. 29, 1995. OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Railroad Safety Appliance Standards.

OMB Control Number: 2130–0594.

Abstract: The information collection associated with 49 CFR part 231 is used by FRA to promote and enhance the safe placement and securement of safety appliances on newly constructed rail vehicles. The regulation provides a process for railroads or car owners to submit requests for the approval of existing industry standards for safety appliance arrangements on newly constructed railroad cars, locomotives, tenders, or other rail vehicles in lieu of the specific arrangements in part 231.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Businesses (Railroads).

Form(s): N/A.

Respondent Universe: 765 railroads.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 6.

Total Estimated Annual Burden: 37 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $3,179.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Christopher S. Van Nostrand,

Acting Deputy Chief Counsel.

[FR Doc. 2023–27314 Filed 12–12–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[DOT–OST–2023–0137]

Advisory Committee on Transportation Equity (ACTE); Notice of Public Meeting

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: DOT OST announces a meeting of ACTE, which will take place via Zoom Webinar.

DATES: The meeting will be held Friday, January 5, 2023, from 2:30 to 4:30 p.m. Eastern Time. Requests for accommodations because of a disability must be received by Friday, December 22. Requests to submit questions must be received no later than Friday, December 22. The registration form will close on Thursday, January 4.

ADDRESSES: The meeting will be held via Zoom. Those members of the public who would like to participate virtually should go to *https://www.transportation.gov/mission/civil-rights/advisory-committee-transportation-equity-meetings-materials* to access the meeting, a detailed agenda for the entire meeting, meeting minutes, and additional information on ACTE and its activities.

FOR FURTHER INFORMATION CONTACT: Sandra Norman, Senior Advisor and Designated Federal Officer, Departmental Office of Civil Rights, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, (804) 836–2893, *ACTE@dot.gov.* Any ACTE-related request or submissions should be sent via email to the point of contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Purpose of the Committee

ACTE was established to provide independent advice and recommendations to the Secretary of Transportation about comprehensive, interdisciplinary issues related to civil rights and transportation equity in the planning, design, research, policy, and advocacy contexts from a variety of transportation equity practitioners and community leaders. Specifically, the Committee will provide advice and recommendations to inform the Department's efforts to:

Implement the Agency's Equity Action Plan and Strategic Plan, helping to institutionalize equity into Agency programs, policies, regulations, and activities;

Strengthen and establish partnerships with overburdened and underserved communities who have been historically underrepresented in the Department's outreach and engagement, including those in rural and urban areas;

Empower communities to have a meaningful voice in local and regional transportation decisions; and

Ensure the compliance of Federal funding recipients with civil rights laws and nondiscrimination programs, policies, regulations, and activities.

Meeting Agenda

The agenda for the meeting will consist of:

Opening remarks
ACTE Community Check-In
Brief discussion of ACTE standards
Review of Department updates
Discussion of ACTE rolling recommendations
Open discussion with the public and Committee members
Discussion on guidance for the next round of rolling recommendations

Closing remarks

Meeting Participation

Advance registration is required. Please register at *https://strategix management.zoom.us/webinar/register/WN_SurX9jTAR5CxpX652egeZw#/registration* by the deadline referenced in the **DATES** section. The meeting will be open to the public for its entirety. The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the point of contact listed in the **FOR FURTHER INFORMATION CONTACT** section. Questions from the public will be answered during the public comment period only at the discretion of the ACTE chair, vice chair, and designated Federal officer. Members of the public may submit written comments and questions to the point of contact listed in the **FOR FURTHER INFORMATION CONTACT** section on the topics to be considered during the meeting by the deadline referenced in the **DATES** section.

Dated: December 8, 2023.

Irene Marion,

Director, Departmental Office of Civil Rights.

[FR Doc. 2023–27317 Filed 12–12–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, ''OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches.''

DATES: Comments must be received by February 12, 2024.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0321, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 293–4835.

Instructions: You must include ''OCC'' as the agency name and ''1557–0321'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' from the drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of the Treasury'' and then click ''Submit.'' This information collection can be located by searching OMB control number ''1557–0321'' or ''OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 generally requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the renewal/revision of this collection.

Title: OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches.

OMB Control No.: 1557–0321.

Description: The OCC's guidelines, codified in 12 CFR part 30, appendix D, establish minimum standards for the design and implementation of a risk governance framework for insured national banks, insured Federal savings associations, and insured Federal branches of a foreign bank (banks). The guidelines apply to covered banks. A covered bank is a bank with average total consolidated assets: (i) equal to or greater than $50 billion; (ii) less than $50 billion if that bank's parent company controls at least one insured national bank or insured Federal savings association that has average total consolidated assets of $50 billion or greater; or (iii) less than $50 billion, if the OCC determines such bank's operations are highly complex or otherwise present a heightened risk as

to warrant the application of the guidelines. The guidelines also establish minimum standards for a board of directors in overseeing the framework's design and implementation. These guidelines were finalized on September 11, 2014.[1] The OCC is now seeking to renew the information collection associated with these guidelines. The standards contained in the guidelines are enforceable under section 39 of the Federal Deposit Insurance Act (FDIA),[2] which authorizes the OCC to prescribe operational and managerial standards for insured national banks, insured Federal savings associations, and insured Federal branches of a foreign bank.

The guidelines formalize the OCC's heightened expectations program. The guidelines also further the goal of the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 to strengthen the financial system by focusing management and boards of directors on improving and strengthening risk management practices and governance, thereby minimizing the probability and impact of future financial crises. The standards for the design and implementation of the risk governance framework, which contain collections of information, are as follows:

Standards for Risk Governance Framework

Covered banks should establish and adhere to a formal, written risk governance framework designed by independent risk management. The framework should include delegations of authority from the board of directors to management committees and executive officers and risk limits for material activities. The framework should be approved by the board of directors or the board's risk committee, and it should be reviewed and updated, at least annually, by independent risk management.

Front Line Units

Front line units should take responsibility and be held accountable by the chief executive officer (CEO) and the board of directors for appropriately assessing and effectively managing all of the risks associated with their activities. In fulfilling this responsibility, each front line unit should, either alone or in conjunction with another organizational unit that has the purpose of assisting a front line unit: (i) assess, on an ongoing basis, the material risks associated with its activities and use such risk assessments as the basis for fulfilling its responsibilities and for determining if actions need to be taken to strengthen risk management or reduce risk given changes in the unit's risk profile or other conditions and (ii) establish and adhere to a set of written policies that include front line unit risk limits. Such policies should ensure risks associated with the front line unit's activities are effectively identified, measured, monitored, and controlled, consistent with the covered bank's risk appetite statement, concentration risk limits, and all policies established within the risk governance framework. Front line units should also establish and adhere to procedures and processes, as necessary to maintain compliance with the policies described in (ii). Front line units should furthermore adhere to all applicable policies, procedures, and processes established by independent risk management. Front line units should also develop, attract, and retain talent and maintain staffing levels required to carry out the unit's role and responsibilities effectively; establish and adhere to talent management processes; and establish and adhere to compensation and performance management programs.

Independent Risk Management

Independent risk management should oversee the covered bank's risk-taking activities and assess risks and issues independent of the front line units. In fulfilling these responsibilities, independent risk management should: (i) take responsibility and be held responsible by the CEO and the board of directors for designing a comprehensive written risk governance framework that meets the guidelines and is commensurate with the size, complexity, and risk profile of the covered bank; (ii) identify and assess, on an ongoing basis, the covered bank's material aggregate risks and use such risk assessments as the basis for fulfilling its responsibilities and for determining if actions need to be taken to strengthen risk management or reduce risk given changes in the covered bank's risk profile or other conditions; (iii) establish and adhere to enterprise policies that include concentration risk limits that state how aggregate risks within the covered bank are effectively identified, measured, monitored, and controlled, consistent with the covered bank's risk appetite statement and all policies and processes established within the risk governance framework; (iv) establish and adhere to procedures and processes, as necessary, to ensure compliance with policies in (iii); (v) identify and communicate to the CEO and either the board of directors or the board's risk committee any material risks and significant instances where the independent risk management's assessment of risk differs from that of a front line unit and any significant instances where a front line unit is not adhering to the risk governance framework; (vi) identify and communicate to the board of directors or the board's risk committee material risks and significant instances where independent risk management's assessment of risk differs from that of the CEO and significant instances where the CEO is not adhering to, or not holding front line units accountable for adhering to, the risk governance framework; and (vii) develop, attract, and retain talent and maintain the staffing levels required to carry out the unit's role and responsibilities effectively while establishing and adhering to talent management processes and compensation and performance management programs.

Internal Audit

Internal audit should ensure that the covered bank's risk governance framework complies with the guidelines and is appropriate for the size, complexity, and risk profile of the covered bank. It should maintain a complete and current inventory of all of the covered bank's material processes, product lines, services, and functions and assess the risks, including emerging risks, associated with each. These risks collectively provide a basis for the audit plan. Internal audit should establish and adhere to an audit plan that: (i) is periodically reviewed and updated; (ii) takes into account the covered bank's risk profile, emerging risks, and issues; and (iii) establishes the frequency with which activities should be audited. The audit plan should require internal audit to evaluate the adequacy of and compliance with policies, procedures, and processes established by front line units and independent risk management under the risk governance framework. Significant changes to the audit plan should be communicated to the board's audit committee. Internal audit should report, in writing, conclusions, material issues, and recommendations from audit work carried out under the audit plan to the board's audit committee. Reports should identify the root cause of any material issues and include: (i) a determination of whether the root cause creates an issue that has an impact on one or more organizational units within the covered bank; and (ii) a determination of the effectiveness of

[1] 79 FR 54518.

[2] 12 U.S.C. 1831p–1. Section 39 was enacted as part of the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102–242, section 132(a), 105 Stat. 2236, 2267–70.

front line units and independent risk management in identifying and resolving issues in a timely manner. Internal audit should establish and adhere to processes for independently assessing the design and ongoing effectiveness of the risk governance framework on at least an annual basis. The independent assessment should include a conclusion on the covered bank's compliance with the standards set forth in the guidelines. Internal audit should identify and communicate to the board's audit committee significant instances where front line units or independent risk management are not adhering to the risk governance framework. Internal audit should establish a quality assurance program that ensures internal audit's policies, procedures, and processes: (i) comply with applicable regulatory and industry guidance; (ii) are appropriate for the size, complexity, and risk profile of the covered bank; (iii) are updated to reflect changes to internal and external risk factors, emerging risks, and improvements in industry internal audit practices; and (iv) are consistently followed. Internal audit should develop, attract, and retain talent and maintain staffing levels required to effectively carry out its role and responsibilities. Internal audit should establish and adhere to talent management processes and compensation and performance management programs that comply with the guidelines.

Strategic Plan

The CEO, with input from front line units, independent risk management, and internal audit, should be responsible for the development of a written strategic plan that covers, at a minimum, a three-year period. The board of directors should evaluate and approve the plan and monitor management's efforts to implement the strategic plan at least annually. The plan should: (i) include a comprehensive assessment of risks that currently impact the covered bank or that could have an impact on the covered bank during the period covered by the strategic plan; (ii) articulate an overall mission statement and strategic objectives for the covered bank with an explanation of how the covered bank will update the risk governance framework to account for changes to its risk profile projected under the strategic plan; and (iii) be reviewed, updated, and approved due to changes in the covered bank's risk profile or operating environment that were not contemplated when the plan was developed.

Risk Appetite Statement

A covered bank should have a comprehensive written statement that articulates its risk appetite and serves as the basis for the risk governance framework. The statement should contain both qualitative components that describe a safe and sound risk culture and how the covered bank will assess and accept risks and quantitative limits that include sound stress testing processes and address earnings, capital, and liquidity.

Risk Limit Breaches

A covered bank should establish and adhere to processes that require front line units and independent risk management to: (i) identify breaches of the risk appetite statement, concentration risk limits, and front line unit risk limits; (ii) distinguish breaches based on the severity of their impact; (iii) establish protocols for when and how to inform the board of directors, front line unit management, independent risk management, internal audit, and the OCC regarding a breach; (iv) provide a written description of the breach resolution; and (v) establish accountability for reporting and resolving breaches that include consequences for risk limit breaches that take into account the magnitude, frequency, and recurrence of breaches.

Concentration Risk Management

The risk governance framework should include policies and supporting processes appropriate for the covered bank's size, complexity, and risk profile for effectively identifying, measuring, monitoring, and controlling the covered bank's concentrations of risk.

Risk Data Aggregation and Reporting

The risk governance framework should include a set of policies, supported by appropriate procedures and processes, designed to provide risk data aggregation and reporting capabilities appropriate for the covered bank's size, complexity, and risk profile and to support supervisory reporting requirements. Collectively, these policies, procedures, and processes should provide for: (i) the design, implementation, and maintenance of a data architecture and information technology infrastructure that support the covered bank's risk aggregation and reporting needs during normal times and during times of stress; (ii) the capturing and aggregating of risk data and reporting of material risks, concentrations, and emerging risks in a timely manner to the board of directors and the OCC; and (iii) the distribution of risk reports to all relevant parties at a frequency that meets their needs for decision-making purposes.

Talent and Compensation Management

A covered bank should establish and adhere to processes for talent development, recruitment, and succession planning. The board of directors or appropriate committee should review and approve a written talent management program. A covered bank should also establish and adhere to compensation and performance management programs that comply with any applicable statute or regulation.

Board of Directors Training and Evaluation

The board of directors of a covered bank should establish and adhere to a formal, ongoing training program for all directors. The board of directors should also conduct an annual self-assessment.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 27.

Estimated Burden per Respondent: 3,776 hours.

Estimated Total Annual Burden: 101,952 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

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

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Patrick T. Tierney,

Assistant Director, Bank Advisory, Office of the Comptroller of the Currency.

[FR Doc. 2023–27294 Filed 12–12–23; 8:45 am]

BILLING CODE 4810–33–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meetings

TIME AND DATE: December 7, 2023, 10 a.m. to 1 p.m., Central Time.

PLACE: The meeting took place at the Hyatt Place San Antonio/Riverwalk Hotel, 601 S St Mary's St., San Antonio, TX 78205. This meeting was accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may have called (i) 1–929–205–6099 (US Toll) or 1–669–900–6833 (US Toll), Meeting ID: 996 4555 2218, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare was *https://kellen.zoom.us/meeting/register/tJ0rc-ytqzkoG9zdIEj7RIgwASUMMlFa89UA.*

STATUS: This meeting was open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the ''Board'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting included:

Proposed Agenda

I. Welcome and Call to Order—UCR Board Chair

The UCR Board Chair will welcome attendees, call the meeting to order, call roll for the Board, confirm the presence of a quorum, and facilitate self-introductions.

II. Verification of Publication of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify publication of the meeting notice on the UCR website and distribution to the UCR contact list via email, followed by subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Board Agenda—UCR Board Chair

For Discussion and Possible Board Action

The proposed Agenda will be reviewed. The Board will consider action to adopt.

Ground Rules

➢ Board actions taken only in designated areas on the agenda.

IV. Approval of Minutes of the September 28, 2023 UCR Board Meeting—UCR Board Chair

For Discussion and Possible Board Action

Draft Minutes from the September 28, 2023 UCR Board meeting will be reviewed. The Board will consider action to approve.

V. Report of FMCSA—FMCSA Representative

The Federal Motor Carrier Safety Administration (FMCSA) will provide a report on any relevant agency activity.

VI. Reopening of Nominations for the Position of Vice-Chair of the UCR Board and Following the Completion of the Nominating Process a Final Vote Recommending to the U.S. DOT Secretary/FMCSA Designation a Director To Serve as Vice-Chair of the UCR Board—UCR Board Chair

For Discussion and Possible Board Action

The UCR Board Chair will entertain a motion, second, and vote to reopen nominations for the position of Vice-Chair of the UCR Board. The name(s) of all nominees will then be submitted to the Board for a vote. The name of the Director receiving the most votes will then be forwarded to the US DOT/FMCSA for FMCSA's consideration and possible designation as Vice-Chair of the UCR Board.

VII. 2021 UCR Financial Audit Update—UCR Executive Director and a Kellen Representative

The UCR Executive Director and a Kellen Representative will provide an update on the 2021 financial audit conducted by Warren Averett.

VIII. Subcommittee Reports

Audit Subcommittee—UCR Audit Subcommittee Chair

A. The Audit Subcommittee Recommends to the UCR Board That the UCR Board Replace the Current Retreat Audit Program With a Program That Relies on NRS Roadside Inspection Data—UCR Audit Subcommittee Chair, UCR Audit Subcommittee Vice-Chair and a Seikosoft Representative

For Discussion and Possible Board Action

The UCR Audit Subcommittee Chair will lead a discussion on options to replace the Retreat Audit Program currently utilized by the States with an automated roadside inspection data driven audit for non-IRP and IRP plated commercial motor vehicles and the motor carriers operating these types of registered equipment. The Board may take action to replace the current retreat audit program with a new program that relies on NRS roadside inspection data.

B. The Audit Subcommittee Recommends a Policy for Closure of Participating and Non-Participating States Focused Anomaly Reviews (FARs)—UCR Audit Subcommittee Chair and UCR Audit Subcommittee Vice-Chair

For Discussion and Possible Board Action

The UCR Audit Subcommittee Chair will lead a discussion on the required steps to close both participating and non-participating state FARs. The Board may take action to adopt a policy for closure of FARs from participating and non-participating states.

Finance Subcommittee—UCR Finance Subcommittee Chair

A. 2025 Registration Fee Submission—UCR Finance Subcommittee Chair

The UCR Finance Subcommittee Chair will provide an update on the 2025 registration fee recommendation approved at the last Board meeting.

B. Review and Approval of 2024 UCR Administrative Budget—UCR Depository Manager and UCR Finance Subcommittee Chair

For Discussion and Possible Board Action

The UCR Depository Manager and UCR Finance Subcommittee Chair will lead a discussion regarding the proposed 2024 UCR administrative budget. The Finance Subcommittee recommends approval of the 2024 proposed administrative budget. The Board may take action to approve the proposed 2024 administrative budget.

Education and Training Subcommittee—UCR Education and Training Subcommittee Chair

Update on Current and Future Training Initiatives—UCR Education and Training Subcommittee Chair

The UCR Education and Training Subcommittee Chair will provide an update on current and planned future training initiatives.

Industry Advisory Subcommittee—UCR Industry Advisory Subcommittee Chair

Update on Current Initiatives—UCR Industry Advisory Subcommittee Chair

The UCR Industry Advisory Subcommittee Chair will provide an update on current and planned

initiatives regarding motor carrier industry concerns.

Enforcement Subcommittee—UCR Enforcement Subcommittee Chair

Update on Current Initiatives—UCR Enforcement Subcommittee Chair

The UCR Enforcement Subcommittee Chair will provide an update on current and planned initiatives.

Dispute Resolution Subcommittee—UCR Dispute Resolution Subcommittee Chair

Update on Current Initiatives—UCR Dispute Resolution Subcommittee Chair

The UCR Dispute Resolution Subcommittee Chair will provide an update on planned initiatives.

IX. Contractor Reports—UCR Board Chair

UCR Executive Director's Report

The UCR Executive Director will provide a report covering his recent activity for the UCR Plan.

UCR Administrator Report (Kellen)

The UCR Chief of Staff will provide a management report covering recent activity for the Depository, Operations, and Communications.

DSL Transportation Services, Inc.

DSL Transportation Services, Inc. will report on the latest data from the FARs program, discuss motor carrier inspection results, pilot projects and other matters.

Seikosoft

Seikosoft will provide an update on recent/new activity related to the National Registration System.

X. Other Business—UCR Board Chair

The UCR Board Chair will call for any other business, old or new, from the floor.

XI. Adjournment—UCR Board Chair

The UCR Board Chair will adjourn the meeting.

The agenda was available no later than 5 p.m. Eastern time, November 27, 2023, at: *https://plan.ucr.gov.*

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2023–27384 Filed 12–11–23; 4:15 pm]

BILLING CODE 4910–YL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0862]

Agency Information Collection Activity: Decision Review Request: Higher-Level Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 12, 2024.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0862'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov*. Please refer to ''OMB Control No. 2900–0862'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 115–55; 38 U.S.C. 3501–3521.

Title: Decision Review Request: Higher-Level Review (VA Form 20–0996).

OMB Control Number: 2900–0862.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 20–0996, *Decision Review Request: Higher-Level Review* is used by a claimant to formally request a Higher-Level Review of an initial VA decision, in accordance with the Appeals Modernization Act. The information collected is used by VA to identify the issues which the claimant wishes to dispute in their request for a Higher-Level Review. Additionally, the information collected is used to schedule a telephonic informal conference, when requested.

This is being submitted as a revision due to an increase in the burden hours based on an increase in the number of respondents using this form. There were minor changes made to the instructions to make the instructions easier to understand and the requirement to sign in ink was removed. Minor changes were also made to the Optional Informal Conference and Issues for Higher-Level Review sections to make these sections easier for claimants to understand and complete.

Affected Public: Individuals and households.

Estimated Annual Burden: 49,650 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 198,600.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer, (Alt.) Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–27360 Filed 12–12–23; 8:45 am]

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Part II

Department of the Interior

43 CFR Part 10
Native American Graves Protection and Repatriation Act Systematic Processes for Disposition or Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony; Final Rule

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 10

[NPS–WASO–NAGPRA–NPS0036506; PPWOCRADN0–PCU00RP14.550000]

RIN 1024–AE19

Native American Graves Protection and Repatriation Act Systematic Processes for Disposition or Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: This final rule revises and replaces definitions and procedures for lineal descendants, Indian Tribes, Native Hawaiian organizations, museums, and Federal agencies to implement the Native American Graves Protection and Repatriation Act of 1990. These regulations clarify and improve upon the systematic processes for the disposition or repatriation of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony. These regulations provide a step-by-step roadmap with specific timelines for museums and Federal agencies to facilitate disposition or repatriation. Throughout these systematic processes, museums and Federal agencies must defer to the Native American traditional knowledge of lineal descendants, Indian Tribes, and Native Hawaiian organizations.

DATES: This rule is effective January 12, 2024. Comments on the information collection requirements in this final rule must be submitted to the Office of Management and Budget by January 12, 2024.

ADDRESSES: All public comments and attachments received, as well as supporting documentation used in the preparation of these regulations, are available online at *https://www.regulations.gov* in Docket No. NPS–2022–0004. 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 information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR–ICCO), 13461 Sunrise Valley Drive, Reston, VA 20191. Please include ''1024–AE19'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Melanie O'Brien, National NAGPRA Program, National Park Service, (202) 354–2201, *melanie_o'brien@nps.gov.* Questions regarding the NPS's information collection request (ICR) may be submitted to Phadrea Ponds, NPS Information Collection Clearance Officer, *phadrea_ponds@nps.gov*. Please include ''1024–AE19'' in the subject line of your email request. In compliance with the Providing Accountability Through Transparency Act of 2023, the plain language summary of the proposal is available on *https://www.regulations.gov* in the docket for this rulemaking.

SUPPLEMENTARY INFORMATION:

I. Background

On November 16, 1990, President George Bush signed into law the Native American Graves Protection and Repatriation Act (NAGPRA or Act) (25 U.S.C. 3001, *et seq.*). The Act recognizes the rights of lineal descendants, Indian Tribes, and Native Hawaiian organizations (NHOs) in Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. The Secretary of the Interior is responsible for promulgating regulations to carry out the provisions of the Act and delegated this authority to the Assistant Secretary. Since 1993, the Department of the Interior (Department) has published rules under the title ''Native American Graves Protection and Repatriation Act Regulations'' including:

- RIN 1024–AC07, 1993 Proposed Rule (58 FR 31122, May 28, 1993) and 1995 Final Rule (60 FR 62134, December 4, 1995);
- RIN 1024–AC84, Civil Penalties Final Rule (68 FR 16354, April 3, 2003) and Future Applicability Final Rule (72 FR 13184, March 21, 2007);
- RIN 1024–AD68, 2007 Proposed Rule Disposition of Culturally Unidentifiable Human Remains (72 FR 58582, October 16, 2007) and 2010 Final Rule Disposition of Culturally Unidentifiable Human Remains (75 FR 12378, March 15, 2010); and
- RIN 1024–AE00, Disposition of Unclaimed Cultural Items Final Rule (80 FR 68465, November 5, 2015).

II. Summary of Public Comments and Responses

The Department (we) published a proposed rule (RIN 1024–AE19) in the **Federal Register** on October 18, 2022 (87 FR 63202, hereafter 2022 Proposed Rule) to clarify and improve upon the systematic processes for disposition or repatriation of Native American human remains and cultural items. We accepted public comments for 90 days via the mail, hand delivery, and the Federal eRulemaking Portal at *https://www.regulations.gov.* After considering several requests for extensions of the public comment period beyond the original 90 days, we extended the comment period an additional 14 days until January 31, 2023.

All comments received by the deadline are publicly available on *https://www.regulations.gov,* Docket No. NPS–2022–0004. During the comment period, we received a total of 206 submissions which included 181 individual submissions posted to the docket and 25 attachments as identified by the submitter. When necessary, we have cited to specific submissions as NPS–2022–0004–XXXX. We received submissions from a range of sources including individual members of the public, Indian Tribes, museums, and organizations. Table 1 shows the number of submissions by type of submitter.

TABLE 1—SUBMISSIONS RECEIVED BY SUBMITTER

Submitter	Submissions
Individuals	95
Federally recognized Indian Tribes*	48
Museums	13
Museum or scientific organizations**	9
Native American organizations	8
Duplicate submissions	4

TABLE 1—SUBMISSIONS RECEIVED BY SUBMITTER—Continued

Submitter	Submissions
Indian groups without Federal recognition	3
Federal Advisory Review Committee	1
Native Hawaiian organizations	0

* Two submissions were on behalf of multiple Indian Tribes making the total number of Indian Tribes represented 55.

** These submissions are by professional organizations representing museums or scientific professionals and they are separate and distinct from the museums above.

In these final regulations, we focus our discussion on changes from the 2022 Proposed Rule based on comments we received during the comment period and our further consideration of the issues raised. For background on the statutory and legislative history and case law relevant to these regulations, we refer the reader to the previously published rules under the title ''Native American Graves Protection and Repatriation Act Regulations'' referenced in I. Background. We reviewed and considered all comments prior to developing this final rule. We have provided 124 summaries of comments and our direct responses below; we combined similar comments where appropriate. Table 2 shows the largest number of comments by issue.

TABLE 2—TOP 10 ISSUES BY NUMBER OF COMMENTS

Issue	Number of comments	See comment and response
Changes to ''affiliation''	102	Comment 58. to 61.
Role of Indian groups without Federal recognition	53	Comment 3. and 39. See also Comment 91. and 114.
Steps for consultation	53	Comment 64.
Timelines under Subpart C	46	Comment 92.
Require consent or consultation before allowing scientific study.	45	Comment 15.
Duty of care, including scientific study	44	Comment 12. to Comment 17.
''Possession or control''	44	Comment 49.
Specific steps in Subpart C	42	Comment 94.
Purpose of this rule	42	Comment 9.
''Consultation''	39	Comment 30.

In addition, we received 109 comments generally supporting the regulations and the changes (see Comment 1.), and we received 96 comments on the estimated burden and information collection requirements for the revised regulations (see Comment 4.). We received 43 comments requesting action by the Department of the Interior outside of the scope of these regulations (see Comment 6.). Four comments requested changes in these regulations from business days to calendar days, which is significant in that it impacts all the timelines under this final rule (see Comment 19).

In response to these comments and others discussed in detail below, we made the following major changes in the final rule:

1. Removed ''geographical affiliation'' in its entirety, simplified the process for cultural affiliation to provide that one type of information, including geographical information, is sufficient for cultural affiliation, and replaced ''preponderance of the evidence'' with ''clearly or reasonably identify'' (§ 10.3 Determining cultural affiliation).

2. Removed all reference to Indian groups without Federal recognition and prioritized the rights of federally recognized Indian Tribes in disposition and repatriation (§ 10.2 Definitions for this part ''Indian Tribe'' and §§ 10.7(d) Disposition and 10.10(k) Repatriation).

3. Required free, prior, and informed consent before any exhibition of, access to, or research on human remains or cultural items (§ 10.1(d) Duty of Care).

4. Extended the timeline to allow five years (rather than two as proposed) for museums and Federal agencies to consult and update inventories of human remains and associated funerary objects (§ 10.10(d) Repatriation).

5. Replaced ''business days'' with ''calendar days'' and extended deadlines as a result (§ 10.1(f) Deadlines).

6. Revised ''consultation'' to provide more instruction on goals and process (§ 10.2 Definitions for this part ''Consultation'').

7. Removed the requirement for written requests to consult from Indian Tribes or NHOs, and therefore removed the requirement for a museum or Federal agency to respond within a set timeframe (§§ 10.4(b), 10.9(b), and 10.10(b) Initiate consultation).

Despite receiving many comments, we have not revised the definitions or application of ''possession or control'' and ''custody.'' As in the Act, ''possession or control'' is a jurisdictional requirement for human remains or cultural items subject to these regulations and for repatriation (§ 10.2 Definitions for this part ''custody'' and ''possession or control'').

A. General Comments

1. Comment: We received 109 comments generally supporting these regulations and the overall goals of disposition or repatriation. Comments from individuals, including many students in high school, college, and graduate school, offered support for the general principle of returning ancestors and objects to lineal descendants, Indian Tribes, and NHOs. Museum and museum and scientific organizations supported the overall goals to clarify and improve upon the systematic processes for disposition and repatriation. A few comments from museums focused on the impact the revised regulations would have on the museum profession. One comment stated ''Overall, the language in the proposed draft reflects contemporary best practices around repatriation and codification in 43 CFR part 10 makes sense in an effort to standardize repatriation activities across diverse institutions, agencies, and Tribes'' (NPS–2022–0004–0129). Another museum commented:

> A fundamental shift in priorities is necessary at institutions who have fallen short in their efforts to comply with the legislation's intent. It is time for institutions to prioritize this work, in both the allocation of resources and the ethical commitment to genuinely engage in consultation with Native Nations. The passage of these proposed revisions is a necessary step towards addressing the legacy of colonial injustices imposed upon Indigenous Peoples in the United States (NPS–2022–0004–0115).

Many Indian Tribes and Native American organizations also expressed appreciation and support for the revisions and felt the changes better reflected Congressional intent. One Indian Tribe stated:

> We appreciate the difficult work and coordination the Department has undertaken to make vast and meaningful changes to shift the burden of NAGPRA compliance to where it belongs—to federal agencies and museums. We explain below several changes that we support. While in the interest of brevity, we focus our comments on areas of concern, the Department should understand that our Tribes welcome this proposed rule. With our comments below addressed, we believe the new regulations will better implement NAGPRA and facilitate the repatriation of our Ancestors and sacred objects as Congress intended (NPS–2022–0004–0158).

DOI Response: As discussed more fully throughout this document, we agree with many of these statements; and, as a result, we are publishing this final rule. We appreciate the comments from individuals, especially from students, not only for supporting this effort but for engaging in the rulemaking process. We appreciate the supportive, yet constructive comments from museums and museum and scientific organizations. We are indebted to the many Indian Tribes who provided comments as well as those who provided input during consultation throughout the process of developing these regulations.

2. Comment: We received nine comments generally objecting to the changes to these regulations. One comment stated the process was more of a political statement than a necessity. One comment supported the idea of clarifying the repatriation process but felt the proposed rule would undermine existing efforts and result in a rushed, transactional process. One comment felt the proposed regulations would hinder meaningful consultation and impede the progress that museums, Indian Tribes, and NHOs have made so far. One comment believed the revisions compounded difficulties that both museums and Indian Tribes already face and would reduce efficiency rather than improve it. One comment stated that in addition to a lack of statutory authority for some of the revisions, the Department had not identified any inadequacies or difficulties in the existing regulations, particularly with respect to Subpart B. One comment saw the revisions as a reversal rather than a strengthening of Congressional intent and stated that, as the drafted, the revisions are ''based upon 'restorative justice' rather than the words and intent of Congressional legislation, [and] has gone too far.'' The comment stated the revisions reflected a larger cultural shift and that Native activist groups ''have urged aggressive claims for repatriation and demanded that [T]ribal permission be sought for the transfer of objects long in legal circulation'' (NPS–2022–0004–0188). Three comments from Indian Tribes expressed concerns that the revisions would slow down or even stop the work of repatriation. All three comments believed the revisions are too extensive and too complex and will, ultimately, create more issues than the revisions resolve. One of these comments was especially concerned that the revisions did not address two central and persistent issues that Indian Tribes have long asked for: enhanced enforcement and protection of private information.

DOI Response: As discussed more fully throughout this document, we disagree with many of these statements; and, as a result, we are proceeding with publication of this final rule despite these objections. These regulations reflect and implement the legal requirements established by Congress. We understand that some of the timelines under this final rule will require faster action by museums and Federal agencies than under the existing regulations. However, certain deadlines can be extended or actions delayed, provided the appropriate lineal descendant, Indian Tribe, or NHO has agreed to extend or delay the process. We believe the changes in these regulations will enhance meaningful consultation and ensure that resulting efforts are based on consensus or agreement. We believe that the increased transparency and communication required by these regulations will resolve some of the existing challenges faced by all parties. As discussed in more detail throughout this document, these revisions are within the Secretary's statutory authority and based on over 30 years of input, comment, and experience in implementing the Act. As reflected in the supportive comments above, these revisions reflect best practices and changes in the wider professional disciplines, while at the same time adhering to the language and limits provided by Congress. We have incorporated requests from Indian Tribes and NHOs to the maximum extent possible, but we do not believe these revisions will stop the work of repatriation or create more issues than are resolved. We do anticipate that the work of repatriation may be slowed as all parties adjust to the revisions in these regulations and especially as all parties re-evaluate past practices considering these simplified, clarified, and streamlined regulations. We reiterate here, as we have throughout this document, that the goal of this final rule is to clarify and improve the systematic processes for disposition and repatriation by making the requirements clear to all parties involved.

3. Comment: We received 53 comments on the standing of Indian groups without Federal recognition under these regulations. Of that total, 40 comments supported giving standing to Indian groups without Federal recognition while 13 comments opposed it. Some comments also suggested changes to 25 CFR part 83 to recognize more groups and that the National NAGPRA Program should help educate groups on how to achieve Federal recognition.

DOI Response: The recognition process and training concerning it are outside the scope of these regulations. Furthermore, as discussed below under that definition, these regulations cannot expand the definition of ''Indian Tribe'' beyond that provided in the Act. Indian groups without Federal recognition, including State recognized tribes, are not completely excluded from the disposition or repatriation processes. As is the current practice, Indian groups without Federal recognition can work with federally recognized Indian Tribes as part of a joint claim for disposition or joint request for repatriation. See also Comment 39.

4. Comment: We received 96 comments about the estimated burden and related information collection requirements of the proposed regulations. Of that total, nine comments supported some part of the burden estimate, including agreeing that there is a wide variation in the actual time required because of differences in size and complexity of the required responses. Two of these comments supported the overall burden estimate and agreed that the changes would yield long-term savings, despite the short-term increased costs. Five of these comments agreed that the collection of information is necessary and has a practical utility. One comment specifically stated the information collected had no practical utility and should not be required. Five comments suggested one way to minimize the burden of these regulations was for the Department to provide online resources to assist with identifying Indian Tribes with potential cultural affiliation.

Eighteen comments generally objected to the burden estimate. Many of these comments felt the methods and assumptions were flawed and did not

reflect the actual amount of effort required to comply with these regulations. Several comments stated that the proposed regulations significantly expanded the administrative, staffing, and financial burdens already imposed on museums and Federal agencies and that museums and Federal agencies are already facing capacity and resource limitations that prevent them from completing the already burdensome requirements under the existing regulations. Five comments stated that, regarding the quality, utility, and clarity of the information to be collected, there was a disconnect between oral statements by the National Park Service staff and the proposed regulations on the requirements for consultation and reporting (see NPS–2022–0004–0081). A few comments stated additional financial resources must be provided before any additional tasks can be required and that it was unreasonable and misguided to expect museums and Federal agencies to comply without providing additional funds. Two comments stated that the estimates should not rely on responses from the last three years to estimate costs due to the pandemic. One comment requested that the General Accountability Office estimate the costs of the proposed regulations. One comment questioned the authority of the Department to collect information that could be used to monitor the repatriation process.

A total of 31 comments specifically discussed the impact of these regulations on Indian Tribes and NHOs and suggested some possible solutions to lessen the burden. Of that total, 18 comments suggested the Department create a dedicated grant program for Indian Tribes and NHOs. One of these comments expressed that museums have been wasting grant funds on unnecessary tasks since 1994 and more grant funding should be provided to Indian Tribes and NHOs. Five comments felt the burden on Indian Tribes and NHOs in these regulations was underestimated, too high, or prohibitively expensive. One comment from an individual stated the burden on Indian Tribes and NHOs could not be minimized with technology due to a general lack of access to the internet in Indian Country. One comment requested the regulations provide more funding as well as flexibility for Indian Tribes to engage with repatriation at their own pace. Seven comments questioned the costs to Indian Tribes under Subpart B of the proposed regulations, which some estimated to be $40 million per year.

Eighteen comments provided input or alternative estimates for specific tasks. Two comments believe tasks are missing from the estimate, such as documentation review, correspondence after consultation, travel arrangements, hosting arrangements, inventory/packet/documentation preparation, room setup, consultation participation, documentation of consultation, administrative requirements, moving items to or from storage, and implementation of care guidance. One comment stated the costs of physical transfer should be included and, for a large repatriation, staff time alone can exceed $100,000 for physical transfer. Two comments stated the estimate for initiating consultation should be much higher, from 40 hours to at least 140 hours, to include the time required to identify consulting parties, prepare, and distribute letters or emails, and to make follow up phone calls. One comment suggested the estimate for conducting consultation be increased to provide for staff to retrieve collections from storage and travel by many representatives (sometimes up to ten people) from Indian Tribes or NHOs to conduct a physical review. Three comments stated the estimate for completing an inventory was too low as even an inventory update was an enormous undertaking that required significant time and resources. One of these comments noted that a previously prepared inventory did not reduce the necessary time, as previous inventories are generally ''woefully inadequate.'' One of these comments stated that, based on experience, it takes 10 hours to inventory one box plus an additional 6–8 hours to describe each individual or object in the box and an additional 40 hours per site to produce a final report. The comment estimated that for 200 boxes, it would take 2,000 hours to inventory the boxes, and this did not include additional time to describe each object or write a site report (NPS–2022–0004–0125). One comment stated the estimate for a summary was also underestimated and stated it takes anywhere from 6 months to two years to prepare a summary and then an additional six months for illustration and documentation of the objects. Five comments believe the estimate for preparing notices (either for inventory completion or intended to repatriation) were underestimated. One of these comments estimated it takes 120 hours to facilitate a notice of inventory completion plus additional time to verify the information with a physical review. Four of these comments suggested that for each notice type, the minimum amount of time required was 2 hours while the maximum amount of time was between 10 and 30 hours per notice, plus additional time to consult on the draft notice. One comment stated evaluating competing requests and resolving stays of repatriation required significantly more time, estimating between 100 and 1,000 hours, especially when considering the involvement of legal departments, executives, and board members in those tasks. Two comments stated the rate used to calculate costs should be $100 to $120 per hour.

Fourteen comments provided estimates for the total costs of Subpart C of these regulations. For Indian Tribes and NHOs several estimated a cost of $17.2 million per year. For museums and Federal agencies one comment estimated $19.4 million per year. The two estimates were developed by one individual, using grant awards from 2011 to 2021 to estimate the average cost for a notice of inventory completion ($14,416 per notice). After calculating an estimated cost for museums and Federal agencies to comply with the proposed regulations, the estimate calculated the costs for Indian Tribes and NHOs by using the percentage of funding awarded in grants from 2011–2021 to museums (58%) and Indian Tribes or NHOs (42%) to estimate a total burden for the proposed regulations at $91.4 million over 30 months or $36.6 million per year (see NPS–2022–0004–0174). Other comments estimated a total for museums only between $25 million and $118 million per year. One museum provided a variety of estimates based on current project budgets which ranged from $200,000 to $500,000 per project per year for one museum. The comment estimated the burden for the single museum at 19,000 hours per year ($1.273 million per year per museum assuming an hourly rate of $67/hour). When applied to all 407 museums that will be required to update inventories under these regulations, that amounts to the highest estimate of $518.1 million per year for museums alone, although the comment noted that not all museums will require the same number of hours). The same comment questioned how the Department estimated that the proposed regulations do not impose an unfunded mandate on State, local, or [T]ribal governments or the private sector of more than $100 million per year (see NPS–2022–0004–0125).

One comment detailed the hours involved in one part of a two-part project over 15 months. The first phase of the project included 13 consultation meetings which required hundreds of

hours of time by Indian Tribes and museum staff, including hundreds of phone calls. Consultants hired to develop and complete the first phase of the project spent thousands of hours on the first phase and travel expenses totaled $3,000. In the first phase, 31 notices of inventory completion were published, although the comment stated that the number of notices could be irrelevant as each notice involved a single group of Indian Tribes and one museum and could have been a single notice. The first phase of the project covered 1,021 individuals and 11,590 associated funerary objects. The comment noted that these estimates do not include the hours involved in preparation of the original inventory of human remains and associated funerary objects completed in the early 1990s. Although a total estimated cost for this phase of the project was not provided, elsewhere the comment suggested at minimum $100 to $120 an hour should be used in dollar estimates (see NPS–2022–0004–0135). Using the lower hourly figure and the number of hours provided, the estimate for the first phase of the project is $123,000 over 15 months or $98,400 per year. When applied to all 407 museums that will be required to update inventories under these regulations, it equals an estimated $40 million per year for museums.

DOI Response: We appreciate the specific input on the estimated costs for certain requirements in these regulations. We have addressed many of these comments in the revised Cost-Benefit and Regulatory Flexibility Threshold Analyses for the final regulations. We reiterate that the Department believes the short-term increased costs of these regulations are justified by the associated long-term quantitative and qualitative benefits. We believe the information collected under these regulations is necessary and any information collected by the Department under these regulations is required by the Act for administrative purposes (such as publishing notices) and is not used for monitoring or evaluating the quality of that information. The Department will develop and provide templates for all information collection requirements, and we will provide additional resources to assist with identifying consulting parties to minimize the burdens of these regulations, as discussed further in Comment 95. Any changes to the amount of available funding through grants are beyond the scope of these regulations and are the purview of Congress and the appropriations process. We cannot limit the grant awards to only Indian Tribes and NHOs as that would be inconsistent with the Act.

Regarding the hourly rate used to calculate costs, we used the Bureau of Labor Statistics (BLS) News Release USDL–23–1305, March 2023 Employer Costs for Employee Compensation—released June 16, 2023 (*https://www.bls.gov/news.release/ecec.nr0.htm,* accessed 12/1/2023). This is a standard source we have used in estimating the burden of these regulations as a part of our compliance with the Paperwork Reduction Act. Any person equates to Civil workers. Table 2 lists the hourly rate for full-time workers as $43.07, including benefits. Lineal descendants equate to Private Industry Workers: Table 6 lists the hourly rate for all workers as $40.79, including benefits. Any Affected Party, Indian Tribes/NHOs, Federal agencies, and museums equates to State and Local Government Workers. Table 3 lists the hourly rate for Professional and related Workers as $67.01, including benefits.

Regarding the impact of these regulations on Indian Tribes and NHOs, we anticipate a change in how grant funds are awarded due to the changes in these regulations. During the first five years after publication of the final regulations, grant funds will likely continue to go to consultation and documentation projects to consult and update inventories. After five years, we anticipate more grant funds will be requested by Indian Tribes or NHOs for repatriation assistance or for making requests for repatriation. As noted in Comment 102, the Notice of Funding Opportunity for NAGPRA grants is where any changes to the allowable activities for grants will be made. We do not intend to impose requirements on lineal descendants, Indian Tribes, or NHOs to respond to invitations to consult or to submit claims for disposition or requests for repatriation. Those are actions that lineal descendants, Indian Tribes, and NHOs may choose to take but are not required.

We agree there are new requirements for Indian Tribes to take certain actions under Subpart B that under the existing regulations are voluntary. We disagree that all those requirements under Subpart B are new, and we strongly disagree with the estimate provided. As discussed in Comment 70 and Comment 83, we disagree that the Act, the existing regulations, or any other regulations designate that the BIA is responsible for discovery, excavation, and disposition on Tribal lands in Alaska and the continental United States. We agree that Indian Tribes have discretion under the existing regulations in responding to a discovery on Tribal lands and that the final regulations will require Indian Tribes to respond to discoveries on Tribal land. This is to improve consistency with the Act and clarify the responsibilities in these regulations. We understand that in some cases these responsibilities may exceed the capacity or resources of an Indian Tribe, and in those cases, the Indian Tribe can delegate these responsibilities to the Bureau of Indian Affairs or another Federal agency with primary management authority. Lastly, we note that Tribal laws, policies, and administrative capacity vary greatly, and the comments do not seem to take that into account by applying a blanket assumption of the same cost for each Indian Tribe. The comments also do not consider the small number of actions on Tribal lands per year, which is not likely to significantly change based on the final regulations.

Regarding the alternative estimates provided by some comments, we believe that any estimate based on current practice or past grant awards is inherently flawed and does not account for the specific objective of the proposed and final regulations to simplify and improve the systematic processes within specific timeframes. We understand that our estimates do not reflect the actual amount of time some museums and Federal agencies currently spend on compliance with these regulations. We strongly disagree, however, that our estimates do not reflect what is required by these regulations. In the 33 years since the passage of the Act, each museum or Federal agency has approached the requirements of these regulations in different ways, and, as a result, there is a wide variation in how much time and money is spent to comply with these regulations. As noted in the proposed regulations and elsewhere in this document, one of our goals in revising the regulations is to improve efficiency and consistency in meeting these requirements. Necessarily, this will mean a difference between our estimated costs for these regulations and current practices. While we understand the objections to our estimates and the concerns about insufficient funding to carry out these requirements, the Secretary, the Assistant Secretary, and the Department are committed to changing the implementation of the Act and to clearing a path to expeditious repatriation as Congress intended.

Concerns about the financial burden of the Act and these regulations on museums were expressed even before the Act was passed. In discussing the key compromises made to the final bill

in 1990, Representative Campbell stated that limiting the inventory requirement to only human remains and associated funerary objects ''will go a long way to reduce cost to museum and at the same time encourage both sides to sit down early together to discuss their options'' (136 Cong. Rec. 31938). With this change and the authorization of a grant program to assist museums with the inventory requirements, the Association of American Museums and the Antique Tribal Arts Dealers Association withdrew their objections to the final legislation.

As envisioned by Congress, most of the requirements for repatriation under the Act should have been completed by 1995, although extensions were authorized in some cases. In 1990, the Congressional Budget Office (CBO) reviewed the Act and estimated the legislation would cost between $20 million and $50 million over five years. The main costs of the Act were in preparing inventories of human remains, estimated between $5 million and $30 million over five years, ''for museums to provide [T]ribes with the basic information required by the bill.'' The CBO acknowledged that to some extent, ''the total cost is discretionary—the more funds made available, the more accurate and comprehensive will be the information collected by museums.'' More extensive and expensive studies might be required for some human remains, but, as the CBO noted, such studies were not required by the Act. CBO noted that ''If museums were required to identify all of their holdings definitively, the costs of this bill would be significantly higher than the $30 million estimate.'' The other $15 million to $20 million in estimated costs were for identifying funerary objects and completing summaries as well as for Indian Tribes to make claims and repatriate human remains or cultural items (H. Rpt. 101–877, at 21–22).

After nearly 33 years of implementation, the total cost of repatriation is clearly discretionary, and, in addition to funds, the more time that has been available to complete an inventory of human remains, the more comprehensive, extensive, and expensive the inventories have become. After meeting the initial deadline for inventories in 1995, many museums and Federal agencies have continued to update inventories at their own discretion, going beyond what is required by the Act and the existing regulations. Under the Act and the existing regulations, an inventory of human remains only requires use of ''information possessed by such museum or Federal agency'' (25 U.S.C. 3003(a)). Yet, despite the minimum requirements, hundreds of museums and several Federal agencies submit updated inventories each year. The number of museums updating inventory data is relatively large and accounts for multiple submissions each year from a single museum because the data is updated on a case-by-case basis at the discretion of the museum.

Since 1993, the Department has provided estimated hours for tasks under these regulations as a part of its compliance with the Paperwork Reduction Act. These estimates are far below the estimates provided by some comments, but these estimates have been consistently used by the Department and reflect what the Department believes is required by the Act and these regulations. The 1993 Proposed Rule included an estimate of ''100 hours for the exchange of summary/inventory information between a museum or Federal agency and an Indian [T]ribe or Native Hawaiian organization . . .'' (58 FR 31124). From 1993 until publishing the proposed regulations in 2022, we continued to use the estimate of 100 hours per museum for a new summary or inventory. This is far less than the comment that stated a museum spends 19,000 hours per year on its inventory and summary and related tasks.

The 1993 Proposed Rule included an estimate of ''six hours per response for the notification to the Secretary, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collected information'' (58 FR 31124). In 2012, we increased this estimate to 10 hours per notice. This is less than the estimate provided in the comments of 120 hours to facilitate a notice, including gathering and maintaining data and reviewing and verifying the information, or the estimated range of two hours to 30 hours, for a median of 16 hours, to just complete the notice template. The estimate based on previous grants suggests a notice costs $14,416 each which equates to between 120 hours and 225 hours per notice, depending on the hourly rate applied. We agree with the one comment that stated the number of notices is irrelevant to estimating the burden involved. Although not explicitly stated in the existing regulations, the final regulations clearly state that museums or Federal agencies may include in a single notice all human remains and associated funerary object having the same lineal descendant or cultural affiliation for efficiency and expediency. The comment that stated 31 notices could have been combined in to one notice demonstrates the discretion museums and Federal agencies exercise in complying with these regulations.

The 2010 Final Rule added a new estimate related to the new regulatory requirements. Under the regulations, museums and Federal agencies were required to (1) provide to Indian Tribes and NHOs a list of Indian groups without Federal recognition that may have a relationship to human remains and associated funerary items and (2) request from Indian Tribes and NHOs the temporal and/or geographic criteria used to identify the groups of human remains to be included in consultation. The estimated burden on museums for this collection of information was 30 minutes total, including time for reviewing existing data sources, gathering and maintaining data, and preparing a transmission to other consulting parties. In the 2022 Proposed Rule, we renamed this requirement ''Initiating consultation and requesting information,'' and we increased the estimated time required to range from less than one hour, or 0.50 hours, up to 5 hours, or a median of 2.75 hours. This is far less than the comments that suggested this should be much higher and range from 40 hours to 140 hours, or a median of 90 hours to initiate consultation and request information.

In preparing the Cost-Benefit and Regulatory Flexibility Threshold Analyses for the 2022 Proposed Rule, we accounted for all actions that are required under the existing regulations to calculate the baseline conditions. We disagree that our estimate is missing required tasks, and the tasks identified by comments as missing are generally included in the estimate for conducting consultation. The costs of conducting consultation vary greatly, depending on the size and complexity of the consultation. However, we note that consultation does not require any specific documentation beyond what was already prepared in the initial summary or inventory. The additional tasks of inventory/packet/documentation preparation or even moving items from storage for purposes of consultation are not required by the regulations. A physical inspection of a collection is not required by these regulations, although we understand that for some museums, lineal descendants, Indian Tribes, or NHOs, in person consultation is preferred. As for the costs of physical transfer, we address this further in Comments 51 and 66 in this document. Physical transfer, and any costs that accompany that effort, are not required by these

regulations, and we note that grants are provided specifically for assisting with the costs of physical transfer.

As these comments clearly emphasize, the burden estimates vary widely. In its 1990 evaluation of the Act, the Congressional Budget Office made a similar conclusion, noting ''[t]here is considerable disagreement about the nature of the inventory required by H.R. 5237,'' and widely varied estimates of costs. In the end, the CBO estimated only $5 million to $30 million over five years would be required which reflected the ''costs of an inventory of museums' collections, as well as a review of existing information to determine [Tribal] origin'' (H. Rpt. 101–877, at 22).

5. Comment: We received 25 comments expressing concerns for the protection of sensitive information in the regulations. Some comments suggested use of the Privacy Act and the Archeological Resources Protection Act (ARPA) to withhold information about human remains and cultural items. Other comments suggested changes to the regulations to require that museums and Federal agencies keep sensitive information confidential.

DOI Response: While we appreciate the suggestions, we cannot make the requested changes. First, neither the Privacy Act nor ARPA apply. Deceased individuals do not have any Privacy Act rights, nor do executors or next-of-kin. See, generally, OMB 1975 Guidelines, 40 FR 28, 40 FR 951 (also available at *https://www.justice.gov/paoverview_omb-75,* accessed 12/1/2023) (stating ''the thrust of the Act was to provide certain statutory rights to living as opposed to deceased individuals'' and ''the Act did not contemplate permitting relatives and other interested parties to exercise rights granted by the Privacy Act to individuals after the demise of those individuals''). Similarly, the exemption from disclosure under ARPA applies specifically to ''the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under [ARPA] or under any other provision of Federal law'' (16 U.S.C. 470hh(a)). Thus, the ARPA provision is directed to archaeological resources that would require a permit for excavation or removal, which applies to some but not all human remains and cultural items under the Act and these regulations.

In the proposed regulations and in these final regulations, the Department has taken steps to remove requirements for museums or Federal agencies to disclose sensitive information in an inventory, summary, or notice. While we cannot dictate how a museum or Federal agency responds to a request for disclosure of sensitive information, we encourage a museum or Federal agency, at the request of a lineal descendant, Indian Tribe, or NHO, to ensure that information of a particularly sensitive nature is not made available to the public. Since 1995, the Department has recommended museum or Federal officials ensure that sensitive information does not become part of the public record by not collecting, or writing down, such information in the first place (1995 Final Rule, 60 FR 62154).

6. Comment: We received 43 comments requesting additional action by the Department of the Interior outside of these regulations. Of that total, nine comments requested the Department impose NAGPRA-related conditions on any museum that received any Federal grant. Seven comments requested the Department move the National NAGPRA Program out of the National Park Service. A total of 11 comments requested the Department conduct more consultation on these regulations before issuing final regulations; five comments requested consultation with only Indian Tribes and NHOs while six comments requested consultation with all constituents. Five comments requested further engagement with the Department on these regulations. Five comments requested the Department conduct or request an audit of the National NAGPRA Program, Federal agency compliance, or the grant program. Four comments requested the Department provide more information about the changes to these regulations, either through training or simplified documents outlining the changes. One comment requested the Department ensure its own bureaus follow these regulations. One comment requested the proposed regulations be withdrawn and the Department start a new effort to develop these regulations in consultation with Indian Tribes and NHOs.

DOI Response: We appreciate the requests for additional action by the Department. We agree that additional information about changes to these regulations will be needed, and we plan on providing as many opportunities as we can for training sessions, discussions, and guidance documents once the regulations are effective. We welcome any other suggestions for how we can support museums, lineal descendants, Indian Tribes, or NHOs with these regulations. We are working to ensure all the bureaus within the Department of the Interior have adequate staffing and support to ensure compliance with these regulations.

We decline to include in these regulations a requirement for imposing NAGPRA-related conditions on Federal grants. All Federal grant recipients are required to provide assurances that they will comply with all applicable requirements of Federal laws, regulations, and policies (see ''Assurances for Construction/Non-Construction Programs (SF–424D and SF–424B)'' at *https://www.grants.gov/forms/forms-repository/sf-424-family,* accessed 12/1/2023). While we cannot include the requested provisions in these regulations, we agree to work with the Office of Management and Budget to explore whether and how a NAGPRA-specific condition might be included in the general assurances required for all Federal grant programs. We decline to withdraw the proposed regulations or to engage in additional consultations at this time. We are committed to implementing the final regulations as soon as possible to ensure these long-overdue changes are implemented.

Regarding the location of the National NAGPRA Program, we appreciate the input we received during Tribal consultation in 2021 and in response to the proposed regulations. Currently, we have not decided about the future location of the National NAGPRA Program. Regarding the requests for an audit of the National NAGPRA Program, Federal agency compliance, or the grant program, all Federal agency programs, including the National NAGPRA Program, Federal agency NAGPRA programs, and the NAGPRA grant program, are subject to regular internal control reviews under the Office of Management and Budget Circular A–123, Management's Responsibility for Enterprise Risk Management and Internal Control (revised 7/15/2016). Along with other management and performance evaluation processes, the National NAGPRA Program and all Federal agency programs undergo routine and regular review. We will continue to consider the need for additional management oversight.

7. Comment: We received 22 comments concerning how the regulations should balance the interests of, on the one hand, repatriation, and on the other hand, scientific study. Of that total, 17 comments outright objected to the regulations giving museums or Federal agencies decision-making authority for disposition or repatriation. Thirteen of these comments, which came from one submission, asserted that decisions on cultural affiliation, evaluation of requests, repatriation, and competing requests should be in the

hands of the appropriate Indian Tribes or NHOs and not museums and Federal agencies (see NPS–2022–0004–0157). Four comments provided similar sentiments. One comment requested that an independent authority evaluate decisions made by museums and Federal agencies. One comment noted that despite positive changes, the proposed regulations still had not truly shifted the burden of having to prove the identity or cultural affiliation of human remains or cultural items off Indian Tribes or NHOs because the regulations did not give the power of decision making to Indian Tribes or NHOs.

By contrast, two comments objected to the proposed regulations claiming that they eliminate the balance of interests that Congress intended when it passed the Act. Both comments referenced or quoted from statements made by Senators Inouye and McCain in 1992, to the effect that the Act represents a balance between scientific study and respectful treatment of human remains and cultural items. One of these comments stressed that the proposed regulations were inherently imbalanced because they were developed through consultation only with Indian Tribes and NHOs and not with museums, scientific organizations, and Federal agencies (see NPS–2022–0004–0150). Citing to ''. . . words such as 'balance' and 'compromise' [in] describing the law in a special issue of the Arizona State Law Journal published shortly after the bill was passed (vol. 24, 1992),'' the other objecting comment stated, ''[i]n my view, a rule published in 2010 (43 CFR 10.11) began to move NAGPRA away from the balance that Congress intended. The new regulations proposed here would make that balance go away entirely'' (see NPS–2022–0004–0172).

Three comments directly refuted the two objecting comments as gross misrepresentations of the Act. One of these comments concluded that the imbalance is because the Act vests decision making with museums and Federal agencies and stated ''where there is disagreement between institutions and Tribes regarding affiliation, it requires that the Tribes take extraordinary lengths to press claims. The challenge is, can this rule or any rule really overcome the inherent imbalance in the Act?'' (see NPS–2022–0004–0129). Another comment supported the proposed regulations in trying to shift the balance more toward Indian Tribes and NHOs because, since 1990, repatriation has been too slow, and the burdens placed on Indian Tribes and NHOs has been too great. The comment supported the proposed regulations as representing the ''continued evolution to ensure NAGPRA's relevance to its true constituents-Indian [T]ribes and Native Hawaiian organizations'' (see NPS–2022–0004–0080). A third comment refuting the objecting comments stated:

> Though some argue that repatriation is a weighing of interests between science and human rights, that interest is absent from the Act, which is singularly aimed at providing restitution. The Act creates an administrative process for repatriation and disposition to provide restitution for harms that have been called out by Congress as genocide and human rights violations. The only exception the Act provides to repatriation is when a museum or agency can prove that they have a ''right of possession.'' Even permitting completion of a scientific study of major benefit to the United States does not prevent repatriation, and will only delay it. 25 U.S.C. 3005(b).
>
> Museums—even well-funded ones—have admitted that they will not be proactive with their CUI inventories, even with the NAGPRA funding they request, and that instead, they will continue to work to overcomplicate the process, based on the current regulations and criteria outlined there. Thus, it is imperative that the Secretary take over this duty and correct the Ancestors and their belongings that languish under a label called ''unidentifiable'' (NPS–2022–0004–0153).

DOI Response: Nowhere in the Act did Congress say that decisions about disposition or repatriation are made by balancing the interests of science against the interests of human rights. While we are aware of the statements made by Senators Inouye and McCain in 1992, we understand those statements to say that the Act itself is the product of balancing these interests. The lengthy process of developing, drafting, and agreeing to the language of the Act is how Congress ensured a balance between scientific study and respectful treatment of human remains and cultural items.

To ensure all information related to the Congressional record is available, the documents that provide legislative intent are available on the National NAGPRA Program website (*https://www.nps.gov/subjects/nagpra/the-law.htm,* accessed 12/1/2023). Beyond the two reports, the Congressional Record provides statements by individual members of Congress. In the Senate, Senator Inouye's full statement is available in the Congressional Record Senate (October 26, 1990) on page 35678–35679. Senator McCain's opening statement is on the preceding page 35677. A discussion of the impact of the legislation on development activities on Federal lands by Senators McCain and Simpson is on page 35679–35680. In the House, Representatives Campbell (D–CO), Rhodes (R–AZ), Collins (D–IL), Richardson (D–NM), Bennett (D–FL), Mink (D–HI), and Udall (D–AZ) provided statements in the Congressional Record House (October 22, 1990) on pages 31937–31941.

We agree with the objecting comments that the Congressional record is replete with references to the balance, compromise, and agreement in both the process to develop the Act and in the content of the Act itself. We agree with the objecting comments that the Act creates a balance, but we believe that the balance is built into the Act itself through compromises made in the Act before its final passage. The objecting comments appear to indicate that the balance Congress intended comes in only repatriating some human remains and even fewer associated funerary objects (as suggested by the objecting comments reference to the 2010 Final Rule) or that in each decision on disposition or repatriation, a museum or Federal agency must balance the interests of science with those of human rights. We disagree with this interpretation of the legislative history.

The Congressional record of the House clearly identified ''points of compromise'' in the final version of the Act. Representatives Campbell and Richardson stated the Act represents a compromise on the following issues:

1. Limiting the inventory requirement to only human remains and associated funerary objects rather than all Native American collections;
2. Clarifying the definition of cultural affiliation to incorporate anthropological and archeological criteria (*i.e.,* traced historically or prehistorically);
3. Adding a standard of repatriation for unassociated funerary objects, sacred objects, and objects of cultural patrimony by defining ''right of possession;''
4. Tightening the definitions of unassociated funerary objects and sacred objects;
5. Clarifying the definition of museum to not apply to private individuals who receive Federal payments such as social security; and
6. Balancing representation of the Review Committee to include all groups affected by the Act.

Representative Campbell's statement included two other compromises in the final version of the Act:

> The bill takes into account that many of these items may be of considerable scientific value and allows for current studies to continue *with repatriation occurring after the completion of such a study.* It further acknowledges that repatriation is not the only alternative and I encourage all sides to try and work out agreeable compromises where all interested parties can benefit from

access to some of the items (136 Cong. Rec. 31938, emphasis added).

We agree with the last comment summarized above that the only exception to expeditious repatriation under the Act is proving a ''right of possession'' (25 U.S.C. 3005(c)). Any need to complete a scientific study does not prevent repatriation but only delays it (25 U.S.C. 3005(b)). In addition, we note that any need to excavate human remains or cultural items on Federal or Tribal lands is only permitted after consultation (on Federal lands) or consent (on Tribal lands), and that regardless of any scientific study, disposition of human remains or cultural items to the appropriate lineal descendant, Indian Tribe, or NHO is always required (25 U.S.C. 3002(c)). Accordingly, we conclude that the objective of the systematic processes in the Act is the disposition or repatriation of human remains or cultural items, not to achieve any kind of balance between the interests of science and the interests of human rights.

We intend these regulations to better align with the processes for disposition and repatriation found in the Act. In these regulations, we cannot remove the decision-making authority vested in museums and Federal agencies because doing so would be inconsistent with the Act. We can, and have, included requirements for museums and Federal agencies to consult, collaborate, and, in the case of scientific study or research, obtain consent from lineal descendants, Indian Tribes, or NHOs (see Comment 15). In addition, these regulations require museums and Federal agencies to defer to the Native American traditional knowledge of lineal descendants, Indian Tribes, and NHOs in all decision-making steps.

In developing both the proposed and final regulations, we emphasized consultation with Indian Tribes and NHOs and incorporated comments from consultation to the maximum extent possible. This does not indicate an imbalance in the process to develop these regulations or in the resulting product, but rather reflects the special relationship between the Federal government and Indian Tribes and NHOs (25 U.S.C. 3010). Furthermore, while the Act is the primary authority for these regulations, Congress authorized the Secretary to make such regulations for carrying into effect the various provisions of any act relating to Indian affairs (25 U.S.C. 9). As the Act is Indian law (*Yankton Sioux Tribe* v. *United States Army Corps of Engineers,* 83 F. Supp. 2d 1047, 1056 (D.S.D. 2000)), the Secretary may promulgate this provision under the broad authority to supervise and manage Indian affairs given by Congress (*United States* v. *Eberhardt,* 789 F. 2d 1354, 1360 (9th Cir. 1986)).

Finally, a statement in the Congressional record by Senator Inouye is directly relevant to the objective of these revised regulations to better reflect Congressional intent:

> This legislation is designed to facilitate a more open and cooperative relationship between native Americans and museums. For museums that have dealt honestly and in good faith with native Americans, this legislation will have little effect. For museums and institutions which have consistently ignored the requests of native Americans, this legislation will give native Americans greater ability to negotiate. Mr. President, I believe this bill represents a major step in correcting an injustice that started over 100 years ago. It is appropriate that Congress take an active role in helping to restore these rights to native Americans and I urge the adoption of this measure by the Senate (136 Cong. Rec. 35678).

8. Comment: We received two comments requesting the Department develop guidance and a framework to establish reburial areas for repatriated collections. The comments point to the U.S. Department of Agriculture, Forest Service, as an example of how land-managing Federal agencies can assist and support reburials on Federal lands.

DOI Response: We appreciate the request, and we understand the significant issues involved with securing lands for reburial. While this request is outside the scope of these regulations, the Department will consider how guidance and policy might be used to effectuate the requested change.

B. Section 10.1 Introduction

9. Comment: We received 42 comments on § 10.1(a) Purpose. Of that total, 18 comments supported the revised paragraph, specifically the inclusion of deference to lineal descendants, Indian Tribes, and NHOs in the purpose paragraph. An additional 19 comments, while generally supportive, also suggested changes to the paragraph. Suggested changes include adherence to the purpose as stated by Congress, emphasizing the limited exceptions to disposition or repatriation, a significant change to verb tense, and defining and referencing deference in the regulatory text. On the other hand, four comments specifically objected to the inclusions of deference in the purpose paragraph and expressed concerns about how deference applies when there are disagreements among Indian Tribes or when other requirements or definitions do not allow for deference to lineal descendants, Indian Tribes, or NHOs. One comment generally objected to the change in the purpose as an entire rewrite of the regulations that would impede the systematic repatriation process.

DOI Response: We specifically requested input on the proposed purpose paragraph, and we appreciate the response and have made changes where permissible. As many comments indicate, the proposed purpose paragraph was not as clear or effective as we had intended. Although some comments suggested we delete the sentence on the rights the Act recognizes, we have retained the sentence given the number of supporting comments we received, but we have changed the verb tense as requested. We have revised the purpose paragraph as suggested by several comments to paraphrase the language used by Congress (H. Rpt. 101–877, at 8) which outlines the two separate processes for disposition and repatriation under the Act. The purpose paragraph uses plain language to describe the overall goals of these two separate processes for disposition and repatriation (protect and restore). In response to the objections and concerns about deference, we have included both consultation and deference as a part of the purpose for these regulations to ensure meaningful consideration of Native American traditional knowledge throughout these processes. It is through consultation and deference that these regulations ensure the rights of lineal descendants, Indian Tribes, and NHOs the Act recognizes.

10. Comment: We received four comments on § 10.1(b) Applicability. Three comments suggested editorial changes to the paragraph while one comment strongly supported the paragraph, especially with its focus on museums and Federal agencies as the applicable party.

DOI Response: Considering the revisions to § 10.1(a), we have made changes to this paragraph to emphasize the applicable parties that are responsible for each major section of these regulations. We tried to make this paragraph clear that many parts of the Act and these regulations are not limited to Federal or Tribal lands. In response to other comments on the requirements of these regulations, we have clarified that lineal descendants, Indian Tribes, and NHOs are not required to consult or to make a claim for disposition or a request for repatriation.

11. Comment: We received two comments related to § 10.1(c) Accountability. One comment suggested

requiring a duty of candor by museums and Federal agencies to disclose any human remains or cultural items that were destroyed, deaccessioned, lost, or in any other way removed from the provisions of these regulations. One comment suggested adding transparency to the accountability requirements.

DOI Response: We cannot make the requested change regarding candor as it is contrary to the requirements of the Act. A museum or Federal agency must compile a summary of cultural items and an itemized list of human remains and associated funerary objects in its possession or control (25 U.S.C. 3003(a) and 3004(a)). Based on the information available, a museum or Federal agency must determine if human remains or cultural items that are destroyed, deaccessioned, lost, or in any other way removed are under its possession or control and therefore subject to these regulations. We note that in these regulations, as in the proposed regulations, a museum or Federal agency must ensure the summary and itemized list are comprehensive and cover any holding or collection relevant to § 10.9 and § 10.10.

12. Comment: We received five comments objecting to § 10.1(d) Duty of care because the requirements went beyond the statutory authority and should be recommendations not requirements. Some of these comments suggested that the costs to comply with this paragraph would be substantial, that additional curation and collections facilities may need to be constructed, and that conflicts might arise with standard curation, conservation, and preservation principles or practices. One comment questioned how conflicts among Indian Tribes should be handled. Another comment stated that research on human remains and cultural items is necessary to determine cultural affiliation and, therefore, the requirements in this paragraph conflict with the requirements in § 10.3. One comment suggested that ''to the maximum extent possible'' and ''safeguard and preserve'' should be replaced with ''reasonable effort'' and a cross-reference to requirements in 36 CFR part 79, respectively.

DOI Response: We disagree that these requirements go beyond the statutory authority or that these requirements should only be recommendations. The Secretary's authority for promulgating these regulations is discussed extensively in other responses to comments (see Comment 7), the 2010 Final Rule (75 FR 12379), and the 2022 Proposed Rule (87 FR 63207). Given the number of supporting comments for this paragraph during consultation in 2021, including from the Secretary's Federal Advisory Review Committee (Review Committee), and comments on the proposed regulations requesting we strengthen these requirements (see Comments 13–17), we chose not to revise these requirements into recommendations. We strongly disagree with the comment that research on human remains or cultural items is required by the Act or these regulations to determine cultural affiliation or for any other purpose. Rather, the Act explicitly and specifically does not require new scientific studies or other means of acquiring or preserving information (25 U.S.C. 3003(b)(2)), and we have incorporated similar language into this paragraph to clarify (see Comment 16).

Earlier drafts of these regulations referenced 36 CFR part 79, as suggested by one comment, but we received substantial negative feedback on this during consultation in 2021 and from the Review Committee. Most of that feedback felt the inclusion of 36 CFR part 79 in these regulations was confusing or concerning. Federal agencies and their repositories must still care for and manage collections that are covered by the provisions of 36 CFR part 79. Regarding speculation on substantial costs, conflicts with conservation and preservation principles, and conflicts among lineal descendants, Indian Tribes, or NHOs, the final regulations now require museums and Federal agencies to make a ''reasonable and good-faith effort'' to incorporate and accommodate Native American traditional knowledge in the storage, treatment, or handling of human remains or cultural items (see Comment 14).

13. Comment: We received 16 comments supporting § 10.1(d) Duty of care as proposed while 23 comments were generally supportive but suggested changes to strengthen the requirements. Many comments requested this paragraph clearly apply to all Native American collections, even those on loan or where specific cultural items subject to the Act have not been identified. Some comments specifically requested ''custody'' be deleted from the paragraph in line with requested changes to expand ''possession or control'' or that this paragraph clearly state that a museum or Federal agency only has a duty of care and does not have rightful ownership of Native American human remains or cultural items. Several comments requested a definition of ''care for, safeguard, and preserve.'' One comment requested this paragraph include a requirement for the National NAGPRA Program to make sporadic inspections of all museums and Federal agencies to ensure professional museum and archival standards are met, including physically securing collections through clean, rodent-free, and locked areas with limited access. One comment requested additional clarifying language to ensure these requirements do not serve as a justification to delay or avoid repatriation. One comment requested two additional paragraphs be included to require museums and Federal agencies to provide specific and detailed information on any study or research of Native American collections conducted after 1990, including copies of published work and photographs.

DOI Response: We cannot require that this paragraph, or this part, apply to all Native American collections as that would be inconsistent with the Act (25 U.S.C. 3003(a) and 3004(a)). The requirements of this paragraph are limited to human remains and cultural items as defined by the Act and these regulations. We cannot remove ''custody'' from the first sentence and still ensure that this paragraph will apply to human remains and cultural items that are on loan but still subject to the Act (see the definitions of ''custody'' and ''possession or control'' discussed elsewhere). We have intentionally included ''custody'' in the duty of care requirement to ensure all Native American human remains and cultural items are cared for, safeguarded, and preserved until the disposition and repatriation processes are complete. However, the inclusion of museums or Federal agencies with ''custody'' is not intended to limit the ability of the museum or Federal agency with possession or control of the human remains or cultural items from carrying out its responsibilities under this paragraph or these regulations. We cannot include the requested statement on rightful ownership as it would be contrary to the provisions of the Act where a museum or Federal agency can prove it has a right of possession to a cultural item. We have not changed or defined ''to care for, safeguard, and preserve,'' and these terms should be understood to have a standard, dictionary definition. We believe these terms, along with paragraphs (d)(1), (d)(2), and (d)(3), are sufficient to ensure an adequate standard of care for human remains and cultural items, including that the human remains or cultural items are properly stored and physically secured in a clean and locked area and are reasonably believed to be safe from damage or destruction by pests or natural elements. We believe the

timelines included in the disposition or repatriation processes ensure that these requirements will not be used to delay or avoid repatriation, and we note that any request for an extension of the deadlines for repatriation or for a stay of repatriation for scientific studies would require consultation with and consent of the appropriate lineal descendant, Indian Tribe, or NHO. While we appreciate the suggestion to require information on any past research or study be provided to lineal descendants, Indian Tribes, or NHOs as a part of a duty of care, this provision is already provided for in §§ 10.9(c)(4) and 10.10(c)(4). Under the Act and these regulations, lineal descendants, Indian Tribes, and NHOs have a right to request records, catalogues, relevant studies, or other pertinent data (25 U.S.C. 3003(b)(2) and 25 U.S.C. 3004(b)(2)), and museums and Federal agencies are required to share that information (25 U.S.C. 3005(d)). As required by the Act, additional information is only provided upon request of an Indian Tribe or NHO, and we cannot make this a requirement that applies to all human remains or cultural items absent such a request.

In conjunction with that reasoning, we have removed the requirement for lineal descendants, Indian Tribes, or NHOs to first make a request for the duty of care requirements that follow, and we have removed ''to the maximum extent possible'' from the introductory phrase (see Comment 14). We have revised this paragraph to include paragraphs (d)(1), (d)(2), and (d)(3) on what a museum or Federal agency must do as a part of its more general duty of care for human remains or cultural items. These three requirements align with the purpose of the Act, these regulations, and Congressional intent, which was stated as follows:

> The [Senate] Committee intends the provisions of this Act to establish a process which shall provide a framework for discussions between Indian [T]ribes and museums and Federal agencies. The Committee believes that the process established under this Act will prevent many of the past instances of cultural insensitivity to Native American peoples. The Committee has received testimony describing instances where museums have treated Native American human remains and funerary objects in a manner entirely different from the treatment of other human remains. Several [T]ribal leaders expressed their outrage at the manner in which Native American human remains had been treated, stored or displayed and the use of culturally sensitive materials and objects in violation of traditional Native American religious practices. In the long history of relations between Native Americans and museums, these culturally insensitive practices have occurred because of the failure of museums to seek the consent of or consult with Indian [T]ribes (S. Rpt. 101–473, at 3).

Section 10.1(d)(1) requires museums and Federal agencies to consult on the appropriate storage, treatment, or handling of human remains or cultural items, which was reiterated in the proposed regulations at §§ 10.4, 10.9, and 10.10. In these final regulations, we have revised those specific sections to refer to this paragraph.

Section 10.1(d)(2) requires museums and Federal agencies to make a reasonable and good-faith effort to incorporate and accommodate requests made by consulting parties (see Comment 14).

Section 10.1(d)(3) requires museums and Federal agencies to obtain consent from consulting parties prior to any exhibition of, access to, or research on human remains or cultural items (see Comment 15–17).

14. Comment: Of the 23 comments requesting we strengthen the duty of care requirements, many requested ''deference'' replace ''to the maximum extent possible.'' In addition, all comments objecting to the duty of care requirements raised concerns about the vagueness of this phrase and the potential for conflict between and among consulting parties on the implementation of this phrase.

DOI Response: We have removed the phrase and revised § 10.1(d)(2) to require museums and Federal agencies make a reasonable and good-faith effort (in place of ''to the maximum extent possible'' in the proposed regulations) to incorporate and accommodate the Native American traditional knowledge in caring for human remains or cultural items. As the purpose of the Act and these regulations is the disposition or repatriation of human remains and cultural items, museums and Federal agencies must prioritize requests for storage, treatment, or handling by lineal descendants, Indian Tribes, or NHOs who will be the future caretakers of the human remains or cultural items. These requests may require alterations or exceptions to standard curation or preservation practices. In addition, as noted elsewhere, when consultation on the duty of care does not result in consensus, agreement, or mutually agreeable alternatives, the consultation record must describe the concurrence, disagreement, or nonresponse of the consulting parties.

As an example of how this requirement might be implemented, a consulting Indian Tribe might request that an offering of organic material be placed with human remains until repatriation and physical transfer of the collection is complete. During consultation, the museum and Indian Tribe might agree on how to accommodate this request while still protecting and preserving the collection. The resulting agreement might include increased pest monitoring in the area with the offering, enclosing the offering in a glass jar next to the human remains or cultural items, or identifying an alternative location for the offering.

As another example of this requirement, a consulting Indian Tribe might request that a particular type of oil or substance be applied to an animal hide that is incorporated into a cultural item. Traditional knowledge indicates that the oil or substance provides both physical and spiritual protection of the cultural item until it is repatriated. During consultation, the museum and Indian Tribe could agree on the appropriate individual, possibly a trained conservator or a Tribal member, and the appropriate method to apply the substance that does not affect other parts of the cultural item or other items in the collection.

Other examples of requests a lineal descendant, Indian Tribe, or NHO might make for specific human remains or cultural items in a collection include smudging in a collection storage space; using specific cloth to cover collections; restrictions on who, how, or when collections are handled; orienting collections in a certain direction; storing certain collections separately or storing certain collections together. Each of these requests must be considered in light of other policies or systems, such as safety precautions, fire suppression systems, human resource policies, or space limitations. Through consultation, these requests may be incorporated and accommodated in a mutually agreeable way. Resources from the School for Advanced Research and the American Alliance of Museums are available to assist all parties with these types of discussions and accommodations (''Standards for Museums with Native American Collections,'' May 2023, *https://sarweb.org/iarc/smnac/,* and ''Indigenous Collections Care Guide,'' publication pending, *https://sarweb.org/iarc/icc/,* accessed 12/1/2023).

15. Comment: Of the 23 comments requesting that we strengthen the duty of care requirements, many requested that museums and Federal agencies must obtain consent from lineal descendants, Indian Tribes, or NHOs before any activity occurs that involves any Native American collections, but especially prior to allowing access to or research on human remains and cultural items. Some comments requested adding a requirement to remove human

remains or cultural items from display or public access. Some comments requested replacing ''Limit'' with ''Prohibit'' and include ''exhibition of'' with ''access to and research on'' in § 10.1(d)(3). One of the comments objecting to the duty of care requirement stated that a limitation on research conflicted with the requirements for determining cultural affiliation, which requires research.

In addition to these comments, 45 comments on provisions for ''scientific study'' found in Subpart C echoed these requests that the regulations strengthen the protection of human remains or cultural items in holdings or collections. Most of these comments requested that museums and Federal agencies obtain consent from lineal descendants, Indian Tribes, or NHOs prior to allowing any research on human remains or cultural items. The second largest group of comments suggested that museums and Federal agencies must consult with lineal descendants, Indian Tribes, or NHOs prior to allowing research on human remains or cultural items. One comment from a museum and scientific organization requested that the regulations better align with the ethical principles of professional archaeological and anthropological organizations, which call for input, consensus, and informed consent from descendant communities (NPS–2022–0004–0139). One comment from an Indian Tribe explained that research and scientific studies continue to be conducted on human remains and cultural items, despite the repeated requests of Indian Tribes, and this research and study has delayed or even prevented repatriation in some cases. The comment states:

> We have raised these issues many times at the Congressional level before the Senate Committee on Indian Affairs and before the NAGPRA Review Committee and nothing was done to prevent the illegal study of our relatives or the lengthy delays in their repatriation and reburial. Changes must be made now to prevent any further privileged use of the Act by agencies and museums who have been allowed to ignore the plain speech in the Act regarding the study of our deceased ancestors and their burial property.
>
> It is plain to see that agencies and museums have had more than enough time (the 33 years that NAGPRA has existed plus all the decades our relatives sat ignored and collecting dust in museum or agency repositories) to conduct their illegal studies and analyses of our poor deceased relatives and their burial property and insist that steps be taken now to prevent any further studies of our deceased relatives and their burial property (NPS–2022–0004–0123).

DOI Response: In response to these comments, we revised § 10.1(d)(3), by replacing ''Limit'' with ''Obtain free, prior, and informed consent'' and adding ''exhibition of'' to ''access to or research on human remains or cultural items.'' We cannot, as requested by some comments, prohibit exhibition, access, or research on human remains or cultural items as that would exceed the Secretary's authority under the Act and would be contrary to Congressional intent. While the Act is the primary authority for these regulations, Congress authorized the Secretary to make such regulations for carrying into effect the various provisions of any act relating to Indian affairs (25 U.S.C. 9). As the Act is Indian law (*Yankton Sioux Tribe* v. *United States Army Corps of Engineers,* 83 F. Supp. 2d 1047, 1056 (D.S.D. 2000)), the Secretary may promulgate this provision under the broad authority to supervise and manage Indian affairs given by Congress (*United States* v. *Eberhardt,* 789 F. 2d 1354, 1360 (9th Cir. 1986)). Ambiguities in statutes passed for the benefit of Indians are to be construed to the benefit of the Indians (*Bryan* v. *Itasca County,* 426 U.S. 373 (1976)).

The Act does not prohibit museums or Federal agencies from conducting scientific studies of human remains or cultural items but does clearly state that such studies are not authorized by or required to comply with the Act (25 U.S.C. 3003(b)(2)). The Act allows for a scientific study to delay, but not to prevent, repatriation (25 U.S.C. 3005(b)). The Act provides only one exception to expeditious repatriation by proving a ''right of possession'' (25 U.S.C. 3005(c)). In addition, the Act allows for excavation of human remains or cultural items from Federal or Tribal lands for purposes of a study, but only after consultation (on Federal lands) or consent (on Tribal lands) (25 U.S.C. 3002(c)). As a result, there is some ambiguity in the Act related to scientific study, which has been interpreted to mean that the Act neither authorizes nor prohibits scientific study of human remains or cultural items. In exercising the Secretary's authority for these regulations, the Department considered both the legislative and regulatory history related to scientific study of human remains or cultural items subject to the Act, as well as related recommendations from the Review Committee who is responsible for monitoring the repatriation process (25 U.S.C. 3006(c)(2)).

The legislative history shows Congress intended for the Act to give lineal descendants, Indian Tribes, and NHOs a more equitable voice in any future scientific study of human remains or cultural items. One central goal of the Act was ''to allow for the development of agreements between Indian [T]ribes and museums which reflect an understanding of the important historic and cultural value of the remains and objects in museums collections'' (S. Rpt. 101–473, at 4). The Senate Report provided a model of this kind of agreement where a museum agreed to return human remains to an Indian Tribe for burial, and the Indian Tribe chose to bury the human remains in a specially designed crypt that could be opened periodically to provide access for scientists to continue the study of the human remains. Earlier drafts of the legislation allowed for a request for repatriation to be denied if the requested item was part of a scientific study (H. Rpt. 101–877, at 11). In explaining the substitute amendment that ultimately became the Act, Congress explained the change to only delaying, not denying, repatriation for a scientific study was a means of urging ''the scientific community to enter into mutually agreeable situations with culturally affiliated [T]ribes in such matters'' (H. Rpt. 101–877, at 15).

As discussed in Comment 7, in describing the compromises in the final legislation, Representative Campbell stated that the Act acknowledges ''that many of these items may be of considerable scientific value'' and ''that repatriation is not the only alternative.'' Representative Campbell recommended ''agreeable compromises where all interested parties can benefit from access to some of the items'' (136 Cong. Rec. 31938). Similarly, in urging the passage of the bill, Senator Inouye stated ''[f]or museums and institutions which have consistently ignored the requests of native Americans, this legislation will give native Americans greater ability to negotiate'' (136 Cong. Rec. 35678). This sentiment was echoed by Senator Akaka who stated the Act would, among other things, ''eliminate the longstanding policy of scientific research on future remains found'' (136 Cong. Rec. 35678).

In its final version, the Act used the term ''scientific study'' twice. First, in describing what documentation may be requested, the Act explicitly and specifically does not require new scientific studies on human remains or associated funerary objects (25 U.S.C. 3003(b)(2), referred to here as ''scientific studies are not required''). Second, the Act requires that when a specific scientific study of human remains, associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony will result in a major benefit to the United States, a museum or Federal agency may postpone repatriation but

may not deny the request for repatriation (25 U.S.C. 3005(b)), referred to here as ''delay for scientific study'').

The regulations as proposed in 1993 and as promulgated in 1995 addressed only the delay for scientific study under the exceptions to repatriation in § 10.10. The regulations included the statutory language on documentation of human remains at § 10.9 but did not include that scientific studies are not required. The 1995 Final Rule made a reference to both scientific study provisions in responding to one comment that repatriation could not occur until a scientific analysis was completed. The Department responded stating:

> Section 5 (a) specifies that the geographic and cultural affiliation of human remains and associated funerary objects be determined 'to the extent possible based on information possessed by the museum of Federal agency.' No new scientific research is required. Delaying repatriation until new scientific research is completed contradicts the intent of Congress unless that scientific research is considered to be of major benefit to the United States (60 FR 62156).

The 2007 Proposed Rule, Disposition of Culturally Unidentifiable Human Remains, added that scientific studies are not required to the paragraph on documentation of human remains at § 10.9. The 2007 Proposed Rule added text to explain (1) any documentation provided is a public record and (2) a request for documentation cannot be construed as authorizing a new scientific study or other means of acquiring information. These additions were drawn directly from the Review Committee's recommendations on culturally unidentifiable human remains (discussed below).

In the 2010 Final Rule, Disposition of Culturally Unidentifiable Human Remains, the Department responded to three comments on scientific study specifically. Under General Comments, Comment 3 summarized comments opining that ''Congress intended to allow study of ancient, unaffiliated remains.'' The Department responded that ''The Act does not draw a distinction between 'ancient' and more recent remains'' and then reiterated that scientific studies are not required (75 FR 12380). Under Section 10.9 Other General Comments, Comment 57 summarized comments that ''requested a clear and explicit explanation of how the proposed rule takes into account the potential interests of the public in scientific research and education.'' The Department responded that scientific studies are not required (75 FR 12387).

In the 2010 Final Rule, under Section 10.9(e)(5) Additional Documentation, Comment 46 summarized 20 comments regarding the addition in the proposed regulations that scientific studies are not required. Some comments stated the language would ''create a seemingly impossible conundrum, would severely hinder the scientific study of ancient remains, and are 'an obvious attempt to end-run Congressional intent and a Federal court ruling in the long-fought Kennewick Man case.' '' One comment requested language be added to clarify that scientific studies are not prohibited, and another comment requested language be added to allow scientific studies if the consulting parties agree. The largest number of comments requested language stating that human remains must be treated with respect and ''should not be subject to any further scientific research or used for teaching purposes.'' In response to these comments, the Department simply stated that the language came directly from the Act and reflected Congressional intent (2010 Final Rule at 12386). Since 2010, both provisions on scientific study have been codified in the regulations.

While the existing regulations include both provisions on scientific study, the existing regulations do not provide any mechanisms for ensuring that scientific studies are not required or for administering the delay for scientific study. In the 2021 draft revisions of the regulations prepared for Tribal consultation, the Department introduced a procedure, through the Secretary, to administer the delay for scientific study but did not include any reference that scientific studies are not required. We received a significant number of comments regarding both scientific study provisions during Tribal consultation and from the Review Committee. As a result of this input, the proposed regulations included in the duty of care requirement a limitation on ''access to or research on'' human remains or cultural items which would provide for implementation as well as enforcement that scientific studies are not required. The proposed regulations also provided procedures to administer the delay for scientific study by both requesting and receiving concurrence of the Secretary as a stay of the repatriation timeline under §§ 10.9 and 10.10.

In preparing these final regulations, we looked at not only the comments we received on the proposed regulations but also to the legislative and regulatory history discussed above and to input from the Review Committee on these issues. As noted above, the addition to the regulations in 2007 that scientific studies are not required was based on a Review Committee recommendation. Notably, the Review Committee's recommendation was not to include the statutory language, but to clarify that scientific studies must be agreed to by all parties through consultation. In its 2000 final recommendations on culturally unidentifiable human remains, the Review Committee recommended:

> Documentation must occur within the context of the consultation process. Additional study is not prohibited if the parties (Federal agencies, museums, lineal descendants, Indian [T]ribes, and Native Hawaiian organizations) in consultation agree that such study is appropriate (65 FR 36463, June 8, 2000).

Between July 2021 and June 2022, the Review Committee reviewed and discussed the draft regulatory text and, in its final recommendations, developed its own duty of care requirement:

> Duty of care. Through meaningful consultation with [T]ribes and Native Hawaiian organizations, Federal agencies, museums, universities, and repositories shall provide standards of care based upon the free, prior, and informed consent of [T]ribes and Native Hawaiian organizations for human remains and cultural items. Museums and Federal agencies have an obligation to adhere to a standard of reasonable care while performing any act that would foreseeably harm any cultural item in their possession or control. This duty includes taking affirmative steps to verify the location and condition of all cultural items in the control of the museum or Federal agency, and consulting with any lineal descendants and any culturally or geographically affiliated Indian [T]ribes or Native Hawaiian organizations to determine the standard of care they consider reasonable (NPS–2002–0004–0003, attachment page 2).

As noted in the document, one Review Committee member objected to the requirement of ''consent'' by Indian Tribes or NHOs to the standards of curatorial treatment for Native American human remains and other cultural items. The Review Committee member stated ''[s]uch a unilaterally-imposed requirement might not be appropriate or reasonable, and in some circumstances might violate existing binding administrative agreements, legal obligations, and/or professional standards of the curating organization'' (NPS–2022–0004–0003, attachment page 2, footnote 1).

In preparing the proposed regulations, we adopted the Review Committee's recommendation to include consultation, collaboration, and consent but, in response to the objecting comment, caveated the requirement with ''to the maximum extent possible.'' The proposed regulations did not include the Review Committee's suggested language of ''free, prior, and informed consent'' and the last sentence

of the Review Committee's recommendation was incorporated directly into Subpart C. In preparing these final regulations, we revisited the Review Committee's recommendations and found we were able to incorporate the concept of ''free, prior, and informed consent'' by clarifying the provisions in § 10.1 pertaining to duty of care. Paragraph (d)(1) requires consultation, paragraph (d)(2) requires collaboration, and paragraph (d)(3) requires consent. We agree with the Review Committee member and some of the comments on the proposed regulations that curatorial standards and other requirements may limit a museum or Federal agency's ability to incorporate or accommodate requests from lineal descendants, Indian Tribes, or NHOs, and, as discussed in Comment 14, museums and Federal agencies must make a reasonable and good-faith effort to do so. We have limited the requirement to obtain consent only to the exhibition of, access to, or research on human remains and cultural items.

As the purpose of the Act and these regulations is the disposition or repatriation of human remains or cultural items, we find it appropriate that museums and Federal agencies must obtain consent from lineal descendants, Indian Tribes, or NHOs before conducting activities that might physically or spiritually harm human remains or cultural items. For purposes of the duty of care paragraph, the lineal descendants, Indian Tribes, or NHOs are those identified as consulting parties under §§ 10.4(b)(1), 10.9(b)(1), and 10.10(b)(1): Consulting parties are any lineal descendant and any Indian Tribe or NHO with potential cultural affiliation. If a museum or Federal agency cannot identify any consulting parties for specific human remains or cultural items, the duty of care requirement still applies. Until consulting parties are identified, the museum or Federal agency may not be required to consult under paragraph (d)(1) or collaborate under paragraph (d)(2) of § 10.1. Until consulting parties are identified, the museum or Federal agency must not allow any exhibition of, access to, or research on human remains or cultural items as doing so may be subject to a failure to comply with the requirements of these regulations. If a museum or Federal agency wished to conduct a specific scientific study of human remains or cultural items, it could do so by following the requirements for a stay of repatriation under §§ 10.9 or 10.10. After following the requirements of these regulations, nothing would preclude a museum or Federal agency from exhibiting, allowing access to, or conducting research on collections that are not subject to the Act or, after disposition or repatriation, reaching an agreement with the requesting lineal descendant, Indian Tribe, or NHO.

16. Comment: We received four comments requesting the regulations include in § 10.10 the related statutory language from 25 U.S.C. 3003(b)(2) on ''scientific study.'' Another comment questioned if ''scientific study'' as used in §§ 10.9 and 10.10 equated to a single study that records paleopathology on an individual or a long-term archaeological project at a site that includes many sub-projects that study different bioarcheological and physical anthropological topics.

DOI Response: We incorporated the statutory language on ''scientific study'' into paragraph (d)(3) by adding two sentences to clarify that the term ''research'' as used here equates to the term ''scientific study'' in the Act and to emphasize that ''research'' of any kind is not required by the Act or these regulations. We have defined ''research'' to mean any study, analysis, examination, or other means of acquiring or preserving information. ''Research'' includes any activity to generate new or additional information beyond the information that is already available, for example, osteological analysis of human remains, physical inspection or review of collections, examination or segregation of comingled material (such as soil or faunal remains), or rehousing of collections. ''Research'' is not required to identify the number of individuals or cultural items or to determine cultural affiliation.

For example, if a museum wished to physically examine its collection to identify the number of individuals or associated funerary objects, the museum must first obtain consent from lineal descendants, Indian Tribes, or NHOs. Until that consent is obtained, the museum must rely on the information available (previous inventories, catalog cards, accession records, etc.) to identify consulting parties, conduct consultation, update the inventory, and submit a notice of inventory completion.

If a Federal agency wished to examine an unprocessed collection of archaeological material excavated from Federal land after 1990 to identify if any human remains or cultural items were present, it could do so until human remains or cultural items were identified. At that time, any further examination or inspection of the collection would require obtaining consent from a lineal descendant, Indian Tribe or NHO. Until that consent is obtained, the Federal agency must rely on the information available (excavation location, field notes, etc.) to identify consulting parties, conduct consultation, and complete the disposition of the human remains or cultural items.

17. Comment: We received five comments, including those by the Review Committee, objecting to the inclusion of unassociated funerary objects, sacred objects, or objects of cultural patrimony in the delay for scientific study because it is inconsistent with the Act and adverse to Tribal interests. These comments requested that the stay of repatriation in § 10.9 for ''scientific study'' be deleted in its entirety (see NPS–2022–0004–0096; NPS–2022–0004–0143; NPS–2022–0004–0151; NPS–2022–0004–0177; and NPS–2022–0004–0183).

DOI Response: We believe these comments conflated the two statutory provisions for ''scientific study'' we outlined in response to Comment 16 (''scientific studies are not required'' and ''delay for scientific study''). We agree that the Act limits the provision that scientific studies are not required to only human remains and associated funerary objects (25 U.S.C. 3003(b)(2)). Similar language does not appear in the Act for unassociated funerary objects, sacred objects, and cultural patrimony (25 U.S.C. 3004(b)(2)).

We do not agree, however, that extending the provision that scientific studies are not required or the corresponding paragraph at (d)(3) to unassociated funerary objects, sacred objects, or objects of cultural patrimony is adverse to Tribal interests. Rather, we feel this extension accomplishes the request made by many individuals, Indian Tribes, and Native American organizations to prohibit all ''research'' on human remains as well as any cultural item (see NPS–2022–0004–0107; NPS–2022–0004–0138; NPS–2022–0004–0158; NPS–2022–0004–0161; and NPS–2022–0004–0187). Therefore, paragraph (d)(3) on duty of care that requires consent for exhibition, access, or research applies to human remains, associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony.

We understand that the delay for scientific study in both §§ 10.9 and 10.10 is adverse to Tribal interests and may seem to allow or authorize scientific studies. As one comment stated clearly:

> Finally, please note our previous statement that we are categorically opposed to any

scientific study of our ancestors, their burial property or any item of our sacred or cultural patrimony and we specifically request that any language allowing any type of scientific study of any NAGPRA-related item be stricken from this rulemaking for the reasons submitted by our Nation, above (NPS–2022–0004–0123).

We cannot remove reference to ''scientific study'' or research from these regulations. The delay for scientific study applies to all ''Native American cultural items,'' which are defined in the Act as human remains, associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony (25 U.S.C. 3005(b)). As any elimination or restriction of 25 U.S.C. 3005(b) would require an act of Congress, we cannot remove the reference to ''scientific study'' entirely or make the requested change to remove § 10.9(i)(3). We have, however, strengthened the requirements under duty of care in this final rule to ensure better implementation and enforcement that scientific studies are not required.

18. Comment: We received three comments requesting clarification of § 10.1(e) Delivery of written documents. One comment requested an editorial change to the text and the other two comments requested an explanation of proof of receipt. One comment stated that tracking the sending and receipt of written documents was a considerable burden on all parties and would require a significant outlay of resources (NPS–2022–0004–0135).

DOI Response: We have made the requested editorial change to paragraph (e)(1) and added ''one of the following'' to ''must be sent by.'' Regarding ''proof of receipt'' for email, many email systems include an option to request a read receipt automatically. While these systems may not constitute legal proof, use of such systems is sufficient for the purposes of these regulations. If an email system does not provide this option, other software or services can provide proof of receipt for little to no cost. However, we do not expect or require additional software or services to meet this requirement. The minimum requirement to satisfy ''proof of receipt'' would be to request that the recipient acknowledge receipt of the email. If no acknowledgment is received, the sender may follow up with a phone call to ensure the email was received. A call log or note to the file would be sufficient ''proof of receipt.''

19. Comment: We received four comments suggesting changes to § 10.1(f) Deadlines and timelines. One comment noted that Tribal holidays may not coincide with Federal holidays and should be included. Another comment requested this paragraph clarify that the **Federal Register** calculates calendar days. One comment questioned how the Manager, National NAGPRA Program, will meet the notice publication deadline if there is a lapse in appropriations. One comment specifically questioned the use of business days in relation to the requirements under § 10.5 and stated that under the Act, ''days'' means calendar days. By using business days, the total maximum work stoppage under § 10.5 could increase to some 95 calendar days. In enacting the 30-day stop-work period, Congress said ''days,'' which is commonly understood as calendar days. Similarly, Rule 6(a) of the Federal Rules of Civil Procedure provides that, in computing any time period specified in the Rules, in any local rule or court order, or in any statute that does not specify a method of computing time, when a period is stated in days or a longer unit of time, every day is counted, including intermediate Saturdays, Sundays, and legal holidays. Furthermore, the comment states, except for using three ''working days'' for the ministerial certification of receipt of a notice of discovery, the Department has always used calendar days as the metric for calculating a period in the existing regulations stated in days or a longer unit.

DOI Response: We agree that in the Act, days means calendar days. We appreciate the comment on Tribal holidays, but given the great variation in those dates, we cannot accommodate the request to include or observe Tribal holidays. The purpose of this paragraph is to provide clear instruction on how to calculate dates for the deadlines and timelines in these regulations. Earlier drafts of these regulations used calendar days. We received requests during consultation in 2021 to use business days and to account for a lapse in appropriations. We noted this change would lengthen most deadlines in the regulations but accepted the suggested change in the proposed regulations. We have revised paragraph (f)(1) in § 10.1 to calendar days and included an exception for when a deadline falls on a Saturday, Sunday, or Federal holiday, including a lapse in appropriations.

20. Comment: We received seven comments suggesting changes to § 10.1(g) Failure to make a claim or a request. Five comments requested we delete this paragraph because the Act does not provide the Secretary with the authority to include this waiver of rights language in the regulations. These comments state that an Indian Tribe or NHO must never lose its rights to claim disposition or request repatriation of human remains or cultural items. One comment requested clarification and guidance on the application of this paragraph to the time between sending a repatriation statement and completing physical transfer of human remains or cultural items. One comment requested the regulations require clear and concise written proof of compliance with the notice and consultation requirements prior to any waiver of a right to make a claim or a request.

DOI Response: The Secretary's authority for promulgating these regulations is discussed extensively in the 2010 Final Rule (75 FR 12379) and the 2022 Proposed Rule (87 FR 63207). The purpose of a disposition or repatriation statement is to provide clear and concise written proof that the requirements of the Act have been fulfilled (25 U.S.C. 3002(a) and 3005(a)). With the disposition or repatriation statement, the museum or Federal agency divests itself of any interest in the human remains or cultural items.

We cannot remove this paragraph without jeopardizing the entire disposition or repatriation processes provided by the Act and these regulations. This paragraph has been included in these regulations since the 1993 Proposed Rule (58 FR 31132) and ensures that any claim for disposition or request for repatriation must be considered by a museum or Federal agency prior to disposition, repatriation, transfer, or reinterment of human remains or cultural items. Once disposition, repatriation, transfer, or reinterment occurs, a museum or Federal agency cannot accept a claim or request from another party as the museum or Federal agency no longer has any rights to or interest in the human remains or cultural item. This paragraph provides protection for lineal descendants, Indian Tribes, and NHOs as well as for museums and Federal agencies that once a disposition or repatriation statement is sent, it is not subject to future appeal or challenge.

21. Comment: We received four comments suggesting changes to § 10.1(h) Judicial jurisdiction. Three comments requested we include the role of the U.S. Court of Federal Claims in resolving specific matters. One comment asked if this paragraph restricted the role of Tribal courts in any related legal actions.

DOI Response: Nothing in the Act or these regulations is intended to abrogate any concurrent Tribal jurisdiction that may exist with respect to alleged violations of similar Tribal laws on Tribal lands. Regarding the U.S. Court of Federal Claims, we disagree with the

suggested change. This paragraph reflects the statutory description of judicial jurisdiction for violations of the Act (25 U.S.C. 3013). It is not intended to address judicial jurisdiction for potential constitutional violations, such as the possibility of a Fifth Amendment taking as described in the Act's definition for ''right of possession'' (25 U.S.C. 3001(13)). It is unnecessary for these regulations to address the Court of Federal Claims' jurisdiction over Fifth Amendment takings claims, which is well-established and not specific to this Act. Regarding collection of civil penalties, this is already included in § 10.11, specifically in paragraph (m)(2) of these regulations.

22. Comment: We received 19 comments suggesting changes to § 10.1(i) Final agency action. Four comments requested clarification as to how to interpret final agency action and confirming that disposition or repatriation determinations are final agency actions. Four comments considered the categories of final agency action to be too narrow as written and recommended adding language to clarify and including examples of determinations that would make this part inapplicable, such as determinations regarding plans of action, excavations, Federal land ownership, and possession or control. On the other hand, one comment described how those categories of final agency action impermissibly broaden the concept. Six comments urged the Department to approve all museum determinations under these regulations or compel museum action, and that such approval or failure to compel should be defined as final agency action. Four comments recommended that the Assistant Secretary's decision not to assess a civil penalty be considered reviewable as final agency action.

DOI Response: The Act does not grant the Secretary authority to approve or compel museum determinations, other than by assessing civil penalties for failures to comply. Regarding civil penalties, we have not made changes that would make decisions to assess civil penalties reviewable as final agency action because, first, the Act makes this decision permissive, not required, and second, such decisions are comparable to those in a criminal context (*United States* v. *Halper,* 490 U.S. 435 (1989)) and generally considered unreviewable under the Administrative Procedure Act in order to preserve prosecutorial discretion (*Heckler* v. *Cheney,* 470 U.S. 821 (1985)). While we appreciate the remaining recommendations, we believe that the concerns underlying each are already addressed by the language as it appeared in the proposed regulations. First, the inclusion of any final determination making the Act or this part inapplicable is intentionally broad and inclusive enough to capture the examples and other regulatory actions described in the comments. Second, at the same time, because this determination must be final, because it is on its own terms limited to situations where the information available to the Federal agency has informed the determination that the Act or this part is inapplicable, and because the determination in question is specific to the application of this Act or this part, the category is sufficiently limited in scope so as to ensure consistency with the Administrative Procedure Act. The Department does not consider this language in these regulations to redefine final agency action, but only to clarify its existing application across the entirety of the Act and this part.

In addition, we have added a paragraph (k) to this section on severability. While this rule is intended to create systematic processes for implementing the Act, if a court holds any provision of one part of this rule invalid, it should not impact the other parts of the rule. For example, a decision holding a portion of Subpart B invalid should not impact Subpart C, since they are two separate processes for two different situations. Similarly, a decision holding part of the inventory process invalid should not impact the summary or repatriation processes. Any decision finding any provisions in this rule to be invalid would not impact the remaining provisions, which would remain in force. The intent of this rule is to streamline the processes and increase deference to lineal descendants, Indian Tribes, and NHOs as a whole, but the rule is not an interdependent whole—other provisions of the rule would implement that intent even if a court declared certain provisions invalid.

C. Section 10.2 Definitions for This Part

23. Comment: We received four comments requesting we add new definitions. Three comments requested we define ''deference.'' One comment requested we define ''simple itemized list,'' ''lot,'' and ''specific area'' for funerary objects.

DOI Response: We have not defined ''deference'' in these regulations. As used in these regulations, this term is intended to ensure meaningful consideration of Native American traditional knowledge of lineal descendants, Indian Tribes, and NHOs throughout the systematic processes for disposition and repatriation. The term should be understood to have a standard, dictionary definition: ''respect and esteem due a superior or an elder; *also* affected or ingratiating regard for another's wishes'' (Merriam-Webster definition of ''deference'' *https://www.merriam-webster.com/dictionary/deference,* accessed 12/1/2023). The requirement for deference is not intended to remove the decision-making responsibility of a museum or Federal agency under the Act or these regulations but is intended to require that a museum or Federal agency recognize that lineal descendants, Indian Tribes, and NHOs are the primary experts on their cultural heritage. We believe the application of deference in these regulations is clear, and we have reinforced its application through changes to paragraphs in § 10.1(a) Purpose and (d) Duty of care and in the definition of ''consultation'' below.

We do not believe it is necessary to define ''simple itemized list,'' ''lot,'' or ''specific area.'' Each of these terms should be understood to have a standard, dictionary definition, and when a museum or Federal agency is trying to apply them, we note that consultation with lineal descendants, Indian Tribes, or NHOs should inform that decision.

24. Comment: We received six comments supporting the definitions in the proposed regulations. These comments appreciated that the definition of ''cultural item'' (and the definitions of specific kinds of cultural items) included language that recognizes lineal descendants, Indian Tribes, and NHOs are the primary experts on their own cultural heritage. One comment requested these definitions be further strengthened by requiring museums and Federal agencies defer to the determination of the lineal descendant, Indian Tribe, or NHO. Similar comments were repeated in each of the definitions of specific kinds of cultural items.

DOI Response: We have retained the language in the definition of ''cultural item,'' ''funerary object,'' ''sacred object,'' and ''object of cultural patrimony.'' We have not added a requirement for deference to the determinations of lineal descendants, Indian Tribes, or NHOs as it would be inconsistent with the Act. Museums and Federal agencies are responsible for making determinations under the Act and these regulations, but must do so after consulting with lineal descendants, Indian Tribes, and NHOs. We have changed the order of the sentences to

reflect the importance of Native American traditional knowledge (which includes customs and traditions) in these definitions. Furthermore, we have strengthened the application of these definitions through changes to paragraphs in § 10.1(a) Purpose and (d) Duty of care and in the definition of ''consultation'' below.

25. Comment: We received 21 comments on the proposed definitions of ''acknowledged aboriginal land'' and ''adjudicated aboriginal land.'' Of that total, 13 comments suggested changes to the definitions while eight comments supported both definitions as proposed.

DOI Response: Due to the changes to the definition of ''cultural affiliation,'' we are not finalizing the proposed definitions of aboriginal land in this rule. We believe the changes to cultural affiliation address the concerns expressed by the comments and ensure consultation on and consideration of information about aboriginal occupation in determining cultural affiliation. We have replaced ''adjudicated aboriginal land'' in the regulatory text with the elements of the definition.

26. Comment: We received 21 comments on the definition of ''affiliation.'' Of that total, 14 comments suggested changes to the definition while seven comments supported it. One comment questioned if the Secretary has the authority to alter a definition in the statute and opposed the generalized and simplistic meaning of ''affiliation.'' The other comments requested that the definition of ''affiliation'' be used to define ''cultural affiliation.''

DOI Response: We agree with the suggestion to add ''cultural'' before affiliation in this definition. We have clarified this definition by incorporating the Congressional intent of this definition ''to ensure that the claimant has a reasonable connection with the materials'' (H. Rpt. 101–877, at 14, and S. Rpt. 101–473, at 6). The additional language found in the definition in the Act (traced through time and identifiable earlier group) has been incorporated into the procedure for determining cultural affiliation and the related changes explained in our responses under § 10.3. We included in the definition of cultural affiliation the two ways cultural affiliation may be identified (clearly or reasonably), taken from the language in the Act (25 U.S.C. 3003(d)(2)).

27. Comment: We received two comments suggesting changes to the definition of ''ahupua'a.''

DOI Response: We agree with the comments and have made the suggested changes. We appreciate the feedback that the definition of ahupua'a includes extra contextual information that is already incorporated in § 10.3. We also note that priority for cultural affiliation is not given to an NHO based on the NHO's location or cultural practice at the time of their claim or request but rather priority for cultural affiliation is based on the NHO's relationship to the earlier occupants of the ahupua-a from where the human remains or cultural items were removed or in which they are discovered.

28. Comment: We received three comments suggesting changes to the definition of ''appropriate official.'' One comment suggested that the appropriate official be trained on the time requirements of that job. The other comments wanted the Department to provide a contact list of appropriate officials.

DOI Response: The responsible Indian Tribe, NHO, DHHL, or Federal agency is responsible for the training the appropriate official. The National NAGPRA Program maintains contact information on its website at *https://grantsdev.cr.nps.gov/NagpraPublic/Home/Contact* (accessed 12/1/2023). We encourage Indian Tribes, NHOs, Federal agencies, and museums to provide or update contact information on a regular basis. We also point out that the Advisory Council on Historic Preservation keeps an updated list of Federal Preservation Officers for each Federal agency at *https://www.achp.gov/protecting-historic-properties/fpo-list* (accessed 12/1/2023). The National Park Service and the Bureau of Indian Affairs maintain contact information on Tribal Historic Preservation Offices at *https://grantsdev.cr.nps.gov/THPO_Review/index.cfm* (accessed 12/1/2023) and Tribal Leaders at *https://www.bia.gov/bia/ois/tribal-leaders-directory/* (accessed 12/1/2023).

29. Comment: We received 10 comments suggesting changes to the definitions of ''ARPA Indian land'' and ''ARPA public land.'' Most of the comments said that the definitions are inconsistent with the Act and would unduly narrow the application of the Act and these regulations. One comment noted that the definition of ''ARPA Indian land'' includes the term ''individual Indian.'' The comment stated that the latter term was undefined in the proposed regulations and suggested that it be replaced with the defined term ''lineal descendant.''

DOI Response: We have not changed these definitions. These definitions do not change the application of NAGPRA. NAGPRA applies to its fullest extent on ''Federal land'' or ''Tribal land,'' as defined in both the statute and these regulations. Rather, the terms ''ARPA Indian land'' and ''ARPA public land'' define which excavations under NAGPRA require a permit issued under ARPA and which do not. Specifically, NAGPRA requires that human remains or cultural items may only be excavated or removed from Federal or Tribal land if, among other requirements, ''such items are excavated or removed pursuant to a permit issued under [ARPA] which shall be consistent with [NAGPRA].'' 25 U.S.C. 3002(c)(1). Since both NAGPRA and ARPA are intended to protect important cultural resources, they must be construed together. Further, ''issued under ARPA'' is an adjectival phrase modifying ''permit.'' Thus, it is not ARPA that ''shall be consistent with NAGPRA,'' but rather the ARPA permit that must be consistent with NAGPRA. This is supported by the NAGPRA legislative history. The Senate Indian Affairs Committee specifically noted that it ''[intended] the notice and permit provisions of this section to be fully consistent with the provisions of [ARPA]'' (S. Rpt. 101–473, at 7). Likewise, the House Committee on Interior and Insular Affairs, in discussing the stopping of work for an inadvertent discovery, noted that, ''[a]lthough a specific time limit was not added here, the Committee does intend to protect the remains and objects found and does not intend to weaken any provisions of other laws, such as [ARPA], regarding similar situations.'' Like the Senate Committee, the House Committee also stated that, ''[s]ubsection (c) provides that items covered by this Act can be excavated from Federal or [T]ribal land if proof exists that a permit has been acquired under Section 4 of the [ARPA]'' (H. Rpt. 101–877, at 15 and 17).

Therefore, the provisions of ARPA, including the scope of public land and Indian land, are not affected by NAGPRA. So, the terms ''ARPA Indian land'' and ''ARPA public land'' are defined in these regulations using the exact same definitions of ''Indian land'' and ''public land'' in ARPA, including use of the term ''individual Indian,'' which is used in ARPA to denote land that is owned by an individual Indian, who may or may not be a ''lineal descendant'' as defined in NAGPRA. The protection of the scope of both statutes is reflected in these regulations by the requirement that ARPA permits are issued for NAGPRA excavations just as they are for ARPA excavations, keeping the full protections of each statute in place, as Congress intended.

30. Comment: We received 39 comments on the definition of ''consultation.'' Of that total, two comments objected to the definition because ''to the maximum extent possible'' was a vague and troubling standard. These two comments also objected to the use of consensus and requested it be removed or made a recommendation rather than a requirement because, as one comment stated, ''it is not within the ability of museums to seek consensus or mediate potential disagreements among sovereign nations during the consultation process'' (NPS–2022–0004–0136). In addition, one comment didn't object to the definition but requested clarification as to whether ''seek consensus'' would mean museums and Federal agencies must ensure responses are received from all parties invited to consult.

On the other hand, nine comments supported the definition as proposed while 27 comments supported the definition but suggested changes to strengthen it. Most of these comments suggested changing ''seek consensus'' to ''achieve'' or ''strive for'' consensus, replacing ''incorporating'' with ''deferring to,'' replacing ''to the maximum extent possible'' with ''as the Indian Tribe or Native Hawaiian organization understands them,'' or removing ''to the maximum extent possible.'' A few comments suggested adding that consultation is between equal parties or that it must be conducted in good faith. A few comments suggested including a requirement for museum or Federal agency decision-makers to be present at consultation, for consultation to be continual, or to add ''transparent'' and ''formal'' to the definition. One comment renewed a request to use the definition of consultation in 36 CFR part 800.

DOI Response: Consultation is a critical, central, and continual part of the systematic processes for disposition or repatriation provided by the Act and these regulations. However, neither the Act nor the existing regulations define consultation. Earlier drafts of these regulations drew directly on Congressional report language that ''consultation'' under NAGPRA means ''the open discussion and joint deliberations with respect to potential issues, changes, or actions by all interested parties'' (H. Rpt. 101–877, at 16). Specific to the inventory, Congress emphasized the need for ''cooperative exchange of information between Indian [T]ribes or Native Hawaiian organizations and museums regarding objects in museum collections'' (S. Rpt. 101–473, at 8). In the proposed regulations, we added specific types of information that are exchanged during consultation (identifications, recommendations, and Native American traditional knowledge). We also drew language from other definitions for consultation found in 36 CFR part 800, Executive Order 13175, and draft guidance and language that became the November 2022 White House memorandum on Uniform Standards for Tribal Consultation.

In response to comments that objected to the proposed definition, we have removed ''to the maximum extent possible'' and clarified the goal of consultation is to strive for consensus, agreement, or mutually agreeable alternatives. We did not and do not intend for ''consensus'' to imply museums or Federal agencies are required to mediate potential or even actual disagreements among lineal descendants, Indian Tribes, or NHOs. Likewise, ''consensus'' does not require a museum or Federal agency receive a response from every invited consulting party before it can proceed. The consultation record should include efforts to invite consulting parties. When consultation does not result in consensus, agreement, or mutually agreeable alternatives, the consultation record must describe the concurrence, disagreement, or nonresponse of the consulting parties.

In response to comments that requested strengthening the definition for consultation, we have revised the second half of the sentence to better reflect the goals of consultation. We have added ''good faith'' to the definition to ensure honest and fair consideration of all points of view and removed it from each of the regulatory steps on consultation. We have expanded the definition to clearly identify the goals of consultation, drawing on other sources suggested by the comments. ''Seek, discuss, and consider the views of all parties'' comes from language in 36 CFR part 800.16. Although we received several comments requesting we change ''seek'' to ''achieve,'' we have used ''strive for'' which was suggested by some comments and is found in the November 2022 White House memorandum on Uniform Standards for Tribal Consultation. We feel this change better reflects the goal of consultation and is stronger than ''seek consensus'' but still reflects consensus may not be achieved. We have also added to the goal of consensus ''agreement'' and ''mutually acceptable alternatives.'' Although we received several comments requesting we add deference to this definition, we have instead added that consultation enables consideration of the kinds of information that can be provided by lineal descendants, Indian Tribes, and NHOs. This replaces the more limited list of information in the proposed regulations, and we expect it will provide a more robust and clearer record of information shared by lineal descendants, Indian Tribes, and NHOs during consultation.

In response to all the comments and as noted elsewhere, when consultation does not result in consensus, agreement, or mutually agreeable alternatives, the consultation record must describe the concurrence, disagreement, or nonresponse of the consulting parties. Although a few comments suggested we require in the definition that decision makers attend consultations, we have not included this in these regulations. We believe this requirement may not fit every situation and might end up delaying or eliminating the efficiencies of these regulations. Rather, we note that when consultation does not result in consensus, agreement, or mutually acceptable alternatives, consulting parties may wish to involve decision makers from all parties to see if a resolution can be found.

Lastly, we note that consultation as defined here is different than consultation defined in other contexts, especially consultation between a Federal agency and an Indian Tribe or NHO. For purposes of disposition or repatriation, Federal agencies are required to comply with this definition of consultation as well as any applicable policy on government-to-government/sovereign consultation that would apply in all contexts. For purposes of repatriation, we cannot require museums to conduct the same level of consultation that would be required for a Federal agency. We feel this definition of consultation provides requirements that can be met by both museums and Federal agencies, fills in a missing piece of the Act and the existing regulations, and ensures consultation remains a critical, central, and continual part of the systematic processes for disposition or repatriation.

31. Comment: We received 20 comments on the definition of ''cultural item.'' Of that total, 16 comments suggested changes to the definition while four comments supported it. Four comments stated that changing the definition of cultural item to exclude human remains exceeded the Secretary's authority. One comment objected to the definition without further request for changes. One comment suggested a grammatical change. One comment suggested

cultural item be broadened to include documents and records (including photographs) associated with human remains or cultural items to ensure repatriation of those documents and records. Six comments requested the definition of cultural items be expanded to require Tribal consultation. The comments pointed out that the definitions in the Act ''depend in part on [T]ribal use and cultural significance. 25 U.S.C. 3001(3). Courts have clarified that Indian Tribes play a role in determining whether items possess the requisite cultural significance to meet NAGPRA's definitions, especially regarding 'cultural patrimony.' See *United States* v. *Tidwell,* 191 F.3d 976, 981 (9th Cir. 1999); *United States* v. *Corrow,* 119 F.3d 796, 805 (10th Cir. 1997).'' (see NPS–2022–0004–0119 for one of the six comments). Three comments objected to the definition as proposed because the required deference to Indian Tribes and NHOs in the regulations and the definitions of cultural items had the potential to create conflict between types of information or among Indian Tribes or NHOs.

DOI Response: As we stated in the proposed regulations, use of the phrase ''human remains or cultural items'' is responsive to requests of Indian Tribes and NHOs. The existing regulations do not define ''cultural items'' but still use the term to include human remains. This change from ''cultural items'' to ''human remains or cultural items'' is only editorial and does not have any impact on the applicability or scope of these regulations. This editorial change is within the Secretary's authority, as the Department asserted in the 1993 Proposed Rule (58 FR 31122).

We have not made the requested grammatical change (from singular to plural) as it is unnecessary in regulatory definitions. Throughout these final regulations, a singular term includes and applies to several persons, parties, or things. We cannot expand the definition to include documents and records (including photographs) as that would be inconsistent with the Act. We note that requesting documents and records (which could include photographs) is already provided for in §§ 10.9(c)(4) and 10.10(c)(4). Under the Act and these regulations, lineal descendants, Indian Tribes, and NHOs have a right to request records, catalogues, relevant studies, or other pertinent data (25 U.S.C. 3003(b)(2) and 25 U.S.C. 3004(b)(2)), and museums and Federal agencies are required to share that information (25 U.S.C. 3005(d)). As required by the Act, additional information is only provided upon request of an Indian Tribe or NHO, and we cannot require documents and records be provided by including these in the definition of cultural items. We advise lineal descendants, Indian Tribes, and NHOs to make their requests as broad as possible to ensure all information about cultural items, including digital data, is provided.

Regarding the request to strengthen the definition, we are unable to change ''according to'' to ''as determined by'' as it would be inconsistent with the Act. Museums and Federal agencies are responsible for making determinations under the Act and these regulations, but must do so after consulting with lineal descendants, Indian Tribes, and NHOs. We have changed the order of the sentence to reflect the importance of Native American traditional knowledge (which includes customs and traditions) in this definition.

We disagree that the definition is over-broad, a reversal of Congressional intent, or contrary to explicit statements in the Congressional record. Deference to Native American traditional knowledge is necessary to ensure the rights of lineal descendants, Indian Tribes, and NHOs the Act recognizes. The addition of ''according to Native American traditional knowledge'' in this definition is to ensure meaningful consideration of this information during consultation.

We believe this addition to the various definitions of cultural items will lead to more informed decision-making and help to avoid the lengthy and costly delays in disposition or repatriation. In crafting the definitions of cultural items, Congress clearly intended that the definitions ''will vary according to the [T]ribe, village, or Native Hawaiian community'' (S. Rpt. 101–473, at 4). Consultation, which is required throughout the Act prior to any determination, is how an Indian Tribe or NHO shares the information needed to identify a cultural item.

32. Comment: We received 14 comments on the definition of ''custody.'' Of that total, nine comments suggested changes to the definition while five comments supported it. Eight comments recommended deleting this definition and replacing it with the concept of possession in the definition of ''possession or control.'' One comment recommended replacing the term ''sufficient interest'' with the term ''legal authority.''

DOI Response: We have not made changes to this definition. We cannot replace this definition with an expanded definition for ''possession or control,'' as discussed in the response to comments on that definition (see comment 49). Custody without ''possession or control'' is a distinct concept from ''possession or control'' itself. This distinct concept requires definition to implement certain requirements, including a duty of care and certain reporting requirements. Further, we did not replace the term ''sufficient interest,'' which is a threshold determination that museums and Federal agencies must make. Changing this phrase would presume application of the Act before that determination has been made. As discussed in more detail in the response to comments for the definition of ''possession or control,'' whether a museum or Federal agency has a sufficient interest in an object or item to establish ''possession or control'' is a legal determination that must be made on a case-by-case basis.

33. Comment: We received two comments requesting changes to the definition of ''discovery.'' One comment raised a concern that removal of human remains or cultural items from Federal or Tribal lands is either excavation or theft, not a discovery. One comment questioned why the word ''inadvertent'' is no longer used with the word ''discovery.''

DOI Response: We understand the concern but cannot make the requested change to eliminate ''removing'' from the definition of discovery and still ensure that human remains or cultural items are protected on Federal or Indian lands under these regulations. As one comment notes, an intentional removal without a written authorization for an excavation could violate other Federal laws, depending on the circumstances. These regulations do not replace or supplant the other protections available on Federal or Tribal lands. Rather this definition and these regulations provide a process for the disposition of those human remains or cultural items that may be discovered.

The definition of discovery includes both inadvertent and intentional discovery of human remains or cultural items. This ensures that any human remains or cultural items are subject to these regulations, regardless of how they were discovered.

34. Comment: We received seven comments requesting clarification of the definition of ''Federal lands.'' Four comments did not consider the definition to be sufficiently clear or instructive to Federal agencies. One comment noted that the definition should include lands leased by the Federal government. One comment noted that the definition could impact museum collections under Subpart C. One comment noted that the definition should include language to provide for

the protection and disposition of Native American children buried at Indian boarding schools on lands not owned or controlled by the Federal Government, but where the Indian boarding school was operated by or for the U.S. Government.

DOI Response: We have not made these changes. Whether a Federal agency's control of the lands on which it conducts it programs or activities is sufficient to apply these regulations depends on the circumstances and scope of that Federal agency's authority, and on the nature of State and local jurisdiction. Because of the wide array of agency-specific authorities that can establish federally controlled lands, the Federal agency officials must make such determinations on a case-by-case basis. In some circumstances, the definition may include lands leased by the Federal agency, depending on the nature of that lease, the Federal agency's statutory authority, and other case-by-case circumstances. The Department cannot instruct Federal agencies any further on their own circumstances or statutory authorities, and recommends Federal agencies consult with their legal counsel in making such determinations. The definition is not applied to museum collections in Subpart C.

Regarding lands on which Native American children were buried at Indian boarding schools, we cannot amend the regulatory definition of ''Federal lands'' as requested. Congress specifically and explicitly defined Federal lands based on control or ownership, not on receipt of Federal funds (as it did in the definition of a ''museum''). Thus, ''[w]e have here an instance where the Congress, presumably after due consideration, has indicated by plain language a preference to pursue its stated goals . . . . In such case, neither [a] court nor the agency is free to ignore the plain meaning of the statute and to substitute its policy judgment for that of Congress'' (*Alabama Power Co.* v. *United States EPA,* 40 F. 3d 450, 456 (D.C. Cir. 1994); *United Keetoowah Band of Cherokee Indians Of Okla.* v. *United States HUD,* 567 F. 3d 1235, 1243 (10th Cir. Okla. 2009) (same); *Chevron U.S.A.* v. *Natural Resources Defense Council,* 467 U.S. 837, 842–43 (1984) (''If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress'')). However, the Department does encourage the custodians of records from boarding schools not on Federal or Tribal lands, and the current owners of those boarding schools and cemeteries, to fully consult with lineal descendants, Indian Tribes, and NHOs on identification, disinterment, and repatriation of Native American children. The Department stands ready to assist lineal descendants, Indian Tribes, and NHOs to the fullest extent of its authority.

35. Comment: We received two comments suggesting changes to the definition of Federal agency to include the Smithsonian Institution.

DOI Response: We cannot make this change. The Act expressly excludes the Smithsonian Institution from the definition of Federal agency.

36. Comment: We received 22 comments on the definition of ''funerary object.'' Of that total, 8 comments supported the definition in the proposed regulations while 14 comments requested changes to it. Two comments objected to the definition as being too expansive by replacing ''preponderance of the evidence'' in the existing regulations with ''according to'' which the comments believed would create ambiguity and confusion in applying the definition. On the other hand, two comments suggested changing ''according to'' to be ''as determined by'' to further strengthen the deference to lineal descendants, Indian Tribes, and NHOs on identification of funerary objects. One comment suggested integrating the definition of funerary object in to two separate definitions for associated and unassociated funerary objects. This same comment raised concerns about the example provided in the proposed regulations. One comment expressed frustration with the use of acronyms for funerary objects which the comment stated are offensive and dismissive.

Six comments provided an extensive argument and requested removing the temporal limitation on human remains related to associated funerary object (''are, or were after November 16, 1990'') (see NPS–2022–0004–0119 for one of the six comments). One comment requested clarification of and emphasis on the location of human remains for unassociated funerary objects. One comment objected to the statement that a burial site could ever be ''no longer extant.''

DOI Response: We reemphasize that the proposed revisions to the existing regulations, specifically the removal of ''preponderance of the evidence'' from the definition of funerary object, is to align the definitions in the regulations with those in the Act. The existing regulations limit the definition of a funerary object by including the statutory language intended to apply only to unassociated funerary objects. In 1995, the Department accepted the suggestion to combine the definitions of associated funerary objects and unassociated funerary object into a single definition of funerary object and in doing so, attached the statutory language for unassociated funerary object to all funerary objects. In 1995, the Department asserted:

> The statutory language makes it clear that only those objects that are associated with individual human remains are considered funerary objects. The distinction between associated and unassociated funerary objects is based on whether the individual human remains are in the possession or control of a museum or Federal agency. (60 FR 62137).

The Department reiterated and clarified this statement in the 2022 Proposed Rule, ''. . . determining if the funerary object is associated or unassociated does not require identifying the specific individual with which the object was placed, but rather, only requires identifying the location of the related human remains'' (87 FR 63211). The intent of revising this definition is to clarify long-standing confusion over the distinction between associated and unassociated funerary objects and align the definitions with those in the Act. We have retained the single defintion for funerary object and the two related definitions of associated or unassociated funerary object as we believe it clarifies the definitions.

It is important to note ''individual human remains'' as used in the Act means the human remains of an individual or individuals. We have removed ''individual'' from the definition of funerary object to simplify and clairfy the definition. The Act does not require a funerary object be identified to a specific individual. Rather, a group of individuals may be related to a single funerary object and the object may be a funerary object without identifying specifically with which individual the object was placed.

We have retained the phrase ''with or near'' as we believe it approporiately expands the definition of what may be a funerary object. As noted in the 1995 Final Rule, ''[t]he clause was included to accommodate variations in Native American death rites or ceremonies'' (60 FR 62138). We have retained the requirement for the object to be ''intentionally'' placed. As noted in the 1995 Final Rule, ''[t]he term is included to emphasize the intentional nature of death rites or ceremonies. Items that indadvertently came into proximity or contact with human remains are not considered funerary objects'' (60 FR 62137). For funerary objects, broad categorical identifications, including everything from a burial site or specific area, may meet the definition of a

funerary object depending on the information available and the results of consultation. As noted in the example in the 2022 Proposed Rule, it may be reasonable to believe an object was placed intentionally in a location because of the human remains even if the object was placed there many centuries after the human remains (87 FR 63211). As one comment suggested, this may result in the funerary object having a different cultural affiliation than the human remains. We have revised the definition of funeary object to ensure, as in the Act, that cultural affiliation is not a required element to meet the definition of a funerary object.

Table 3 compares the definition of ''funerary object'' from the Act, the existing regulations, and this final rule and indicates the changes to the definition in the Act by underline (additions), strikethrough (removals), and moved text (brackets).

Table 3: Comparison of "funerary object" definition.

Act 25 U.S.C. 3001(3)(A) - (B)	…as part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later...
Existing §10.2(d)(2)	…as part of the death rite or ceremony of a culture, are reasonably believed to have been placed <u>intentionally</u> [at the time of death or later] with <u>or near</u> individual human remains.
Final §10.2 Funerary object	…reasonably believed to have been placed <u>intentionally</u> with <u>or near</u> ~~individual~~ human remains. <u>A funerary object is any object connected,</u> either at the time of death or later, ~~as part of the~~ <u>to a</u> [death rite or ceremony of a] <u>Native American</u> culture <u>according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.</u>

Regarding the request to strengthen the definition, we are unable to change ''according to'' to ''as determined by'' as it would be inconsistent with the Act. Museums and Federal agencies are responsible for making determinations under the Act and these regulations, but must do so after consulting with lineal descendants, Indian Tribes, and NHOs. We have changed the order of the sentence to reflect the importance of Native American traditional knowledge (which includes customs and traditions) in this definition.

We disagree that the definition is over-broad, a reversal of Congressional intent, or contrary to explicit statements in the Congressional record. Deference to Native American traditional knowledge is necessary to ensure the rights of lineal descendants, Indian Tribes, and NHOs the Act recognizes. The addition of ''according to Native American traditional knowledge'' in this definition is to ensure meaningful consideration of this information during consultation.

We believe this addition to the various definitions of cultural items will lead to more informed decision-making and help to avoid the lengthy and costly delays in disposition or repatriation. In crafting the definitions of cultural items, Congress clearly intended that the definitions ''will vary according to the [T]ribe, village, or Native Hawaiian community'' (S. Rpt. 101–473, at 4). Consultation, which is required throughout the Act prior to any determination, is how an Indian Tribe or NHO shares the information needed to identify a cultural item.

In response to the extensive comments on the definition of ''associated funerary object,'' we appreciate and share the concern regarding the inappropriate and inaccurate misreading of NAGPRA. We clearly and affirmatively state that the Act and these regulations apply to any museum or Federal agency that has possession or control of Native American human remains or cultural items. Identification of where or when the human remains or cultural items were removed may impact which entity has possession or control, but where or when the human remains or cultural items were removed does not impact the identification of human remains or cultural items for purposes of these definitions.

We have revised the definition as requested to remove the date and avoid possible misunderstanding. The Act requires that for a funerary object to be an associated funerary object, the related human remains must be ''presently'' in the possession or control of a museum or Federal agency, but the Act does not require the human remains to be in the possession or control of the same museum or Federal agency as the associated funerary object. The 1995 Final Rule clarified that when another museum or Federal agency has possession or control of the related human remains, the related funerary objects are still ''associated funerary objects'' (60 FR 62138). By using ''presently'' in the Act, Congress intended to distinguish associated funerary objects from unassociated funerary objects based on the location of the related human remains. Where human remains and funerary objects were removed from a burial site and when the location of those human remains is known, the funerary objects are associated funeary objects. Even if the human remains were removed with the funerary objects and the human remains are properly repatriated and reburied, the associated funerary objects do not lose their status as associated funerary objects. Associated funeary objects are still associated to the human remains as long as the location of the human remains is known.

Regarding the other comments, we reiterate that when the location of human remains related to a funerary object is unknown, the funerary objects are unassociated funerary objects but are still funeray objects subject to the Act and these regulations. Additional information about unassociated funerary objects is necessary to satisfy the

definition and meet the criteria for disposition or repatriation of the unassociated funerary objects. For example, an object that was intentionally placed with or near human remains and is connected to a death rite or ceremony of a Native American culture meets the definition of a funerary object. If the location of the related human remains is unknown, the funerary object meets the definition of unassociated funerary object. If cultural affiliation of the unassociated funerary object is reasonably identified by the geographical location where the unassociated funerary object was removed, the unassociated funerary object may satisfy the criteria for repatriation, provided the museum or Federal agency cannot prove it has a right of possession to the unassociated funerary object.

We understand the comment that in some Native American traditions a burial site never ceases to exist, we have retained the option for an unassociated funerary object to be identified when in a specific area, such as a flood plain or a shore line, the burial site is no longer extant. Lastly, we appreciate and will strive to no longer use acronyms for associated funerary objects or unassociated funerary objects that may be offensive. We encourage all parties to discuss appropriate terminology during consultation to recognize and reflect the significance of human remains and cultural items to lineal descendants, Indian Tribes, and NHOs.

37. Comment: We received two comments on the definition of ''holding or collection,'' both supporting the definition as proposed.

DOI Response: These regulations retain this definition to assist all parties with identifying the application of the Act and these regulations.

38. Comment: We received 37 comments requesting changes to the definition of ''human remains.'' One comment objected to considering human remains incorporated into a cultural item as the cultural item and not human remains. One comment requested adding that soil associated with burials and likely containing human remains be accounted for in this definition. Two comments requested we remove the sentence on comingled material (such as soil or faunal remains) being treated as human remains while one comment supported it.

One comment letter stated in five separate comments that animal remains should be included in the definition of human remains or cultural items and a Review Committee comment agreed. These comments requested animal burials be included separately and distinctly from cultural items because these animals are imbued with the same spirit as human remains and, therefore, require the same treatment under the Act and these regulations. An additional comment suggested the Department look at incorporating protections for ceremonial animal interments.

Of the total number of comments, 13 comments requested we expand the definition of human remains to include casts, 3–D scans, and all other digital data. Some of these comments also suggested expanding the definition to include any information or samples taken from an individual, including pictures, biological samples, isotope readings, soft tissue, and any other biological remnants. Some of these comments requested we add that any data collected directly relating to a Native American individual should also be considered human remains. A few of these comments requested that we require museums and Federal agencies to provide references to all casts of human remains, any replicas from 3–D scans, and all other digital data produced from human remains or cultural items and require consultation on the proper treatment of those references. The comments also requested we add that ''No such casts, replicas, or digital data scanned from Native American human remains, funerary objects, sacred objects or cultural patrimony shall be offered for sale or exchange without the free, prior, and informed consent of the culturally affiliated Indian Tribe or Native Hawaiian organization. Failure to comply shall be deemed a violation of NAGPRA.'' Separately, one comment suggested the definition of human remains be broadened to include documents and records associated with human remains or cultural items to ensure repatriation of those documents and records.

In addition, 12 comments requested we delete from the definition the sentence that excludes from the definition any human remains or portions of human remains that are determined to have been freely given or naturally shed.

DOI Response: We understand there is a wide variety of opinions on how human remains that are incorporated into a cultural item might be identified. The Department sought input on this issue in the 1993 Proposed Rule and retained the language in the 1995 Final Rule as it was ''recommended by the Review Committee to preclude the destruction of items that might be culturally affiliated with one Indian Tribe that incorporated human remains culturally affiliated with another Indian Tribe.'' The 1995 Final Rule also noted that ''[d]etermination of the proper disposition of such human remains must necessarily be made on a case-by-case basis'' (60 FR 62137). In the 2022 Proposed Rule, we included these two ways human remains may be incorporated into an object or item to ensure, as Congress intended, that human remains of any ancestry be treated with respect, and any Native American human remains must be made available for disposition or repatriation. We decline to make the requested change.

Regarding an admixture of comingled materials, the Act requires identification of all human remains in a holding or collection, including human remains reasonably believed to be comingled with other material (such as soil or faunal remains). Museums and Federal agencies are required to identify these comingled materials in its itemized list and during consultation should evaluate if the entire admixture can be treated as human remains. If it is not possible to treat the admixture as human remains, the record of consultation should include the effort to identify a mutually agreeable alternative, which may include additional handling, with consent of the lineal descendant, Indian Tribe, or NHO, to separate the human remains from other materials. We are aware that comingled materials are a significant issue for many Indian Tribes, NHOs, museums, and Federal agencies. The intent of this addition to the definition is to ensure these kinds of collections are included on an itemized list and made available to lineal descendants, Indian Tribes, and NHOs during consultation and for repatriation.

The term ''human remains'' appears in the definition section of the Act even though it is an undefined term. We have defined ''human'' using the commonly understood meaning of the word, *i.e.,* a member of the species *homo sapiens.* For this reason, we cannot make the requested change to include animal burials as a separate and distinct category of human remains as that would be inconsistent with the Act. We note, too, that purposefully buried remains that do not include human remains are not included in the definition of human remains. Other kinds of burials and remains that are not human remains should be carefully considered, through consultation, as cultural items. For example, animal burials that are not related to the burial of human remains and, therefore, are not funerary objects, may be needed by traditional Native American religious leaders for the practice of traditional religions and may be sacred objects.

We cannot expand the definition of human remains to include casts, 3–D scans, or other digital data, documents, or records as that would be inconsistent with the Act. We note that the right to request documents and records, which could include casts, 3–D scans, photographs, digital data, or other information, is already provided for in §§ 10.9(c)(4) and 10.10(c)(4). Under the Act and these regulations, lineal descendants, Indian Tribes, and NHOs have a right to request records, catalogues, relevant studies, or other pertinent data (25 U.S.C. 3003(b)(2) and 25 U.S.C. 3004(b)(2)), and museums and Federal agencies are required to share that information (25 U.S.C. 3005(d)). We advise lineal descendants, Indian Tribes, and NHOs to make their requests as broad as possible to ensure all information about human remains, including digital data, is provided. In addition, we cannot make the requested addition to prohibit the sale or exchange of casts, replicas, or digital data of human remains as that would be inconsistent with the Act.

We have always interpreted biological samples (including DNA), soft tissue, and any other biological remnants to be within the definition of human remains and subject to the Act and these regulations. The definition of human remains is purposefully broad to ensure that ANY physical remains of the body of a Native American individual are included (with the one exception discussed below). In the 1993 Proposed Rule, the Department included an example clause in the definition of human remains as ''including, but not limited to bones, teeth, hair, ashes, or mummified or otherwise preserved soft tissues of a person of Native American ancestry'' (58 FR 31126). In the 1995 Final Rule, the Department considered comments requesting the definition of human remains exclude isolated teeth, finger bones, cut finger nails, coprolites, blood residues, and tissue samples taken by coroners. In response, the Department stated:

> The Act makes no distinction between fully-articulated [sic] burials and isolated bones and teeth. Additional text has been added excluding ''naturally shed'' human remains from consideration under the Act. This exclusion does not include any human remains for which there is evidence of purposeful disposal or deposition. The exemplary clause has been deleted (60 FR 62137).

Identification of human remains for the purposes of the Act and these regulations requires a case-by-case assessment, in consultation with lineal descendants, Indian Tribes, and NHOs. Recent examples have demonstrated that the example clause from the 1993 Proposed Rule is beneficial in identifying human remains subject to the Act and these regulations, especially when it comes to hair samples taken from living individuals, coprolites, blood residues, tissue samples, and DNA extractions. The definition of human remains is intentionally broad and contains only one exception (discussed below). The definition does not include a requirement for the human remains to be from an archeological context, of a certain age, or from a deceased person. The definition does not exclude human anatomical collections used by medical schools for training or teaching collections. Again, the definition of human remains is purposefully broad to ensure that ANY physical remains of the body of a Native American individual are included (with the one exception discussed below).

We appreciate the comments requesting removal of the sentence that excludes human remains that were freely given or naturally shed. We agree with the comments of the Review Committee that state: ''[a]llowing museums and Federal agencies to predetermine if such remains were freely given or naturally shed and not report them in their inventories deprives Indian [T]ribes and Native Hawaiian organizations with necessary information'' (see NPS–2022–0004–0096). However, we disagree that a museum or Federal agency should be required to complete an inventory for human remains that were obtained with full knowledge and consent of the individual or next of kin. In the 1995 Final Rule, one comment requested clarification if human remains included blood sold or given to a blood bank by a Native American individual (60 FR 62137). In the 2010 Final Rule, two comments recommended excluding human anatomical collections used by medical schools for training from the definition of human remains. In response, the Department stated, ''[t]hough not excluded from the inventory provisions, medical schools that receive Federal funds would not be required to repatriate Native American human remains obtained with the voluntary consent of an individual or group that had authority of alienation'' (75 FR 12393).

We have revised the sentence in the definition to require a higher standard of information for human remains that are excluded from the Act and these regulations. We agree with the Review Committee that a museum or Federal agency must be able to prove the original acquisition of Native American human remains was obtained with the full knowledge and consent of the individual, next of kin, or the official governing body of the appropriate Indian Tribe or NHO (see ''right of possession'' 25 U.S.C. 3001(13)). In the Act, Congress acknowledged that a right of possession is qualified with respect to human remains and associated funerary objects. Congress did not provide for a museum or Federal agency to assert a right of possession to human remains and associated funerary objects identified in an inventory. This approach is consistent with Congress' intent to distinguish human remains and associated funerary objects from cultural items as quasi-property. Applicable common law in the United States generally accepts that human remains and associated burial items cannot be ''owned'' in the same manner as conventional property. The Act follows the common law by distinguishing between the quasi-property attributes of Native American human remains and associated funerary objects and the property attributes of Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony.

In line with applicable common law in the United States, Congress stated that the original acquisition of Native American human remains which were exhumed, removed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate Indian Tribe or NHO is deemed to give right of possession to those human remains. Therefore, these regulations cannot require a museum or Federal agency to complete an inventory or repatriate Native American human remains where the museum or Federal agency can show it has a right of possession.

For example, when any individual, regardless of ancestry, dies, local or State law dictates certain actions by law enforcement, medical examiners, and other local or State officials. Local or State law generally requires consent by the next of kin prior to any other action by the local or State authorities. When the deceased individual is Native American and when no next of kin is ascertainable, the local or State authorities may be required to treat the individual as human remains under the Act and these regulations, unless the local or State authorities obtain the full knowledge and consent of the official governing body of the appropriate Indian Tribe or NHO. Coroners, medical examiners, and other local or State agencies should consider their requirements under the Act and these

regulations for any Native American human remains.

The Department interprets ''full knowledge and consent'' considering the history of Indian country and recognizes that ''full knowledge and consent'' does not include ''consent'' given under duress or because of bribery, blackmail, fraud, misrepresentation, or duplicity on the part of the recipient. As such, consent in this definition must be shown to have been fully free, prior, and informed consent.

39. Comment: We received 24 comments suggesting changes to the definition of ''Indian Tribe.'' Several of the comments relied on the decision which held, based on the definition of ''group'' in the 1992 regulations at 25 CFR part 83, an Indian group without Federal recognition was an ''Indian Tribe'' for purposes of NAGPRA (*Abenaki Nation of Mississquoi* v. *Hughes,* 805 F. Supp. 234 (D.Vt., 1992), *aff'd per curiam,* 900 F.2d 729 (2nd Cir. 1993)). Some comments also disagreed with the addition of a reference to the List Act in this definition, arguing that the definition of Indian Tribe under NAGPRA is different than the standard for inclusion on the list published under the List Act. Many of those comments requested we reiterate the statutory definition verbatim. A few comments adamantly opposed any changes to the definition of Indian Tribe beyond federally recognized Indian Tribes.

DOI Response: NAGPRA defines ''Indian [T]ribe'' as ''any [T]ribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act [43 U.S.C. 1601 *et seq.*]), *which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians*'' (25 U.S.C. 3001(7) (emphasis added)). This definition was based on the definition in the Indian Self-Determination and Education Assistance Act (ISDEAA), which defines ''Indian [T]ribe'' as ''any Indian [T]ribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], *which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians*'' (25 U.S.C. 5304(e) (emphasis added)). Finally, the List Act requires that the Secretary ''publish in the **Federal Register** a list of all Indian [T]ribes which the Secretary recognizes to be *eligible for the special programs and services provided by the United States to Indians because of their status as Indians*'' (25 U.S.C. 5131(a) (emphasis added)).

The Supreme Court of the United States recently ruled that the ISDEAA definition referred only to federally recognized Tribes and Alaska Native Corporations (*Yellen* v. *Confederated Tribes of the Chehalis Reservation,* 141 S. Ct. 2434 (2021)). The only difference between the ISDEAA definition and the NAGPRA definition is Congress's intentional deletion of Alaska Native Corporations (see Statement of Representative Bill Richardson, 136 Cong. Rec. 36815). Therefore, under the Supreme Court's reasoning on ISDEAA, the NAGPRA definition only applies to federally recognized Indian Tribes. Because Congress also used the same language ''eligible for the special programs and services'' in both NAGPRA and the List Act, the list of federally recognized Tribes is the list of Indian Tribes for the purposes of NAGPRA.

The *Abenaki* decision is not persuasive. First, the decision not only precedes the List Act, but also solely relies on a definition that no longer appears in the 25 CFR part 83 regulations. Second, the decision focuses on that definition while ignoring the rest of the NAGPRA definition concerning recognition of eligibility for services. Finally, it is a Tribal-specific analysis that has not been followed by any other court. In contrast, the list of federally recognized Tribes under the List Act is based on the current recognition regulations in part 83, which are specifically designed ''for the Department to use to determine whether a petitioner is an Indian [T]ribe eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' 25 CFR 83.2. The plain language congruence of the ISDEAA definition, the NAGPRA definition, and the purpose and foundation of the list under the List Act, as confirmed by the *Yellen* decision, are more persuasive than the *Abenaki* case, and fully support the definition in these regulations. The definition in these regulations has not been changed. The Department believes it is important to codify this definition and clarify any continuing misinterpretation or misunderstanding.

Throughout these final regulations, the term ''Indian Tribe'' is used in the singular form, but it is expected that multiple Indian Tribes may meet the criteria under this part for disposition or repatriation of the same human remains or cultural items. Any Indian Tribe with cultural affiliation may submit a claim for disposition or a request for repatriation. Two or more Indian Tribes may agree to joint disposition or joint repatriation of human remains or cultural items. Claims or requests for joint disposition or joint repatriation should be considered a single claim or request and not competing claims or requests.

40. Comment: We received three comments on the definition of ''inventory.'' Of that total, two comments suggested changes to the definition while one comment supported it as proposed. The supportive comment felt the revision was an excellent clarification and would streamline the inventory and overcome a barrier to repatriation. One comment adamantly opposed revision of the existing regulatory definition, specifically the removal of an ''item-by-item description'' requirement. One comment asked if the definition meant that (1) an inventory is not complete unless it is informed by consultation and (2) an initial itemized list could not be submitted to National NAGPRA if consultation had not occurred.

DOI Response: We decline to make changes to the definition. Our intent is to clarify and simplify what an inventory must include both in the definition and in the § 10.10. We are aware that the existing regulatory definition and related text have been a barrier to expeditious repatriation. On the other hand, we know that a lack of transparency and accuracy in inventories is also a barrier to repatriation.

The Act defines an inventory as ''a simple itemized list that summarizes the information called for by this section'' (25 U.S.C. 3003(e)). The information called for in an inventory is information to identify (1) ''each Native American human remains or associated funerary objects and the circumstances surrounding its acquisition'' (25 U.S.C. 3003(d)(2)(A)); and (2) ''the geographical and cultural affiliation of such item[s]'' (25 U.S.C. 3003(a)). An inventory only pertains to human remains and associated funerary objects (25 U.S.C. 3003(a)). The inventory is also defined by what is not an inventory; namely, a summary, which is ''in lieu of an object-by-object inventory'' (25 U.S.C. 3004(b)(1)(A)) and pertains to ''unassociated funerary objects, sacred objects, or objects of cultural patrimony'' (25 U.S.C. 3004(a)).

The existing regulations provide a short definition for an inventory: ''the item-by-item description of human remains and associated funerary

objects,'' but also provide a more detailed list of what an inventory must include in § 10.9. As noted in the 1995 Final Rule, the difference between a summary and an inventory ''reflects not only their subject matter, but also their detail (brief overview vs. item-by-item list), and place within the process. Summaries represent an initial exchange of information prior to consultation while inventories are documents completed in consultation with Indian [T]ribe officials and representing a decision by the museum official or Federal agency official about the cultural affiliation of human remains and associated funerary objects'' (60 FR 62140).

We are keenly aware of the preference of many, if not most, Indian Tribes and NHOs to have all human remains and associated funerary objects identified in order to repatriate them together. In reviewing the comments, the goal of both the supporting comment and the opposed comment is the same: allow lineal descendants, Indian Tribes, and NHOs to dictate the level of documentation or collections review required for an inventory. We agree, and changes to § 10.1(d) Duty of care are specifically meant to achieve this goal. The final regulations require a museum or Federal agency to obtain free, prior, and informed consent prior to any exhibition of, access to, or research on human remains or cultural items.

In response to the questions asked, an inventory is not complete until a museum or Federal agency initiates consultation with lineal descendants, Indian Tribes, and NHOs and consults with any consulting party that wishes to do so. Only completed inventories that contain the names of consulting parties or those invited to consult should be submitted to the National NAGPRA Program. If there is no response to the invitation to consult, the museum or Federal agency must still complete or update the inventory by the required deadlines.

41. Comment: We received eight comments on the definition of ''lineal descendant.'' Of that total, four comments suggested changes to the definition while four comments supported it as proposed. One comment stated common-law system of descent is not clear and the regulations should revert to the existing language. One comment requested a grammatical change and one comment asked what ''known individual'' means. One comment requested clarification if a museum or Federal agency must confirm the identity of a lineal descendant with an Indian Tribe with cultural affiliation or if the presence of a lineal descendant meant consultation with an Indian Tribe was not required.

DOI Response: The existing regulations refer to the ''common law system of descendance'' and ''known Native American individual'' in the definition for lineal descendant. The regulatory text adds ''This standard requires that the earlier person be identified as an individual whose descendants can be traced.'' The common law system of descent means the customary practice of tracing ancestry to a person's parents, grandparents, great-grandparents, and so on. It does not indicate any kind of precedent is set by previous repatriations. There is a requirement for the deceased individual to be known, but that does not mean a named individual is the only way a person could be known. Rather, it indicates that the deceased individual must be identified in some way to trace ancestry between that individual and the living individual. We have removed the limiting gendered language from the definition as requested by one comment.

Both the existing regulations and this final rule require museums and Federal agencies to initiate consultation with both lineal descendants and Indian Tribes or NHOs with potential cultural affiliation and to provide the names of all identified consulting parties. The existing regulations require a museum or Federal agency convey information to both a lineal descendant, if known, and to the Indian Tribe or NHO with cultural affiliation, when the inventory results in a determination that the human remains are of an identifiable individual. In the proposed regulations and this final rule, this requirement is a part of the information shared and requested during the consultation process. We cannot require a museum or Federal agency to verify the identity of a lineal descendant with an Indian Tribe or NHO. The statute gives lineal descendants priority over Indian Tribes or NHOs. Establishing a system in which verification of lineal descendants is through Indian [T]ribes or NHOs could be detrimental to the rights of lineal descendants, particularly those that are not members of an Indian [T]ribe or NHO. Given the diversity of ways in which a lineal descendant may be traced, we cannot require certain types of documentation or evidence needed to establish lineal descent. Museums and Federal agencies must determine if a request from a lineal descendant provides sufficient information and respond to the request accordingly.

Throughout these final regulations, the term ''lineal descendant'' is used in the singular form, but it is expected that multiple lineal descendants may meet the criteria under this part for disposition or repatriation of the same human remains, funerary objects, or sacred objects. Any lineal descendant may submit a claim for disposition or a request for repatriation for human remains, funerary objects, or sacred objects. Two or more lineal descendants may agree to joint disposition or joint repatriation of human remains, funerary objects, or sacred objects. Claims or requests for joint disposition or joint repatriation should be considered a single claim or request and not competing claims or requests.

42. Comment: We received one comment suggesting a review of the involvement of non-profits in museum funding and a change to the definition of ''museum'' that would replace ''institution of higher learning'' with ''all educational institutions.''

DOI Response: The requested review is outside of the scope of this regulatory action. We have not made the requested change because this part of the definition comes directly from the Act, which is already sufficiently inclusive of all educational institutions that have possession or control of human remains or cultural items and receive Federal funds.

43. Comment: We received four comments suggesting changes to the definition of ''Native American.'' Two comments expressed concern over the inclusion in this definition of Indian groups without Federal recognition. One comment requested we require consultation with Indian Tribes or NHOs prior to any determination that human remains or cultural items are Native American. One comment expressed concern that, as written, this definition might exclude cross-border indigenous peoples or cultures who are indigenous to the United States but also to Canada, Mexico, or Russia.

DOI Response: We do not intend to include Indian groups without Federal recognition in the definition of Tribe (as noted elsewhere in the definition of Indian Tribe). In determining whether human remains or cultural items are Native American, we cannot require consultation prior to compiling a summary of cultural items or an itemized list of human remains and associated funerary objects under Subpart C, but we can and do require consultation prior to any determination of cultural affiliation or decision on a request for repatriation. When compiling a summary of cultural items or an itemized list of human remains and associated funerary objects, a museum or Federal agency should

include any potential Native American human remains or cultural items to allow for further consultation.

The Act limits the definition of Native American to the United States, and we cannot remove that geographical descriptor. We believe the added definitions for ''people'' and ''culture'' includes those who are indigenous to locations near present day geographical borders. Any pre-contact Tribe, people, or culture would be included in this definition. Native Hawaiians are included in this definition as a ''people,'' to clarify an ambiguity left by Congress.

44. Comment: We received 12 comments on the definition of ''Native American traditional knowledge.'' Of that total, six comments suggested changes to the definition while six comments supported it. Two comments opposed the definition, and both requested it be revised or removed because it was unclear and complex, and one comment felt it would lead to poor decision-making or other pitfalls. One of these comments was concerned that this definition, along with the required deference, would give equal or greater weight to this type of information than to scientific and historical information and, when identifying cultural items, Native American traditional knowledge might be used as the only type of information instead of scientific or historical evidence. One comment was neutral and asked how the term changed the current cultural affiliation process. Three comments supported the definition as proposed but suggested changes to strengthen it. One comment requested we add language to the variety of information listed while another comment requested we include a reference to § 10.3. One comment provided an extensive discussion and specific changes to the definition to include Indian Tribes, expert opinion, and confidentiality.

DOI Response: We disagree that the definition is unclear, vague, or overly broad or that this definition is novel or unique to these regulations. The concept of ''Native American traditional knowledge'' has been used broadly among Federal agencies in the context of land management and the use of natural or cultural resources, although the specific terms used might vary. More recently, the White House Council on Environmental Quality and the Office of Science and Technology Policy released government-wide guidance and an implementation memorandum for Federal agencies on recognizing and including Indigenous knowledge in Federal research, policy, and decision making (*https://www.whitehouse.gov/ceq/news-updates/2022/12/01/white-house-releases-first-of-a-kind-indigenous-knowledge-guidance-for-federal-agencies/,* accessed 12/1/2023). Most certainly, this is not a new concept to lineal descendants, Indian Tribes, or NHOs and any difficulty understanding this definition could be resolved through adequate consultation. We believe this term will lead to more informed decision-making and help to avoid the lengthy and sometimes costly delays in disposition or repatriation. Under the Act and these regulations, all information available is equally relevant to determining cultural affiliation, and our intent in defining this type of information is to ensure that Native American traditional knowledge is considered alongside scientific and historical information. In response to the question asked, this is not different than decision-making for cultural affiliation under the existing regulations or the Act itself. Although it may not have been identified as such, Congress intended for Native American traditional knowledge to be considered when determining cultural affiliation or identifying cultural items. The definitions of funerary objects, sacred objects, and objects of cultural patrimony all rely on information that may only be available to or shared by lineal descendants, Indian Tribes, or NHOs. Consultation, which is required throughout the Act prior to any determination, is how an Indian Tribe or NHO shares the information needed to identify a cultural item. In cases where there is no other information, Native American traditional knowledge alone may identify a cultural item.

In response to the other comments, we have added linguistics to the variety of named information, but stress that this list is not exhaustive. We have added a final sentence to reiterate the statement in § 10.3 that Native American traditional knowledge is expert opinion. We have added Indian Tribes, the Native Hawaiian Community, and confidentiality to the definition, although in slightly different places than was suggested.

45. Comment: We received 11 comments suggesting changes to the definition of ''Native Hawaiian organization.'' Most of the comments requested revisions to paragraph (3)(i) identifying some NHOs. One comment expressed concern that changes to this definition would result in a broad range of NHOs who meet the criteria and impact the Native Hawaiian objects that are subject to the regulations.

DOI Response: The definition reflects the language in the Act, which is binding unless stricken, modified, or contravened by other Federal law. The definition in the Act may be modified if it is no longer relevant when certain referenced terms, conditions, or entities cease to exist. The Act includes the Office of Hawaiian Affairs as a ''Native Hawaiian organization,'' and the definition in these regulations remains unchanged. Other concerns about NHOs are addressed by the definition as well as the prioritization of cultural affiliation under § 10.3. The omission of Hui Malama I Na Kupuna O Hawai'i Nei from the definition of a ''Native Hawaiian organization'' is due to the group's dissolution rather than any judgment as to its or any successors' status as NHOs. The incorporation of ''Native Hawaiian'' into the definition of a ''Native Hawaiian organization,'' and the use of the term ''indigenous people'' rather than ''aboriginal people,'' clarifies what constitutes an NHO and their relevance to these regulations (2022 Proposed Rule, 87 FR 63213).

This definition and these regulations are consistent with the government-to-sovereign relationship between the United States government and the Native Hawaiian Community. If the Native Hawaiian Community decides to change its relationship with the United States government to that of a government-to-government relationship, the Department may review and update the current policy and procedures.

Throughout these final regulations, the term ''Native Hawaiian organization'' is used in the singular form, but it is expected that multiple NHOs may meet the criteria under this part for disposition or repatriation of the same human remains or cultural items. Any NHO with cultural affiliation may submit a claim for disposition or a request for repatriation. Two or more NHOs may agree to joint disposition or joint repatriation of human remains or cultural items. Claims or requests for joint disposition or joint repatriation should be considered a single claim or request and not competing claims or requests.

46. Comment: We received six comments suggesting changes to the definition of ''object of cultural patrimony.'' One comment requested we remove from the definition the provision that the object must have been considered inalienable by the group at the time the object was separated from the group as it seems unnecessary. One comment questioned the use of ''Native American group'' in the definition. One comment suggested changing ''according to'' to be ''as determined by'' to further strengthen the deference to lineal descendants, Indian Tribes, and

NHOs on identification of objects of cultural patrimony. One comment requested an expansion of this definition to include intellectual property like songs, recordings, and photos as well as digital files. Another comment asked if this definition included documents and photos and, if not, then how the regulations support the return of such objects. One comment objected to the definition as over-broad, a reversal of Congressional intent, and contrary to explicit statements in the Congressional record at the time of the Act's passage.

DOI Response: We do not have the discretion to revise the definition as suggested by these first two comments as both are a part of the definition in the Act. The term ''group'' or ''sub-group'' used in this definition and elsewhere in these regulations should be understood to have a standard, dictionary definition: ''a number of individuals assembled together or having some unifying relationship'' (*https://www.merriam-webster.com/dictionary/group,* accessed 12/1/2023). We cannot expand the definition to include intellectual property, digital files, other documents, or records as that would be inconsistent with the Act. We note that requesting documents and records (which could include recordings, photos, or digital files) is already provided for in §§ 10.9(c)(4) and 10.10(c)(4). Under the Act and these regulations, lineal descendants, Indian Tribes, and NHOs have a right to request records, catalogues, relevant studies, or other pertinent data (25 U.S.C. 3003(b)(2) and 25 U.S.C. 3004(b)(2)), and museums and Federal agencies are required to share that information (25 U.S.C. 3005(d)). As required by the Act, additional information is only provided upon request of a lineal descendant, Indian Tribe, or NHO, and we cannot require documents and records be provided by including these in the definition of objects of cultural patrimony. We advise lineal descendants, Indian Tribes, and NHOs to make their requests as broad as possible to ensure all information about objects of cultural patrimony, including digital data, is provided.

Regarding the request to strengthen the definition, we are unable to change ''according to'' to ''as determined by'' as it would be inconsistent with the Act. Museums and Federal agencies are responsible for making determinations under the Act and these regulations, but must do so after consulting with lineal descendants, Indian Tribes, and NHOs. We have changed the order of the sentence to reflect the importance of Native American traditional knowledge (which includes customs and traditions) in this definition.

We disagree that the definition as proposed is over-broad, a reversal of Congressional intent, or contrary to explicit statements in the Congressional record. We agree with the concerned comment that when NAGPRA was passed, Congress made clear that not all objects could be deemed ''sacred'' or ''cultural patrimony.'' The definition of object of cultural patrimony in these regulations is consistent with the Act and the legislative history. An object of cultural patrimony must not only be an object owned by the collective whole, but must be of ongoing historical, traditional, or cultural importance, as indicated by the Senate (S. Rpt. 101–473, at 5).

Deference to Native American traditional knowledge is necessary to ensure the rights of lineal descendants, Indian Tribes, and NHOs the Act recognizes. The addition of ''according to Native American traditional knowledge'' in this definition is to ensure meaningful consideration of this information during consultation.

We believe this addition to the various definitions of cultural items will lead to more informed decision-making and help to avoid the lengthy and costly delays in disposition or repatriation. In crafting the definitions of cultural items, Congress clearly intended that the definitions ''will vary according to the [T]ribe, village, or Native Hawaiian community'' (S. Rpt. 101–473, at 4). Consultation, which is required throughout the Act prior to any determination, is how an Indian Tribe or NHO shares the information needed to identify a cultural item.

47. Comment: We received two comments suggesting changes to the definition of '' 'ohana.'' Both comments requested a revision of the definition to reflect that an 'ohana may be comprised of lineal descendants.

DOI Response: We appreciate the suggested change and acknowledge the limitations of the proposed definition. We have revised the definition accordingly.

48. Comment: We received one comment suggesting changes to the definition of person to include ''spiritual entity personhood'' and clarification that this is different from ''appropriate official.''

DOI Response: While the word ''person'' is used in a few definitions and instances, the definition is intended to ensure the requirements under § 10.5 Discovery are completed and to give clear meaning to the phrase in the Act and these regulations: ''Any person who knows or has reason to know. . . .'' Certain actions are required by any individual, partnership, corporation, trust, institution, association, or any other private entity, or any representative, official, employee, agent, department, or instrumentality of the United States Government or of any Indian Tribe or NHO, or of any State or subdivision of a State when a discovery of human remains or cultural items on Federal or Tribal lands occurs. These actions are separate from the required actions of an ''appropriate official'' for that same discovery. It is possible that a person who makes a discovery on Federal or Tribal land may also be the representative authorized by a delegation of authority within an Indian Tribe, NHO, Federal agency, or Department of Hawaiian Home Lands (DHHL) to be responsible for human remains or cultural items on Federal or Tribal lands. In those instances, the same individual may be performing the required actions of the person and the appropriate official. Considering the use of this definition, we decline to include ''spiritual entity personhood.''

49. Comment: We received 44 comments on the definition of ''possession or control.'' Of that total, 40 comments suggested changes to the definition while four comments supported it. A total of 17 comments expressed concerns with museum and Federal agency compliance. Six comments supported using a single definition for the term possession or control while five comments proposed splitting the definition into two definitions. Five comments proposed replacing the definition of custody with the concept of possession. A total of 13 comments recommended expanding the definition to include museums that only have an obligation to care for human remains or cultural items, for example, a museum that received a loan of human remains or cultural items from another museum. One comment recommended replacing the phrase ''a sufficient interest in an object or item to independently direct, manage, oversee, or restrict the use of the object or item'' with ''an interest in human remains or cultural items, such that the museum or Federal agency has been providing care, direction, management, oversight, or restrictions regarding the use of the human remains or cultural item.'' Two comments recommended replacing the phrase ''sufficient interest'' with ''legal responsibility'' or ''legal authority.'' One comment requested that we clarify the meaning of sufficient interest to address confusion over whether a museum with mere custody by a loan, lease, license, or bailment, has possession or control.

One comment was concerned that the definition as written would permit museums that have received loans of human remains or cultural items from other museums to make determinations regarding repatriations of the loaning museum's collection. Six comments were concerned with museums making unilateral determinations regarding possession or control of human remains or cultural items. Nine comments expressed concerns that museums and Federal agencies use the existing definitions as a loophole to avoid compliance with the Act. One comment expressed concern that the proposed regulations no longer include a statement that ''Federal agencies must ensure that these requirements are met for all collections from their lands or generated by their actions whether the collections are held by the Federal agency or by a non-Federal institution.''

DOI Response: We have not made changes to this definition, other than to replace physical custody with physical location to avoid any confusion. We received one more comment in support of the use of a single definition than we did recommending that the definition be split in two. Congress used these two words as a single term throughout the Act, except for ''right of possession.'' And, given the overwhelming support for the single definition during consultation in 2021, we have not made any other changes to this definition from the proposed rule. Further, we did not change the terms ''sufficient interest'' or ''independently direct'' which are threshold determinations for museums and Federal agencies to make and changing these phrases as suggested would presume application of the Act before that determination has been made. Whether a museum or Federal agency has a sufficient interest in human remains or cultural items to establish possession or control is a legal determination that must be made on a case-by-case basis. However, when a museum with custody of human remains or cultural items cannot identify any person, institution, State or local government agency, or Federal agency with possession or control, the museum should presume it has possession or control of the human remains or cultural items for purposes of repatriation under the Act and these regulations. When a Federal agency cannot determine if human remains or cultural items came into its possession or control before or after November 16, 1990, or cannot identify the type of land the human remains or cultural items were removed from, the Federal agency should presume it has possession or control of the human remains or cultural items for purposes of repatriation under the Act and these regulations. This determination is a jurisdictional requirement for application of the Act and these regulations to the human remains or cultural items that may be subject to repatriation by the appropriate museum or Federal agency.

While we acknowledge the continued interest in expanding the scope of the definition to include entities that merely have custody, we cannot make the requested change. In some cases, expanding the scope of the definition would make multiple entities concurrently responsible for fulfilling the inventory, summary, and repatriation process. Such an interpretation is inconsistent with the framework and legislative history of the Act. Congress provided no indication that such an expansive interpretation was its intent, and various features of the Act, including civil penalties, right of possession, and museum obligations, presume that a single museum or Federal agency would be responsible for compliance with the inventory, summary, and repatriation provisions. The phrase ''possession or control'' as used in the Act connotes a singular interest in human remains or cultural items. Since 1993, these regulations have defined the two elements of the phrase only to differentiate between physical location of the human remains or cultural items (1993 Proposed Rule, 58 FR 31127). In the Act, having possession or control means a museum or Federal agency has an interest in human remains or cultural items, or, in other words, it may make determinations about human remains or cultural items without having to request permission from some other entity or person. This interest is present regardless of the physical location of the human remains or cultural items. For a similar example, a person has the same interest in property that is in the person's home as in property that same person keeps in an offsite storage unit. The person can make determinations about the property in the storage unit without having to request permission from the storage facility. Regardless of the physical location of the property, the person's interest in the property is the same whether it is in their home or in the custody of the storage facility.

Several comments expressed concerns that collections loaned to other institutions would fall outside the scope of the Act and these regulations. We reiterate that this is not the case. Even where a collection is loaned to another institution, the loaning entity is still required to comply with all the requirements of the Act and these regulations. Under these regulations, if the entity that holds the loaned collection meets the definition of a museum, it would also have to comply with certain requirements for the loaned collection and any other human remains or cultural items in its custody, including a duty of care and reporting obligations. We acknowledge that the underlying intent of this request is to ensure repatriation of all human remains or cultural items subject to the Act and that it is related to the concerns expressed regarding compliance by museums and Federal agencies. We have made other revisions to address these issues by requiring museums and Federal agencies to share information and increase efforts to complete inventories, summaries, and repatriation of human remains and cultural items, even when they are in the custody of other entities.

50. Comment: We received 16 comments on the definition of ''receives Federal funds.'' Of that total, 15 comments suggested changes to the definition while one comment supported it. Four comments recommended revising the phrase ''institution or agency of a State or local government'' to ''institution or State or local government agency.'' Two comments considered the definition to be overbroad or an overreach of Federal authority. One comment expressed constitutional concerns with the impacts of this definition on private property. One comment suggested making the definition of receives Federal funds apply to museums that only received funds prior to November 16, 1990. Four comments sought clarification on whether funds received via specific Federal programs constitute Federal funds under the Act and these regulations.

DOI Response: We have made the requested change to ensure consistency between the definitions of museum and receives Federal funds. We do not consider this definition to be overly broad or an overreach of Federal authority. The regulations reflect statutory intent as well as a robust area of law surrounding the receipt of Federal funds. We do not consider this definition to unconstitutionally interfere with private property rights. The Act itself restricts activities that would violate the Fifth Amendment's protection of property rights, though such situations are rare. We do believe that applying this definition to the receipt of Federal funds prior to the passage of the Act raises constitutional concerns. Generally, the Fifth

Amendment requires us to disfavor retroactive interpretation of Federal statutes, unless expressly provided for by Congress. Congress did not provide such an express instruction here. Regarding the nature of funds received through specific Federal programs, a case-by-case determination as to the nature of such funds is outside the scope of this regulatory action. We recommend seeking technical assistance from the National NAGPRA Program on specific Federal programs.

51. Comment: We received 27 comments on the definitions of ''disposition'' or ''repatriation.'' Of that total, 11 comments requested we add physical transfer to the definition. Similarly, two comments requested we add ''the desired outcome'' has occurred, as confirmed by the lineal descendant, Indian Tribe, or NHO. The comments noted ''[s]uch an outcome can include, but is not limited to, transfer of possession, reburial, traditional use, loan agreements, etc.'' One comment recommended including ''and completes the physical transfer'' at the end of the definitions. Four comments requested changes to ''control or ownership'' in the definitions. Alternatives suggested are ''has the right to repatriate human remains or cultural items'' or ''has right of possession'' or ''has possession or control'' of the human remains or cultural items. Four comments requested we replace ''control or ownership'' with ''now has control as a result of disposition or repatriation.'' One comment suggested adding ''relinquishes control'' and include legal transfer in the definition. Three comments requested we define ''disposition statement'' and ''repatriation statement.'' One comment questioned why disposition is defined and used if repatriation encompasses all transfers.

DOI Response: We have not made the requested change to include physical transfer in the definitions of disposition or repatriation and have responded in more detail in Comment 67. We have accepted, in part, the suggested change to ''repatriation'' and use ''relinquish possession or control.'' We have retained ''ownership or control'' in the definition of disposition, as it is used in the Act, and ensured throughout that the order of the words in that phrase are consistently applied.

There is no definition in the Act for either disposition or repatriation. The existing regulations use the single term ''disposition'' to mean ''transfer of control'' which does not necessarily equate to physical transfer in any, or all, of the situations where the term applies. This definition was added in 2007 to clarify the different procedures in the regulations that effectuate the same result: transfer of control over human remains or cultural items by a museum or Federal agency under the regulations (2007 Final Rule, 75 FR 58585 and 58588). The existing definition does not clarify if ''transfer of control'' means legal transfer of control or physical transfer of control or both. In practice and as we advise, legal transfer of control often occurs prior to physical transfer of control, as physical transfer often requires extensive planning for transportation, scheduling, and funding.

We sought to clarify this in the draft revisions for consultation in 2021 where we provided two separate terms: ''disposition'' and ''repatriation'' and neither term included physical transfer. We received significant feedback objecting to the implication that museums and Federal agencies have a legal interest in human remains or cultural items which is conveyed or transferred by disposition or repatriation, as the Act does not recognize museums or Federal agencies have a lawful interest other than ''right of possession.'' We revised the definitions of ''disposition'' and ''repatriation'' to remove any implication of a legal interest being transferred.

These regulations provide definitions for ''disposition'' and ''repatriation,'' and we do not believe it is necessary to also define the related statement because these statements are fully explained in the regulatory text.

52. Comment: We received 11 comments suggesting changes to the definition of ''right of possession.'' One comment objected to the concept of a right of possession as to any human remains, funerary objects, or objects of cultural patrimony. Two comments objected to the inclusion of funerary objects, particularly unassociated funerary objects, in the definition. One comment objected to the inclusion of objects of cultural patrimony in the definition. Six comments recommended removing the term possession or control from the definition and adding language found in the explanation of the proposed regulations. One comment recommended describing right of possession as possession or control, ownership, or holding legal title. One comment noted that determinations of right of possession must incorporate deference to Native American traditional knowledge. One comment asked for clarification on how fully free, prior, and informed consent is proven.

DOI Response: We cannot make the requested changes. The definition is drawn directly from the Act itself, which provides for a right of possession and applies it in some manner to human remains, funerary objects, sacred objects, and objects of cultural patrimony. Moreover, we cannot delete or alter the express meaning provided by Congress.

We have not removed the term possession or control because doing so could cause confusion that might prevent cultural items to which a museum or Federal agency asserts a right of possession from appearing on summaries. Even where a museum or Federal agency asserts a right of possession, it must still comply with the requirements of the Act and these regulations for cultural items which are in its possession or control. We have not made ownership or legal title a requirement because doing so would be circular and presume the result that an analysis of right of possession seeks to determine. As this definition intentionally hews closely to the Act, we have not added any clarifying language from the proposed regulations. Instead, we reiterate here that a right of possession does not include, for example, consent given under duress or because of bribery, blackmail, fraud, misrepresentation, or duplicity on the part of the recipient. Voluntary consent may be shown by evidence that consent was fully free, prior, and informed, though those elements are not listed in the definition itself. The type and extent of such evidence will vary from case to case.

While we agree that determinations of right of possession must consider Native American traditional knowledge, we have not added that requirement to the definition. In other places, we have emphasized the need for deference to Native American traditional knowledge to ensure the rights of lineal descendants, Indian Tribes, and NHOs the Act recognizes. The addition of ''according to Native American traditional knowledge'' in other definitions is to ensure meaningful consideration of this information during consultation. Consultation, which is required throughout the Act prior to any determination, is how an Indian Tribe or NHO shares the information needed to identify a cultural item.

53. *Comment:* We received 11 comments requesting changes to the definition of ''sacred object.'' Two comments requested the addition of family spiritual practices to accommodate a broader definition of traditional Native American religions. One comment requested we replace ''according to'' with ''as determined by'' to strengthen the definition. Three comments objected to the definition as

it adhered too closely to the definition in the Act and the existing regulations and is too limiting by requiring the object be needed, the adherents be present-day, or the practice be for observance or renewal. One comment asked why the definition has been revised at all from the existing regulations and requested it be reverted to the definition in the Act. One comment objected to the definition as over-broad, a reversal of Congressional intent, and contrary to explicit statements in the Congressional record at the time of the Act's passage.

One extensive comment stated that the proposed regulations impermissibly broaden the definition, contravenes Congressional intent, and could create a conflict with the Archaeological Resources Protection Act (ARPA). According to the comment, the proposed definition, coupled with explanatory language in the proposed regulations, means that if a lineal descendant, Indian Tribe, or NHO wants an object, or a category of objects, then that object or object category is, by definition, a sacred object. By contrast, Congress stated that a sacred object is an object that was devoted to a traditional religious ceremony or ritual when possessed by a Native American and must be used in the present-day in a Native American religious ceremony. Furthermore, according to the comment, the impermissible broadening of the term to include items that Congress did not intend to be considered sacred objects could conflict with ARPA because most Native American items removed from Federal lands are archeological; non-NAGPRA archeological resources removed from Federal lands under ARPA must be curated consisted with Federal curation regulations; and those curation regulations do not allow transfer or reinterment of those archeological resources.

DOI Response: We do not believe this definition should include a separate category of ''spiritual practice'' because the language in the Act of ''traditional Native American religion'' is broad enough to encompass the examples in the comment. We are unable to change ''according to'' to ''as determined by'' as it would be inconsistent with the Act. Museums and Federal agencies are responsible for making determinations under the Act and these regulations, but must do so after consulting with lineal descendants, Indian Tribes, and NHOs. We have changed the order of the sentence to reflect the importance of Native American traditional knowledge (which includes customs and traditions) in this definition. We are unable to broaden the definition as requested by some comments as those phrases (needed and present-day) are the required elements of the definition in the Act. ''Observance or renewal'' were incorporated into the definitions in the 1993 Proposed Rule to incorporate language from the House and Senate Committee reports relating to the Act (58 FR 31122 and 58 FR 31126; 1995 Final Rule, 60 FR 62138). We have revised the definition in the existing regulations to clarify the definition by removing the examples and simplifying the sentence structure while retaining the required elements of the definition from the Act and the legislative history.

We disagree that the definition as proposed is over-broad, a reversal of Congressional intent, contrary to explicit statements in the Congressional record, or in conflict with ARPA. We disagree that under the definition, any object, or category of objects, that is imbued with sacredness by a lineal descendant, Indian Tribe, or NHO, without anything more, would satisfy the definition. All the elements explicitly stated in the definition must be satisfied for an object to be identified as a sacred object. The elements of the definition require that an object be:

- A specific ceremonial object,
- Needed by a traditional religious leader,
- For present-day adherents to practice traditional Native American religion.

We also disagree that an object to be interred cannot be a sacred object. A specific object may be deemed to be a sacred object if, based on Native American traditional knowledge, in the past, the object was ceremonially interred as a traditional Native American religious practice, the object was subsequently disinterred, and today, it is needed by a traditional Native American religious leader to renew the ceremonial interment of the specific object by present-day adherents.

We agree with the comment that when NAGPRA was passed, Congress made clear that not all objects could be deemed ''sacred'' or ''cultural patrimony.'' However, this comment reinforces the need for deference to Native American traditional knowledge to ensure the rights of lineal descendants, Indian Tribes, and NHOs the Act recognizes. The addition of ''according to Native American traditional knowledge'' in this definition is to ensure meaningful consideration of this information during consultation.

We believe this addition to the various definitions of cultural items will lead to more informed decision-making and help to avoid the lengthy and costly delays in disposition or repatriation. In crafting the definitions of cultural items, Congress clearly intended that the definitions ''will vary according to the [T]ribe, village, or Native Hawaiian community'' (S. Rpt. 101–473, at 4). Consultation, which is required throughout the Act prior to any determination, is how an Indian Tribe or NHO shares the information needed to identify a cultural item. As we noted in the 1995 Final Rule, ''[i]dentification of specific sacred objects or objects of cultural patrimony must be done in consultation with Indian [T]ribe representatives, [NHOs,] and traditional religious leaders since few, if any, museums or Federal agencies have the necessary personnel to make such identifications'' (60 FR 62148).

54. *Comment:* We received one comment suggesting changes to the definition of ''summary'' to include associated funerary objects.

DOI Response: We cannot add associated funerary objects to a summary as that would be inconsistent with the Act. An inventory pertains to human remains and associated funerary objects (25 U.S.C. 3003(a)), while a summary pertains to ''unassociated funerary objects, sacred objects, or objects of cultural patrimony'' (25 U.S.C. 3004(a)).

55. *Comment:* We received five comments suggesting changes to the definition of ''traditional religious leader.'' All five comments requested broadening the definition so as not to limit it to individuals who are responsible or who hold a leadership role. A broader definition will allow Indian Tribes or NHOs to identify traditional religious leaders. One comment requested we update the words used in the term itself, as they are unnecessary, condescending, and outdated.

DOI Response: As noted in the comments, this definition is not in the Act but the term is used in the Act in the definition of sacred object, the consultation requirements for inventories and summaries, and the composition of the Review Committee. In the proposed regulations, we intended to place the authority for identifying a traditional religious leader in the hands of an Indian Tribe or NHO. We understand the term may be offensive but given its use in the Act we cannot change the term itself. We can, and have, modified the definition to ensure a lineal descendant, as well as an Indian Tribe or NHO, can identify any individual that the lineal descendant, Indian Tribe, or NHO feels is the appropriate individual to serve in this

role. This addition of lineal descendant aligns with statements made by the Department in the 1995 Final Rule regarding the role of ''a member of an Indian Tribe'' in the existing definition of a traditional religious leader (see 60 FR 62138, 60 FR 62151, and 60 FR 62155).

56. *Comment:* We received seven comments suggesting changes to the definition of ''Tribal lands.'' Some of the comments objected to the deletion in the proposed regulations of a sentence concerning application of the Fifth Amendment to the Constitution to private land, reasoning that the Department was proposing to exclude private land within the exterior boundaries of a reservation from the application of the Act and these regulations. Another comment was concerned that the definition does not include Tribal trust lands outside reservation boundaries. Other comments suggested the addition of an amendment to the regulatory definition, incorporating our clarification in the preamble to the proposed regulations that, under Supreme Court precedent, the boundaries of Tribal trust land constituted an informal reservation.

DOI Response: The Act defines ''Tribal land'' as ''(1) All lands that are within the exterior boundaries of any Indian reservation; (2) All lands that are dependent Indian communities; and (3) All lands administered by the Department of Hawaiian Home Lands (DHHL) under the Hawaiian Homes Commission Act of 1920 (HHCA, 42 Stat. 108) and Section 4 of the Act to Provide for the Admission of the State of Hawai'i into the Union (73 Stat. 4), including 'available lands' and 'Hawaiian home lands' '' (25 U.S.C. 3001(15)). We decline to add Tribal trust land to the common statutory definition in the regulations because of the possibility of unforeseen consequences for Tribal jurisdiction. We do, however, agree with the comments that the plain language of the definition includes private land within the exterior boundaries of the reservation (*McGirt* v. *Oklahoma,* 140 S. Ct. 659 (2019)). We also agree that Tribal trust land outside the exterior boundaries of a formal reservation would, under the proposed regulations and these regulations, be considered an ''informal reservation,'' still qualifying as Tribal land for purposes of NAGPRA (*Oklahoma Tax Comm'n* v. *Citizen Band Potawatomi Indian Tribe of Oklahoma,* 498 U.S. 505, 511 (1991)).

57. *Comment:* We received three comments requesting clarification to the definition of ''United States.'' All three comments wanted to understand how the Act and the regulations apply in the U.S. territories.

DOI Response: The Act and these regulations only apply to the 50 states and the District of Columbia. Unlike other statutes referenced by one of the comments, the Act does not provide a definition of the United States that includes its territories and possessions. Any change to this limitation would require Congressional action.

D. Section 10.3 Cultural and Geographical Affiliation

58. *Comment:* We received 27 comments on § 10.3, generally. Of that total, most comments generally supported the elimination of the term ''culturally unidentifiable.'' A few comments specifically objected to the removal of ''culturally unidentifiable'' and the use of ''Native American traditional knowledge'' and ''geographical affiliation'' because of concerns that this would expand the scope of what must be repatriated. Three comments requested more direct participation by Indian Tribes and NHOs in determining cultural and geographical affiliation and one comment requested that the Secretary determine cultural and geographical affiliation.

DOI Response: These regulations do not use the term ''culturally unidentifiable.'' Because Congress anticipated that not all human remains could be determined to have cultural affiliation, Congress required that the Review Committee develop specific actions for the disposition of any human remains with no cultural affiliation and thereby ensured that all Native American human remains would be subject to the Act. For more on the development of these regulations, see 2007 Proposed Rule (72 FR 58582) and 2010 Final Rule (75 FR 12378). The inclusion of Native American traditional knowledge as a type of information that can identify cultural affiliation is consistent with Congressional intent and ensures the stated purpose of these regulations for deference to lineal descendants, Indian Tribes, and NHOs in determinations of cultural affiliation. Other revisions to this section, based on specific comments, are explained below.

In response to the noted objections, we disagree with their limited characterization of the scope of what must be repatriated. To forego the use of geographical information and Native American traditional knowledge to limit the number of human remains or cultural items that may be subject to repatriation is inconsistent with the Act, which only provides three exceptions to the requirement for expeditious repatriation (see 25 U.S.C. 3005).

59. *Comment:* We received 11 comments generally on the paragraph in the proposed regulations under § 10.3 on Information for cultural affiliation (in the final regulations, this is renumbered § 10.3(a) and retitled Step 1: Collect information available.). Most comments supported the changes to the types of information, and a few comments requested additional changes to types of information.

DOI Response: We cannot make the requested changes to prioritize the types of information or assign them relative values (1995 Final Rule, 60 FR 62156). We have repeated the exact types of information used for cultural affiliation as provided by Congress in alphabetical order and added Native American traditional knowledge to call out this newly defined type of expert opinion.

60. Comment: We received 23 comments on the paragraph in the proposed regulations under § 10.3 on Cultural affiliation (in the final regulations, this is incorporated into the introductory paragraph of § 10.3). The comments objected to the use of ''preponderance of the evidence'' rather than ''reasonable'' in this paragraph. Most of these comments referenced the language of the Act, specifically the difference between ''reasonably'' and ''reasonable belief'' at 25 U.S.C. 3001(2), 3002(a)(2)(C), 3003(d)(2)(C), on the one hand, and ''preponderance of the evidence'' at 25 U.S.C. 3001(3)(B), 3002(a)(2)(C)(2), 3005(a)(4). One comment asked what ''reasonable'' means.

DOI Response: We have replaced ''a preponderance of the evidence'' with ''reasonable.'' As stated in the proposed regulations, the Department reiterates that ''a preponderance of the evidence'' is a similar standard to a ''reasonableness'' requirement and both standards require a ''more likely than not'' assessment (87 FR 63216). However, we agree with the comments that these terms have different connotations and that ''preponderance of the evidence'' has been misused and misapplied in determining cultural affiliation. We agree with the comments that the Act envisioned a simple and collaborative procedure to determine cultural affiliation through consultation with Indian Tribes and NHOs. Only when a museum or Federal agency was unable to determine cultural affiliation would an Indian Tribe or NHO need to demonstrate cultural affiliation through a preponderance of the evidence. As this section of the regulations describes the initial procedure for determining cultural affiliation, we have revised it to

only reflect the requirement to reasonably determine cultural affiliation. In response to one comment, ''reasonable'' means both the procedure to make a determination and the determination itself are ''in accordance with reason,'' ''not extreme or excessive,'' and ''moderate, fair'' (*https://www.merriam-webster.com/dictionary/reasonable,* accessed 12/1/2023).

61. Comment: We received 41 comments on the paragraph in the proposed regulations under § 10.3 titled Geographical affiliation (in the final regulations, this is removed). Of that total, two comments objected to broadening affiliation to include geography alone. One comment appreciated the more inclusive term but was concerned about making connections only based on geography. One comment requested that archaeological and historical knowledge, especially of disruptions of indigenous territories, be included as key pieces of evidence for establishing geographical affiliation. Six comments supported the paragraph as proposed.

A total of 33 comments requested the paragraph be removed in its entirety, although these comments were supportive of clarifying that cultural affiliation could be based on geography alone. Some comments were concerned that geographical affiliation would leave out Tribal knowledge and oral history. One comment was concerned that as proposed, ''geographical affiliation'' would disenfranchise Indian Tribes under certain circumstances and provides fewer options than are currently available by restricting evidence of geographical affiliation. Most of the comments expressly requested that geographical affiliation be incorporated into cultural affiliation. As proposed, the comments expressed concern that geographical affiliation would not simplify repatriation but bring new complications and loopholes to the process. The comments requested the final regulations should develop an efficient and less burdensome procedure and provide that, in the absence of other evidence, cultural affiliation need only include one type of information that reasonably points to a shared relationship between an Indian Tribe and an identifiable earlier group.

DOI Response: We have removed the paragraph proposed at § 10.3 titled Geographical affiliation. We have made related changes to other paragraphs in § 10.3 and renamed the entire section. We have revised the text in the final regulations to reflect a step-by-step procedure for determining cultural affiliation. We have required in the step-by-step processes for disposition under § 10.7 or repatriation under §§ 10.9 and 10.10 that when cultural affiliation is not determined, the museum or Federal agency must briefly describe the information considered under § 10.3(a) and the criteria identified under § 10.3(b) to explain how the determination was made. We have made clear in the definition of cultural affiliation, this section, and the step-by-step processes for disposition or repatriation that cultural affiliation must be identified either clearly by the information available or reasonably by the geographic origin or acquisition history of the human remains or cultural items.

The intent of these revisions is to realign the geographic analysis, applied previously to culturally unidentifiable human remains in the existing regulations, as part of the cultural affiliation process. The same methods, analyses, sources, and evidence may inform cultural affiliation determinations based on geographical information as have been used in the past and as discussed in the proposed rule. We agree with the voluminous comments that described museum and Federal agency practices as overly expansive in designating human remains and associated funerary objects as culturally unidentifiable. We believe in most cases, sufficient information on geographic origin and acquisition history exists and can be used to either clearly or reasonably identify Indian Tribes or NHOs with cultural affiliation.

62. Comment: We received four comments supporting the paragraph in the proposed regulations under § 10.3 titled Multiple affiliations (in the final regulations, this is renumbered § 10.3(d) and retitled Joint disposition or repatriation). Many other comments suggested changing the title of the paragraph to Joint disposition or repatriation.

DOI Response: We have accepted and adopted the suggested change in the title of this paragraph.

63. Comment: We received 19 comments suggesting changes to the paragraph in the proposed regulations under § 10.3 titled Closest affiliation (in the final regulations, this is renumbered § 10.3(e) and retitle Competing claims or requests). One comment objected to museums and Federal agencies making determinations on the closest affiliation. One comment objected to the priority order for NHOs as it was too complex and may result in a family or small organization having a priority over the Office of Native Hawaiian Affairs. Two comments asked if the enumerated list reflected a priority and if two Indian Tribes or NHOs might both be in a single category. One comment requested guidance on how closest affiliation would be determined if one Tribe's claim is based on geographic information and another Tribe's claim is based on cultural practices. One comment requested it be clear that museums and Federal agencies must determine the Indian Tribe with the closest cultural affiliation and continually notify that Indian Tribe, regardless of who might make a claim or a request. Several comments requested the regulations be revised to bring all the priority orders together into one provision and provided specific redline changes to the proposed text.

DOI Response: We cannot change who is responsible for making determinations on the closest cultural affiliation when, and only when, there are competing claims or requests. This is required by the Act at 25 U.S.C. 3002(a) and 3005(e). Museums and Federal agencies are responsible for making determinations under the Act and these regulations, but must do so after consulting with lineal descendants, Indian Tribes, and NHOs. Based on consultation with the Native Hawaiian Community, it was our intention to give priority to a family or small organization over the Office of Native Hawaiian Affairs when, and only when, there are competing claims or requests. The enumerated lists are intended to identify a priority order, and it is possible that two Indian Tribes or NHOs might have the same priority. The priority order distinguishes between different kinds of cultural affiliation and places affiliation based on geographic information alone below other kinds of cultural affiliation. There is no obligation for a museum or Federal agency to determine the Indian Tribe or NHO with the closest cultural affiliation unless and until there are competing claims or requests. All Indian Tribes or NHOs with cultural affiliation have an opportunity to make claims or requests prior to a disposition or repatriation statement.

To avoid repetition and to clarify when closest cultural affiliation must be determined, we have combined paragraph (c)(2) in § 10.3 in the proposed regulations titled Competing claims or requests with paragraph (d) titled Closest affiliation to create a new paragraph § 10.3(e) Competing claims or requests. In conjunction with the changes to § 10.3 described above, we have added the standard of ''preponderance of the evidence'' to this paragraph on completing claims or requests. We cannot accept the suggestion to bring the priority orders

together in this paragraph because the priority order established in the Act for Federal or Tribal lands (25 U.S.C. 3002) is broader than the priority order for the ''closest cultural affiliation'' identified here. Where appropriate, we have referred to this paragraph in §§ 10.7, 10.9, and 10.10.

E. Subparts B and C

64. Comment: We received 53 comments on the regulatory steps for consultation (Initiate consultation and Consult with requesting parties) in §§ 10.4, 10.9, and 10.10. Three comments supported the requirement for museums and Federal agencies to initiate consultation in these paragraphs. The largest number of comments (15) requested we remove the requirement for consulting parties to submit a written request to consult. In addition, 11 comments requested that the invitation to consult include a clear statement that sensitive information will not be requested, but if shared, the consultation record will be protected from disclosure ''to any person for any reason.'' Five comments requested changes to the two terms ''consulting parties'' and ''requesting parties'' while one comment requested adding to the list of ''consulting parties.'' Five comments requested deference to Indian Tribes or NHOs on the timelines for consultation and one comment requested deference to documentation submitted by Indian Tribes or NHOs during consultation. Four comments requested changes to ensure consultation is not cutoff with publication of a notice. Three comments questioned the use of good-faith effort in these paragraphs. Two comments questioned how consultation can proceed where consensus cannot be reached. Two comments recommended adding an upfront fee payment for initiating consultation, like the Federal Communications Commission. One comment stated that consultation is not streamlined or simplified in these regulations.

DOI Response: We have removed the requirement for a consulting party to submit a written request to consult and, consequently, the cutoff for requests to consult before publication of a notice. Correspondingly, we have removed the requirement for a response to the request to consult within 10 days. As noted in the proposed rule, the written request to consult was a necessary precursor to require a museum or Federal agency to respond by a certain date. While a written request to consult is no longer a requirement, we would recommend a consulting party submit a written request to consult to ensure there is a clear record in case the museum or Federal agency does not respond.

As noted in Comment 5, we cannot dictate how a museum or Federal agency requests or records sensitive information it receives during consultation. We can, and have, specifically limited the information needed to comply with these regulations, and we encourage lineal descendants, Indian Tribes, and NHOs to request that museums and Federal agencies ensure that information of a particularly sensitive nature is not made available to the public, pursuant to otherwise applicable law. Since 1995, the Department has recommended that museum or Federal officials ensure that sensitive information does not become part of the public record by not collecting, or writing down, such information in the first place (1995 Final Rule, 60 FR 62154). We recommend that in a response to an invitation to consult, lineal descendants, Indian Tribes, and NHOs stipulate their requirements for protecting sensitive information shared during consultation, such as prohibiting any audio or video recording of consultation, requiring use of a specific note-taker or transcriptionist, or conducting consultation in a separate facility with limited attendance.

We have made clarifying edits to the paragraphs in §§ 10.4, 10.9, and 10.10, including the requested change from ''requesting parties'' to ''consulting parties'' throughout. We note that consulting parties are those with potential cultural affiliation, but this should not impact the role of removed and aboriginal land Indian Tribes as consulting parties. Based on geographical information, removed and aboriginal land Indian Tribes are those with potential cultural affiliation. We have not added a requirement for payment of an upfront fee in the initiation of consultation. We recommend that in a response to an invitation to consult, lineal descendants, Indian Tribes, and NHOs stipulate their requirements for conducting consultation, including any required financial support.

In response to other comments, we have made changes to the paragraphs in §§ 10.4, 10.9, and 10.10 to correspond to changes in the definition of consultation which directly addresses comments on deference, good-faith, and reaching consensus. We have changed recommendations to preferences on the timeline and method for consultation, but we cannot require deference in this instance because the timeline may be dictated by other requirements in the regulatory processes.

65. *Comment:* We received 20 comments on the regulatory steps for submitting a notice for publication and for receiving and considering a claim for disposition or a request for repatriation in §§ 10.7, 10.9, and 10.10. Four comments supported the timeline for the National NAGPRA Program to approve or return a notice submission but requested that a timeline be added requiring museums, Federal agencies, or DHHL to submit a revised notice. Five comments requested clarification on the statements in §§ 10.7 and 10.10 that any claim or request received no later than 30 days after publication of a notice must be considered, noting that the preceding sentence in both sections seemed contradictory since any claim or request must be received before a disposition or repatriation statement is sent. One comment requested grammatical edits to clarify the criteria for a claim for disposition or request for repatriation. Seven comments in one submission repeatedly objected to the 30-day timeframe for lineal descendants, Indian Tribes, or NHOs to submit claims or requests following a notice publication in §§ 10.7, 10.9, and 10.10. On the other hand, one comment stated submission of claims or requests should be limited to the 30 days after publication notice and requests received after that date should not be considered. One comment disagreed with the provisions for claims or requests to be received before publication of a notice while another comment felt these provisions would ensure more flexibility for lineal descendants, Indian Tribes, and NHOs.

DOI Response: We do not intend to impose deadlines on lineal descendants, Indian Tribes, or NHOs to submit claims for disposition or requests for repatriation. Under these regulations, a notice is required to identify the date (30 days from the date of publication) after which a disposition or repatriation statement may be sent to a claimant or a requestor. We intended to clarify in these provisions that any claim or request submitted during that 30-day period *must* be considered since a disposition or repatriation statement *may* be sent immediately after that date. With the disposition or repatriation statement, the museum or Federal agency divests itself of any interest in the human remains or cultural items and cannot accept or consider a request from any other party.

Therefore, while there is no timeline for lineal descendants, Indian Tribes, and NHOs to act, a failure to do so before a disposition or repatriation

statement is sent is an irrevocable waiver of any right to make a claim or a request (see § 10.1(g) and Comment 20). For example, once a notice of any kind publishes in the **Federal Register**, there is a 30-day period for any party to make a claim for disposition or a request for repatriation. On day 31, if a disposition or repatriation statement is sent to a claimant or requestor, any additional claims or requests will not be considered.

We have added a timeline (14 days or two weeks) for a museum or Federal agency to resubmit a notice that is returned to them under §§ 10.7, 10.9, or 10.10. We have adjusted the timeline (from 15 days to 21 days) for the National NAGPRA Program to accept or return a notice. This change is related to the change in § 10.1(f) from business days to calendar days and does not change the overall timeline (3 weeks). We have removed the sentence stating that any claim or request received no later than 30 days after publication of a notice must be considered. While accurate, we understand the confusion this sentence causes, especially considering the objections to the 30-day deadline. We have made grammatical changes to the criteria to ensure clarity.

We have not made changes to the date of a claim or request received before publication of a notice (same date the notice was published). We agree that this provides flexibility for lineal descendants, Indian Tribes, and NHOs. In addition, we feel this provides the opportunity for lineal descendants, Indian Tribes, and NHOs to dictate the timeline, as much as they can, after publication of a notice of any kind. For example, in a claim for disposition or a request for repatriation, the lineal descendant, Indian Tribe, or NHO could request that the disposition or repatriation statement be sent on day 31 after publication of any kind. If any competing claims or requests are received during the 30-day period, this request could not be accommodated. If no competing claims or requests are received, nothing in these regulations would prevent the disposition or repatriation statement from being sent on day 31. In addition to competing claims or requests, other factors outside of these regulations, such as legal review of the statement or deaccession policies, may require additional time before sending the disposition or repatriation statement.

If no competing claims or requests are received, 31 days is the minimum amount of time between any kind of notice publication and sending a disposition or repatriation statement. Under §§ 10.7 and 10.10, the maximum amount of time between notice publication and sending a disposition or repatriation statement depends on when a claim for disposition or request for repatriation is received. No later than 90 days after responding to a claim for disposition or a request for repatriation, a disposition or repatriation statement must be sent.

66. Comment: We received 22 comments on the regulatory steps for disposition or repatriation under §§ 10.7, 10.9, or 10.10. Of that total, 13 comments requested that the regulations require documentation or notification of physical transfer after a disposition or repatriation statement is sent. Four comments made a similar request for documentation of the discretionary physical transfer or reinterment of human remains or cultural items under §§ 10.7 or 10.10 specifically so, in the future, Indian Tribes or NHOs with cultural affiliation would be able to request the return of those human remains or cultural items. Three comments requested disposition or repatriation statements be published in the **Federal Register** specifically to further support the reviewability of disposition or repatriation statements by Federal agencies. On the other hand, one comment requested a ''paper transfer'' procedure be developed or explained for Indian Tribes or NHOs who do not have access to a curation facility or other means to physically and honorably receive human remains or cultural items. One comment requested clarification as to what kinds of agreements might be entered into after a disposition or repatriation statement is sent. An additional 14 comments made a similar request to include physical transfer in the definitions of ''disposition'' or ''repatriation'' (see Comment 51).

DOI Response: We have not made the requested changes related to physical transfers or reinterments for several reasons. We have made changes to the definition of repatriation and to what is required after a disposition or repatriation statement is sent.

First, there is a need to balance the requests for additional documentation and notification with the protection of sensitive information. Any document submitted to the National NAGPRA Program is generally subject to release under the Freedom of Information Act. Requiring documentation of physical transfers or reinterments to be submitted to the National NAGPRA Program or published in the **Federal Register** comes with added risks of disclosure of sensitive information. As we advise museums and Federal agencies, the best way to prevent sensitive information from being released is to not write it down in the first place.

Second, as discussed in the response to comments on the definitions in Comment 51, it is difficult for these regulations to require physical transfer either as a part of or after the regulatory processes for disposition or repatriation. The term physical transfer is used in these regulations to provide for an action that, as desired by a Tribe or NHO, may occur, but is not required to occur, after sending a disposition or repatriation statement. While we only received one comment indicating this, we know that many lineal descendants, Indian Tribes, and NHOs prefer to not complete physical transfer immediately or at all. Therefore, as in the proposed regulations, we have retained a separation between the disposition or repatriation statements and physical transfer, and we have not attached any requirements for reporting on physical transfer in these regulations. Documentation of physical transfer is required but is not sent to the National NAGPRA Program or published in the **Federal Register**.

Third, the Act does not provide for or require the involvement of the Secretary in the physical transfer or in any other procedure after publication of a notice. The proposed regulations provided, and these regulations retain, a new requirement for the Secretary to receive copies of disposition or repatriation statements. This new requirement is based on the 2010 Government Accountability Office report on the implementation of the Act, and the Department will retain these documents with the other compliance documents in the disposition or repatriation processes. However, we do not believe the Department should collect any additional documentation on the physical transfers or publish these disposition or repatriation statements. We affirm our response to consultation in 2021 that publication in the **Federal Register** would be costly, inefficient, and of little relative value. The purpose of publishing a notice under the Act and these regulations is to allow additional parties to come forward. Disposition or repatriation statements are the final step in regulatory processes and recognize the rights of a lineal descendant, Indian Tribe, or NHO in the human remains or cultural items. These statements cannot be challenged or revoked. Publication of those statements might lead to confusion about which type of publication is appealable. Although not incorporated into the regulatory text, the National NAGPRA Program will record information on disposition or repatriation statements it receives from

both museums and Federal agencies and will provide that information in its databases or upon request.

The Act provides very little instruction for this significant and important part of the processes. The section of the Act titled ''Repatriation'' (25 U.S.C. 3005) focuses on the circumstances under which human remains or cultural items must be ''expeditiously returned'' after a request from a lineal descendant, Indian Tribe, or NHO. The Act requires that the return of human remains or cultural items be ''in consultation with the requesting lineal descendant or [T]ribe or organization to determine the place and manner of delivery of such items'' (25 U.S.C. 3005(a)(3)). Congressional reports state that after a notice, a museum or Federal agency must ''make arrangements to return such items if the appropriate [T]ribe made a request'' (H. Rpt. 101–877, at 11) and must allow for ''mutually acceptable alternative[s] to repatriation'' (S. Rpt. 101–473, at 8).

The existing regulations refer to ''transfer custody'' of human remains or cultural items from Federal land. For holdings or collections of human remains or cultural items with cultural affiliation, only ''repatriation'' is used, as in consultation must occur on the place and manner of the repatriation and the content and recipients of all repatriations must be permanently documented. Under the 2010 regulations, ''transfer control'' is used repeatedly to describe the process for culturally unidentifiable human remains.

We sought to clarify this in the draft revisions for consultation in 2021 where we provided two separate terms: ''disposition'' and ''repatriation'' and neither term included physical transfer. Transfer and physical transfer were used elsewhere after disposition or repatriation statements. In 2021, we did not receive any related comments on physical transfer. In the proposed regulations, we did not address the separation of disposition or repatriation from physical transfer and retained the procedures for physical transfer that, as desired by a Tribe or NHO, may occur, but are not required to occur, after disposition or repatriation (2022 Proposed Rule, 87 FR 63246, 87 FR 63250, and 87 FR 63255).

We appreciate and understand the significance of physical transfer or other desired outcomes for lineal descendants, Indian Tribes, and NHOs after museums and Federal agencies complete the regulatory processes by sending a disposition or repatriation statement. We do not intend these regulations to indicate that completion of the regulatory processes is the end goal for lineal descendants, Indian Tribes, NHOs, museums, or Federal agencies. We know that for many lineal descendants, Indian Tribes, and NHOs, this work is not finished until their ancestors and other relatives are home or at rest. For many museums and Federal agencies, this work is not finished until the holding or collection is in the hands of its rightful caretakers.

However, we also know that the desired outcome of the disposition or repatriation processes vary greatly among lineal descendants, Indian Tribes, and NHOs. If or when physical transfer occurs depends on many factors, including spiritual, cultural, or religious observances, which cannot and should not be dictated by a regulatory process. It is, therefore, difficult for these regulations to require physical transfer either as a part of or after the regulatory processes. In response to the request for clarification on agreements after disposition or repatriation, any kind of agreement could occur after a disposition or repatriation statement is sent. We provided this language from the Act to ensure it was clear that once a lineal descendant, Indian Tribe, or NHO holds all rights and interests in the human remains or cultural items, what comes next is not in any way dictated by these regulations. We have removed ''the care or custody'' to ensure there is no implied limitation on such an agreement. Examples of agreements after disposition or repatriation include curation agreements, agreements to reinter human remains or cultural items, or agreements to analyze human remains or cultural items. The terms of the agreement, however, are at the discretion of the lineal descendant, Indian Tribe, or NHO.

67. Comment: We received 20 comments on the regulatory steps for or after disposition or repatriation statements in §§ 10.7, 10.9, and 10.10. Two comments related to the requirements for consultation on the care, custody, and physical transfer of human remains or cultural items. One comment requested that we add that museums or Federal agencies cannot dictate care, custody, or physical transfer before or after a disposition or repatriation statement is sent. One comment recommended based on experience that consultation on care, custody, or physical transfer only occur after a disposition or repatriation statement is sent. One comment requested that the regulations require museums and Federal agencies to pay for care and physical transfer of human remains or cultural items. The other comments suggested the following language changes:

- Replace physical ''transfer'' with physical ''repatriation;''
- Replace ''requestors'' with ''claimants;''
- Replace ''most appropriate claimant/requestor'' with ''closest cultural affiliation claimants'' and cite to § 10.3 of this part;
- Replace disposition or repatriation ''statements'' with ''documents;''
- Replace ''care, custody'' with ''the appropriate duty of care, custody;'' and
- Replace ''delivery'' with ''escort'' to be sensitive to the nature of human remains and cultural items.

DOI Response: We have made the requested changes to require a museum or Federal agency to consult with a requestor on custody and physical transfer after a disposition or repatriation statement is sent. Nothing under the Act or these regulations allow a museum or Federal agency to dictate any action after a disposition or repatriation statement is sent. Regardless of the disposition or repatriation statement, a museum or Federal agency is obligated to exercise a duty of care for human remains or cultural items in its custody or in its possession or control under § 10.1(d) and to defer to lineal descendants, Indian Tribes, and NHOs. We cannot require museums or Federal agencies pay for care or physical transfer.

We have not changed ''physical transfer'' for reasons explained in Comment 66 on the intentional difference between disposition or repatriation and physical transfer. We have not changed ''requestor'' to ''claimants.'' We have intentionally used the terms ''claim'' and ''claimant'' to refer to the disposition process in Subpart B and ''request'' and ''requestor'' to refer to the repatriation process in Subpart C. We cannot make the requested change from ''most appropriate claimant/requestor'' because while the Indian Tribe or NHO with the closest cultural affiliation under § 10.3 is one possible most appropriate claimant/requestor, competing claims for disposition or repatriation might involve lineal descendants or other Indian Tribes with a priority for disposition. We have not changed statements to documents. Statements are used in limited instances in these regulations and indicate a specific kind of document. Document is used more broadly.

We have removed ''care'' in any use outside of the duty of care. We have revised the documentation of physical transfer to not require any specific information. While physical transfer

must be documented, it is up to the lineal descendant, Indian Tribe, or NHO to dictate what the documentation should contain to ensure protection of sensitive information.

F. Section 10.4 General

68. Comment: We received seven comments requesting changes to Subpart B-Protection of human remains or cultural items on Federal or Tribal lands. Six of these comments requested that the regulations acknowledge the application of the Act to human remains or cultural items removed from Federal or Tribal lands that are subject to the disposition and trafficking provisions of the Act. The comments request a procedure by which Indian Tribes can report human remains and cultural items obtained in violation of the Act and send a clear signal to third parties that it is a crime to sell human remains or cultural items under NAGPRA and other statutes, such as the Archaeological Resources Protection Act (ARPA). The comments specifically request that references to human remains and cultural items ''on'' Federal or Tribal lands be expanded to human remains or cultural items ''located on or removed from'' such lands. One comment requested stronger requirements in the regulations to protect Tribal cultural heritage and sacred sites from theft or damage on Federal lands.

DOI Response: We cannot add the requested procedures to these regulations. We agree that the criminal provisions of the Act (18 U.S.C. 1170(a) and (b)) apply to human remains or cultural items as defined in the Act and these regulations. The Secretary and the Department do not have jurisdiction for implementing those provisions of the Act and cannot add them to these regulations. Any human remains or cultural items located on or removed from Federal or Tribal lands after November 16, 1990, are subject to these regulations under Subpart B. If human remains or cultural items are obtained illegally from Federal or Tribal lands, the processes described in these regulations do not apply until the human remains or cultural items are recovered by Federal law enforcement agents and any criminal procedures have concluded. The title of Subpart B highlights the procedures in §§ 10.4, 10.5, and 10.6 that provide protection to human remains or cultural items that are *located on* Federal or Tribal land. The disposition procedures in § 10.7 apply to any human remains or cultural items that are *removed from* Federal or Tribal land. We do not believe changing ''on'' to ''located on or removed from'' will have any impact on the application of these regulations. We are unable to add any requirements to these regulations that exceed the requirements provided in the Act for protection of human remains or cultural items on Federal or Tribal land.

69. Comment: We received 15 comments on § 10.4, generally. Of that total, 14 comments suggested changes to the section while one comment supported it as proposed. Ten comments requested a separate and simplified procedure for boarding school cemeteries on Federal lands, such as (1) consult, (2) develop a plan of action, and (3) disinter, with no requirement for an ARPA permit. One comment objected to the revisions and found the text confusing and unclear. One comment stated that these regulations should not require actions by Indian Tribes on Tribal lands. One comment suggested removing this section entirely and relying on the provisions of the National Historic Preservation Act (NHPA) because ''[t]here is no need for a plan of action independent of that already stipulated for historic preservation requirements in the NHPA'' (see NPS–2022–0004–0116). One comment requested a procedure for Indian Tribes to make requests for a plan of action or comprehensive agreement, to report non-compliance of Federal agencies, and to file suit under the Administrative Procedures Act.

DOI Response: We cannot make the requested change for boarding school cemeteries. As stated in the proposed regulations, the Act does not require a Federal agency to engage in an excavation of possible burial sites (*Geronimo* v. *Obama,* 725 F. Supp. 2d 182, 187, n. 4 (D.D.C. 2010)). However, the excavation provisions of the Act and these regulations apply to the human remains and cultural items disinterred from cemeteries on Federal or Tribal lands (2022 Proposed Rule, 87 FR 63205). The suggested simplified procedure is already provided for in these regulations. Any Indian Tribe or NHO may request the excavation of a burial site on Federal lands and, if the Federal agency agrees, a plan of action, including consultation with lineal descendants, Indian Tribes, or NHOs, is required. These regulations cannot require that a Federal agency agree to excavate a burial site nor can we unilaterally state an ARPA permit is not required for excavations at boarding school cemeteries. However, we believe these regulations provide a streamlined procedure for excavations of boarding school cemeteries through consultation and a plan of action, and the Department encourages any Federal agency that manages boarding schools and cemeteries on Federal lands to consult with lineal descendants, Indian Tribes, and NHOs on identification, disinterment, and repatriation of Native American children. The Department stands ready to assist Federal agencies, Indian Tribes, and NHOs to the fullest extent of its authority.

We have made changes to the first paragraph in this section to clarify the responsibilities under this section and this Subpart. We cannot remove the requirement for Indian Tribes to take actions on Tribal lands as these actions are required by the Act itself. We cannot delete this section and rely on provisions in the NHPA because the scope of the Act and these regulations can be greater than the NHPA requirements. However, we encourage Federal agencies to consider coordinating requirements under these regulations with any other required consultation and planning efforts for their planned activities on Federal lands. Nothing in these regulations would prevent an Indian Tribe from requesting a plan of action or comprehensive agreement from a Federal agency, and these regulations require a plan of action for any discovery or excavation on Federal lands. Federal agencies are required to comply with these regulations for any human remains or cultural items on Federal lands. Federal law provides ways to allege that a Federal agency has failed to comply with the requirements of the Act or the regulations (or any other Federal law or regulations). The most broadly applicable way to allege that a Federal agency has failed to comply is to send an allegation to the head of the appropriate Federal agency or to the Federal agency's Office of the Inspector General. If the alleged failure to comply is a final agency action (see § 10.1(i)), the failure to comply could also be the subject of a lawsuit under the Administrative Procedure Act (5 U.S.C. 704).

70. Comment: We received eight comments on § 10.4(a) requiring designation of an appropriate official. One comment supported the change, noting that it would increase transparency. One comment suggested designation of appropriate officials be reported to the Manager, National NAGPRA Program. Two comments requested a training requirement be added for Federal agency employees. Four comments questioned whether the Bureau of Indian Affairs (BIA) should designate the appropriate official for Tribal lands in Alaska and the continental United States rather than an Indian Tribe. Two of these comments

stated that because the BIA is currently responsible for discovery, excavation, and disposition on Tribal lands in Alaska and the continental United States, this change would require the BIA to notify all private landowners within the exterior boundaries of reservations that authority on those lands has changed from the BIA to the relevant Indian Tribe. The other two comments strongly objected to this change and requested that ''. . . NAGPRA and its implementing regulations designate BIA as the exclusive regulatory authority over the discovery, excavation, and disposition of Native American cultural items within the exterior boundaries of any Indian reservation. Only after this necessary step is taken should transfer of that jurisdiction to the Tribes be contemplated'' (see NPS–2022–0004–0151).

DOI Response: We decline to make the requested changes. Each Indian Tribe, Federal agency, or DHHL may designate appropriate officials in any way that best suits its organizational structure. For some Federal agencies, like the National Park Service, the appropriate officials may be the Superintendent of each park unit. The National NAGPRA Program cannot and should not track or record those designations. Each Federal agency is also responsible for ensuring the appropriate official receives the necessary training.

We disagree that the Act, the existing regulations, or the other cited regulations designate that the BIA is responsible for discovery, excavation, and disposition on Tribal lands in Alaska and the continental United States. In the Act, Congress specifically required that a person discovering human remains and cultural items notify ''*the Secretary of the Department, or head of any other agency or instrumentality of the United States,* having primary management authority *with respect to Federal lands* and *the appropriate Indian [T]ribe or Native Hawaiian organization with respect to [T]ribal lands*'' 25 U.S.C. 3002(d)(1) (emphasis added). Nowhere does the Act mention the Bureau of Indian Affairs. We agree that Indian Tribes have discretion under the existing regulations in responding to a discovery on Tribal lands and that, also under the existing regulations, the BIA is responsible for issuing an ARPA permit on private lands that are also Tribal lands. Neither the existing regulations nor the Secretary assign the BIA responsibility for consultation, obtaining consent, or disposition of human remains or cultural items on Tribal lands. As the proposed regulations stated, the clarification of the appropriate official for Tribal lands is to improve consistency with the Act by requiring certain actions by Indian Tribes, NHOs, and DHHL on Tribal lands. We note that other comments discussed below were supportive of Indian Tribes managing and making decisions regarding discoveries or excavations on their Tribal lands under §§ 10.5 and 10.6 of this part (see NPS–2022–0004–0119, as one example).

Furthermore, the BIA does not have a record or list of private landowners within the exterior boundaries of a reservation, and the Federal Government has no obligation, besides those instituted by Congress in the Administrative Procedure Act, to inform the public of changes in laws or regulations.

71. Comment: We received 27 comments on § 10.4(b) Plan of action. Of that total, 21 comments suggested changes to the paragraph while six comments supported it as proposed. Four comments requested a statement that plans of action and comprehensive agreements are not required on Tribal lands. Seven comments suggested changes to the likelihood of a discovery or excavation to include deference to Indian Tribes or NHOs. One comment requested that a plan of action be required before a discovery occurs. Several comments requested specific changes to requirements of a plan of action in paragraph (b)(3) of this section. One comment requested clarification on how a plan of action accommodates immediate reburial of human remains or cultural items. One comment objected to leaving or relocating human remains or cultural items without adequate protection or security. Two comments requested leaving or relocating human remains or cultural items be required in all cases. One comment requested archaeological recording and analysis be added back into the plan of action. One comment requested adding identification of human remains or cultural items to the plan of action. Three comments requested Indian Tribes and NHOs be required to sign the plan of action.

DOI Response: We have clarified that when a Federal agency or DHHL is responsible for a discovery or excavation on Federal or Tribal lands, a plan of action is required. A plan of action is not required for a discovery or excavation on Tribal lands when the Indian Tribe or NHO has responsibility. We hope this clarifies that when an Indian Tribe delegates its responsibility for a discovery or excavation on Tribal lands to the BIA or another Federal agency, the BIA or Federal agency must approve and sign a plan of action. In Hawai'i, DHHL must approve and sign a plan of action on Tribal lands unless a NHO agrees to be responsible for discoveries or excavations on the Tribal lands of an NHO. In that case, a plan of action is not required on Tribal lands of an NHO.

We have added the phrase ''in consultation with Indian Tribes and Native Hawaiian organizations'' to the likelihood of a discovery or excavation for a planned activity. We cannot strengthen this requirement further because Federal agencies and DHHL may have certain obligations under land management authorities to allow planned activities even when an Indian Tribe or NHO objects. However, Federal agencies and DHHL also have consultation responsibilities for land management activities that should inform when a planned activity is likely to result in a discovery or excavation subject to these regulations. We cannot require a general plan of action be developed by all Federal agencies and DHHL in case of discovery, but we agree with the comment that a plan of action is a useful tool to ensure efficiency and effectiveness in responding to a discovery. We believe that the requirement for a plan of action after a discovery will encourage Federal agencies and DHHL to develop these plans.

The comments requesting changes to the content of a plan of action demonstrate the diversity of opinions on protecting and caring for human remains or cultural items on Federal or Tribal lands. Because of this diversity of opinion, we have not made the requested changes to the minimum requirements for a plan of action to ensure flexibility. The requirements for a plan of action must be broad and allow for modification to specific circumstances and preferences of consulting parties. These are minimum requirements for a plan of action and any consulting party can request additional elements be added to a plan of action during consultation. For example, a plan of action might indicate that the consulting parties prefer protection of human remains or cultural items in situ or by relocating them in a nearby location. Alternately, a plan of action might require the immediate removal of human remains or cultural items to a secure, protected facility. In other cases, a plan of action might instruct the appropriate official to take no action upon the discovery of human remains or cultural items to allow for natural exposure or erosion.

We cannot require a plan of action be signed by Indian Tribes or NHOs, but an Indian Tribe or NHO can request to sign a plan of action. The appropriate official must approve and sign the plan of action by the deadlines required under §§ 10.5 and 10.6 and identify disposition by the deadlines required under § 10.7 with or without receiving a response to the invitation to consult. These regulations do not and cannot require a lineal descendant, Indian Tribe, or NHO to respond to the invitation to consult.

72. Comment: We received 14 comments on § 10.4(c) Comprehensive agreement. Two comments supported the paragraph as proposed while 12 comments suggested changes to it. Most of the comments requested more detail or additional requirements be added to this paragraph. Some comments requested a requirement for comprehensive agreements to be renewed on a regular basis. A few comments requested Tribal policy should be substituted for a comprehensive agreement if applicable. One comment asked if Indian Tribes could execute comprehensive agreements with other Indian Tribes. One comment stated comprehensive agreements should not be promoted by these regulations because a well-crafted plan of action works better than a comprehensive agreement.

DOI Response: The diversity of opinion on what a comprehensive agreement should contain is precisely why we decline to make any changes to this paragraph. The comprehensive agreement, like the plan of action, is necessarily broad and includes only the minimum requirements. As the comprehensive agreement is at the discretion of the parties involved, these regulations should not dictate the content or nature of the agreement. Comprehensive agreements should contain whatever terms or requirements the parties wish it to contain beyond the minimum requirements of a plan of action.

G. Section 10.5 Discovery

73. Comment: We received three comments on § 10.5 Discovery, generally. One comment supported the section as proposed and two comments requested clarification on identifying if discovered human remains or cultural items are Native American.

DOI Response: We have not made any changes. Consistent with the Act, this section applies only in the case where a person knows or has reason to know that the human remains are Native American. Whether a person knows or has reason to know that the human remains are Native American is case sensitive. We note that even where a person does not know or have reason to know that the human remains are Native American, other laws addressing the discovery of human remains likely will apply, particularly for forensic purposes. In such cases, the appropriate official would identify whether the human remains are Native American and, if Native American, would notify the appropriate Indian Tribes or NHOs of the discovery. As noted in the 1995 Final Rule the drafter considered any requirement for requiring the complete professional identification of inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony prior to notification of the responsible Federal or Indian Tribe officials to be ''officials inconsistent with the statutory language and the legislative history. (60 FR 62143)

74. Comment: We received six comments on Table 1 to § 10.5(a): Report a discovery on Federal or Tribal lands. Three comments requested changes to the last row of the table related to certain Federal lands in Alaska and seem to reference earlier drafts of these regulations rather than the proposed regulations. One comment requested that Indian Tribes be identified as the appropriate official for Federal, State, county, or private lands near Tribal lands.

DOI Response: We cannot make the requested change to make Indian Tribes the appropriate official for Federal lands, but we note that any Indian Tribe with potential cultural affiliation is the additional point of contact on Federal lands. This subpart only applies to discoveries on Federal or Tribal lands. Discoveries on State, county, or private lands are subject to the laws of the State or county.

We previously revised Table 1 to § 10.5(a) based on similar input we received during consultation in 2021. We used the exact language from the Act to describe the additional point of contact for Federal lands in Alaska selected but not yet conveyed under the Alaska Native Claims Settlement Act (ANCSA). For all other Federal lands in Alaska, the Indian Tribe with potential cultural affiliation should be notified and an Alaska Native Corporation organized under ANCSA is only notified when the Federal land has been selected but not yet conveyed. Based on the comments, we have removed ''or group'' from the table as that term is functionally obsolete following the recognition of Indian Tribes in Alaska.

75. Comment: We received four comments in one submission stated that the proposed regulations impermissibly require private parties to notify an ambiguous ''additional point of contact'' of a discovery of Native American human remains or cultural items on Federal lands. The additional point of contact is ''any Indian Tribe or Native Hawaiian organization with potential cultural affiliation to the human remains or cultural items, if known.'' According to the comment, the Act is unambiguous that notification of a discovery on Federal lands is limited to the Federal land managing agency.

DOI Response: We have not made a change. During consultation in 2021, we received comments requesting the addition of Indian Tribes and NHOs as additional points of contact for reporting a discovery on Federal lands. We disagree with the comment that this provision is impermissible and ambiguous. While the Act is the primary authority for the issuance of regulations implementing and interpreting the Act's provisions, Congress authorized the Secretary to make such regulations for carrying into effect the various provisions of any act relating to Indian affairs (25 U.S.C. 9). As the Act is Indian law (*Yankton Sioux Tribe* v. *United States Army Corps of Engineers,* 83 F. Supp. 2d 1047, 1056 (D.S.D. 2000)), the Secretary may promulgate this provision under the broad authority to supervise and manage Indian affairs given by Congress (*United States* v. *Eberhardt,* 789 F. 2d 1354, 1360 (9th Cir. 1986)). The additional point of contact language is not ambiguous. Not only does this notification requirement only apply to a discoverer who knows of an Indian Tribe or NHO with potential cultural affiliation, but the reporting requirement also only applies to a discoverer who knows, or has reason to know, that Native American human remains or cultural items have been discovered. Whether a person knows or has reason to know that the human remains or cultural items are subject to these regulations is case sensitive. In cases involving a planned activity on Federal lands, a person performing the activity will have reason to know that discovered human remains or cultural items are subject to these regulations and most likely also will know of an Indian Tribe or NHO with potential cultural affiliation based on the required plan of action.

76. Comment: We received five comments on § 10.5(a) Report any discovery. Of that total, three comments suggested changes to the paragraph while two comments supported it. Two comments requested requiring telephone notification while one

comment asked if an email qualifies as written documentation of the discovery.

DOI Response: We have added a requirement for in-person or telephone notification to the first sentence requiring immediate reporting of the discovery. Written documentation of the discovery is required to attach the rest of the timelines in this section. As explained elsewhere and in § 10.1(e) of this part, written documents may be sent by email, with proof of receipt, or by other methods of delivery.

77. Comment: We received nine comments suggesting changes to § 10.5(b) Cease any nearby activity. Most of these comments requested changes to align this paragraph with the preceding paragraph and not impose any unintentional limits on the kind of activity that must be ceased upon a discovery.

DOI Response: We have revised this paragraph to follow and refer to the preceding paragraph. We have removed the introductory sentence, which is already included in § 10.4 of this part, so as not to unintentionally limit the kinds of activities that must be ceased upon a discovery. As suggested by one comment, we have added that the written documentation of the discovery also include any potential threats to the discovery.

78. Comment: We received nine comments on § 10.5(c) Respond to a discovery. Of that total, six comments requested changes to text in earlier drafts of these regulations rather than to the proposed regulations. Two comments requested strengthening the requirement to report the discovery to additional points of contact to initiate consultation. One comment requested an explanation of what is required under this paragraph on Tribal lands.

DOI Response: We already addressed the concerns expressed by six comments in the proposed regulations. The proposed regulations require the appropriate official to respond to a discovery no later than three days after receiving written documentation. The appropriate official is required to report the discovery to any additional point of contact, which would be any Indian Tribe or NHO with potential cultural affiliation. The proposed regulations require the Federal agency or DHHL prepare and approve a plan of action, which includes consultation, for any discovery. We agree with the two comments that requested a stronger requirement in the paragraph to initiate consultation. We have made changes to paragraph (c)(1)(iii).

To clarify what this paragraph requires on Tribal land, we provide the following example: A film production company has permission from an Indian Tribe to film on lands within the exterior boundaries of the Indian Tribe's reservation. The written permission from the Indian Tribe requires the production company to immediately report any discovery of human remains or cultural items to the Director of Tribal Cultural Affairs and the Director of the regional BIA office by telephone and in writing by email. During filming, a member of the production company finds objects eroding from a hillside that may be human remains or cultural items. The production company reports the discovery by telephone and email to the Indian Tribe and the BIA, stops all activity around the discovery, secures and protects the objects by covering them, and confirms that no activity will resume in the area until a written certification is issued by the Indian Tribe. No later than three days after receiving the email from the production company, the Director of Tribal Cultural Affairs must make a reasonable effort to secure and protect the objects, verify that any activity in the area has stopped, and notify the Director of the regional BIA office. The Director of Tribal Cultural Affairs must send a written certification to the film production company no later than 30 days after receiving the email from the production company and provide the date (no later than 30 days after the date of the written certification) on which the film production may resume in the area around the discovery. If an excavation is required, the Director of Tribal Cultural Affairs must follow the requirements under § 10.6(a). If the objects are human remains or cultural items and they are removed from the hillside, the Director of Tribal Cultural Affairs must follow the requirements for disposition under § 10.7. If both the BIA and the Indian Tribe consent in writing, the BIA could take responsibility for any of the actions described above related to the discovery, excavation, or disposition.

79. Comment: We received five comments requesting clarification of the provisions found in §§ 10.5, 10.6, and 10.7 for a NHO to accept responsibility for discoveries, excavations, and dispositions on Tribal lands of an NHO.

DOI Response: To clarify, ''Tribal lands of an NHO'' does not include lands under a Hawaiian homestead lease, but rather lands that the Hawaiian Homes Commission has determined an NHO is qualified to steward under a lease or license pursuant to the Hawaiian Homes Commission Act. Although Congress affords such opportunity in the Act, an NHO need not accept responsibility for discoveries, excavations, or dispositions if it believes it is not qualified. As noted in the proposed rule, ''[a]ccepting or declining responsibility is an exercise of sovereignty,'' and ''the Department seeks to be respectful of the sovereignty of the Native Hawaiian Community and their right to self-determination'' (NPS–2022–0004–0004, pages 17 and 30). The regulations do not prescribe how the Hawaiian Homes Commission implements this provision, recognizing its authorities and responsibilities. The term ''Tribal lands of an NHO'' reflects the language of ''Tribal lands'' used in the Act. The Department acknowledges that the United States' government-to-sovereign relationship with the Native Hawaiian Community is different from its government-to-government relationship with Indian Tribes and these provisions reflect those relationships.

80. Comment: We received three comments on § 10.5(d) Approve and sign a plan of action. One comment supported the timeline while two comments requested that the appropriate official should seek consensus or agreement, not just merely engage in consultation with, Indian Tribes and NHOs.

DOI Response: We appreciate the support for this timeline considering other comments addressed below. Regarding consultation, we note that under these regulations, consultation is defined and includes striving for consensus, agreement, or mutually agreeable alternatives. This is required for consultation under this paragraph and any other place it is used in these regulations.

81. Comment: We received 14 comments on § 10.5(e) Certify that an activity may resume requesting that we extend the timeline for resumption of activities or provide more flexibility for the appropriate official to extend the timeline. Some of these comments believe the Act does not require the appropriate official to provide any date on which activity may resume, and, instead, only sets a 30-day floor to stop an activity after a discovery occurs. These comments also requested clarifying edits be made to this paragraph. Several comments on paragraph (c) discussed above requested a copy of the written certification be sent to consulting parties. One comment stated that evaluating the need for and authorization of an excavation of human remains or cultural items must be done in consultation with Indian Tribes or NHOs.

DOI Response: We specifically requested input on this paragraph in the proposed rule, and we appreciate the responsive comments. However, we

cannot make the requested change to extend the timeline or build in additional flexibility, as discussed in full in the next comment and response. We can and have made the clarifying edits to this paragraph and added a requirement to send a copy of the certification to the additional points of contact. We note that consultation is required on a plan of action under paragraph (d) of this section, which includes the preference of consulting parties for leaving or relocating human remains or cultural items rather than excavating. A plan of action also requires a timeline and method for evaluating the potential need for an excavation, and we have removed the redundant language in paragraph (e)(3) of this section.

82. Comment: We received eight extensive comments from one submission on § 10.5(e) Certify when an activity may resume objecting to the additional time provided in the proposed regulations. According to the comment, the Act unambiguously states that the required certification from the appropriate official to the person responsible for the activity is solely to acknowledge that the responsible official has received written notification of the discovery, and that after 30 days, the activity may resume. The comment cites to Senate Report 101–473 (September 26, 1990) for the proposition that Congress intended the stop-work period to last only 30 days (''After notice has been received the party must cease the activity and make all reasonable efforts to protect the remains or objects before resuming the activity. The activity may resume 30 days after notice has been received. . . Under this section, Indian [T]ribes or native [sic] Hawaiian organizations would be afforded 30 days in which to make a determination as to the appropriate disposition for these human remains or objects.''). The comment also states that expanding the stop-work period by allowing additional time for the appropriate official to certify receipt of the notification would significantly interrupt and impair activities on Federal lands, and thereby contravene Congressional intent, as expressed in Senate Report 101–473 (''The Committee does not intend this section to act as a bar to the development of Federal or [T]ribal lands on which human remains or objects are found. Nor does the Committee intend this section to significantly interrupt or impair development activities on Federal or [T]ribal lands.''). Additionally, the comment states that it would be arbitrary and unreasonable for the responsible official to take up to 35 days to certify that written notice of the discovery from the responsible person had been received. Certification is a ministerial task that takes little time to complete, and the existing regulations provide for a maximum of three working days for doing so. Consequently, the comment requests that the Department continue to require the appropriate official certify receipt within three working days of receiving notification of a discovery.

DOI Response: The Department believes the provision to build in additional days, if needed, after a discovery is permissible. In the final regulations, we have revised this time to a standard 30 days for clarity. The Act does not provide a timeframe for the appropriate official to certify that written notification of a discovery has been received, nor does the Act address the action to be taken by the appropriate official in responding to the discovery itself. Based on other comments about this timeframe, we find there is some ambiguity in the Act. While the Act is the primary authority for the issuance of regulations implementing and interpreting the Act's provisions, Congress authorized the Secretary to make such regulations for carrying into effect the various provisions of any act relating to Indian affairs (25 U.S.C. 9). As NAGPRA is Indian law (*Yankton Sioux Tribe* v. *United States Army Corps of Engineers,* 83 F. Supp. 2d 1047, 1056 (D.S.D. 2000)), the Secretary may promulgate this provision under the broad authority to supervise and manage Indian affairs given by Congress (*United States* v. *Eberhardt,* 789 F. 2d 1354, 1360 (9th Cir. 1986)). Ambiguities in statutes passed for the benefit of Indians are to be construed to the benefit of the Indians (*Bryan* v. *Itasca County,* 426 U.S. 373 (1976)). Therefore, we have provided in these regulations a maximum of 60 days after written documentation of a discovery before an activity could resume. This timeframe provides 30 days for the appropriate official for a Federal agency or DHHL to evaluate the circumstances of the discovery and, in consultation with Indian Tribes and NHOs, prepare, approve, and sign a plan of action. We have provided that no later than 30 days after receiving documentation of the discovery, the appropriate official for an Indian Tribe, NHO, Federal agency, or DHHL must certify that written notification of the discovery has been received and that a lawful activity may resume on a certain date, but no later than 30 days after the date of the written certification. This timeframe allows the appropriate official for a Federal agency or DHHL a reasonable amount of time to consult with Indian Tribes and NHOs, evaluate the potential need for an excavation, and carry out the steps in a plan of action. If the appropriate official determines, based on the circumstances, that a shorter timeframe is acceptable, the lawful activity could resume in fewer than 60 days. Moreover, we hope that Federal agencies and DHHL will be encouraged to engage in consultation earlier and develop a plan of action prior to a discovery to allow for a shorter timeframe.

H. Section 10.6 Excavation

83. Comment: We received 26 comments suggesting changes to § 10.6 Excavation. The comments generally disagreed with our analysis of the relationship between NAGPRA and ARPA, noting that it is inconsistent with the plain language of the Act and would unduly narrow the application of the Act and these regulations. Some comments suggested that, if we did not change the interpretation, we should add a requirement that excavations not on ''ARPA Indian land'' or ''ARPA Public land'' must have an equivalent permit from another jurisdiction.

DOI Response: Our interpretation does not change the application of the Act. NAGPRA applies to its fullest extent on Tribal land and Federal land, as defined in both the statute and regulations. Rather, we have defined which excavations under the Act require a permit issued under ARPA and which do not. Specifically, the Act requires that human remains or cultural items may only be intentionally excavated or removed from Federal or Tribal land if, among other requirements, ''such items are excavated or removed pursuant to a permit issued under [ARPA] which shall be consistent with [NAGPRA].'' 25 U.S.C. 3002(c)(1). Since both NAGPRA and ARPA are intended to protect important cultural resources, they must be construed together. Further, ''issued under ARPA'' is an adjectival phrase modifying ''permit.'' Thus, it is not ARPA that ''shall be consistent with NAGPRA,'' but rather the ARPA permit that must be consistent with the Act. This is supported by the legislative history. The Senate Indian Affairs Committee specifically noted that it ''[intended] the notice and permit provisions of this section to be fully consistent with the provisions of [ARPA]'' (S. Rpt. 101–473, at 7). Likewise, the House Committee on Interior and Insular Affairs, in discussing the stopping of work for an inadvertent discovery, noted, ''[a]lthough a specific time limit was not

added here, the Committee does intend to protect the remains and objects found and does not intend to weaken any provisions of other laws, such as [ARPA], regarding similar situations.'' Like the Senate Committee, the House Committee also stated, ''[s]ubsection (c) provides that items covered by this Act can be excavated from Federal or [T]ribal land if proof exists that a permit has been acquired under Section 4 of the [ARPA]'' (H. Rpt. 101–877, at 15 and 17). Therefore, the provisions of ARPA, including the scope of public and Indian land, are not affected by the Act. So, the terms ''ARPA Indian land'' and ''ARPA public land'' are defined in these regulations just as ''Indian land'' and ''public land'' are defined in ARPA, including use of the term ''individual Indian,'' which is used in ARPA to denote land that is owned by an individual Indian, who may or may not be a ''lineal descendant'' as used in the Act and defined in these regulations. The protections provided for in both statutes is reflected in these regulations by the requirement that ARPA permits are issued for NAGPRA excavations just as they are for ARPA excavations, keeping the full protections of each statute in place, as Congress intended. We have added the requested requirement that excavations on Federal or Tribal lands that are not ARPA Indian lands or ARPA Public lands must have an equivalent permit from the relevant Indian Tribe, NHO, or State, if applicable.

84. Comment: We received eight comments on § 10.6(a) On Tribal lands. Of that total, one comment suggested a change to the paragraph while seven comments supported it as proposed.

DOI Response: We cannot make the requested change to paragraph (a)(2) to replace ''consent'' with ''respond.'' Consent in writing from both the Indian Tribe and the Federal agency is required before the responsibility for an excavation is transferred from the Indian Tribe to the Federal agency. This ensures all parties are aware of the transfer and the responsibilities.

85. Comment: We received 11 comments on § 10.6(b) On Federal or Tribal lands. Of that total, nine comments suggested changes to the paragraph while two comments supported it. The comments requesting changes all expressed concern about the role of consultation in the preliminary steps by an appropriate official to evaluate the potential need for an excavation.

DOI Response: We have removed the sentence in § 10.6 referring to evaluation of the potential need for an excavation. The timeline and method for evaluating the potential need for an excavation is a required part of a plan of action under § 10.4(b)(3)(vi) of this part. The plan of action is required before an excavation is authorized and requires consultation with lineal descendants, Indian Tribes, and NHOs. We note that consultation on a plan of action also includes the preference of consulting parties for leaving or relocating human remains or cultural items rather than excavating them. We have made other clarifying edits to this paragraph considering comments we received on § 10.4(b) under this part. We have retained the requirement for the written authorization to describe the steps taken to evaluate the potential need for an excavation. We believe this is necessary to document how the plan of action was implemented.

Because an Indian Tribe may delegate its responsibilities for excavations on Tribal lands to a Federal agency, we have added a requirement for the plan of action to include written consent of the appropriate Indian Tribe or NHO. This requirement could be fulfilled by the written consent delegating the responsibilities under paragraph (a)(2) of § 10.6. On Tribal lands of an NHO, DHHL is required to obtain written consent from the appropriate NHO prior to authorizing an excavation.

I. Section 10.7 Disposition

86. Comment: We received nine comments on § 10.7 Disposition, generally. Of that total, three comments suggested requirements for consultation be added to the introductory paragraph for this section while one comment supported the consultation requirements as proposed in § 10.7. One comment requested adding the definition of disposition to the introduction to this section. Two comments objected to the burden this section puts on disposition from boarding school cemeteries on Federal lands. One comment found this entire section confusing and the timelines too long. One comment objected to the appropriate official in this section being anyone other than an Indian Tribe or NHO.

DOI Response: We decline to make the requested change to add consultation requirements in the introductory paragraph to § 10.7. This paragraph applies to human remains or cultural items removed from Federal or Tribal lands and as such must include the requirements for the appropriate official for an Indian Tribe on Tribal lands as well as for the Federal agency or DHHL. As discussed elsewhere, we received comments requesting we provide as much flexibility as possible for Indian Tribes who are responsible for complying with this section on their Tribal lands. As several of the comments noted, the requirements of § 10.7 follow the requirements in §§ 10.5 and 10.6 which require consultation by Federal agencies or DHHL through a plan of action. In addition, as the supporting comment noted, consultation is required throughout § 10.7 by Federal agencies or DHHL.

Disposition is defined in § 10.2 and the definition is used to describe what a disposition statement must include in this section. We have not repeated the definition here. Regarding disposition from boarding school cemeteries on Federal lands, we do not believe this will overly complicate the process. It will require, as the existing regulations do, that when human remains or cultural items are removed from Federal lands, including boarding school cemeteries, a notice must be published to identify the Indian Tribe with priority for disposition. We believe these regulations provide a streamlined procedure for excavations of boarding school cemeteries through consultation, a plan of action, and a notice of intended disposition. The Department encourages any Federal agency that manages boarding schools and cemeteries on Federal lands to consult with lineal descendants, Indian Tribes, and NHOs on identification, disinterment, and repatriation of Native American children as expeditiously as possible. The Department stands ready to assist Federal agencies, Indian Tribes, and NHOs to the fullest extent of its authority.

We appreciate the concern expressed by some comments that as written and when read alone, the proposed regulations state that the appropriate official must determine disposition without consultation. We feel that a simple change from ''determine'' to ''identify'' will alleviate this concern. The priority for disposition is established by the Act and all that is required under this section is for the lineal descendant, Indian Tribe, or NHO with priority for disposition be identified and, in some cases, notified. We have also removed the reference to unclaimed human remains or cultural items, as discussed in Comment 91. We cannot make the requested change to the appropriate official in this section.

87. Comment: We received 19 comments on § 10.7(a) Priority for disposition. Of that total, seven comments supported this paragraph especially as it relates to boarding school repatriations. One comment requested human remains or cultural items should only be removed from

Federal lands with the permission and partnership of the affected Indian Tribe. Five comments suggested changes to the priority order, specifically for Tribal lands where the Indian Tribe with cultural affiliation is not the Tribal land Indian Tribe. Four comments requested a significant, but grammatical, change from ''originated'' to ''were removed.'' One comment requested disposition should only occur if other Indian Tribes or NHOs consent. Other comments requesting changes to § 10.3 Determining cultural affiliation required changes to this paragraph.

DOI Response: We reiterate that this paragraph is drawn directly from the Act itself and does not represent a change in any way. We cannot add a requirement to this section to require permission or partnership; see the discussion above on the requirement for a plan of action prior to an excavation or after a discovery. We cannot change the priority order for Indian Tribes with cultural affiliation and Tribal land Indian Tribes. Under the Act, the Indian Tribe from whose Tribal lands the human remains or cultural items were removed has priority over any other Indian Tribe. Likewise, we cannot change the use of aboriginal land in the priority order after cultural affiliation. Any changes to the priority order would require Congressional action. We do want to note here that a final judgment of the Indian Claims Commission or the United States Court of Claims also includes a judgment concerning a settlement as long as that judgment or settlement either explicitly recognizes certain land as the aboriginal land of an Indian Tribe or adopts findings that do so. We have made the requested grammatical change to ''originated.''

88. Comment: We received 11 comments suggesting changes to paragraph (b) in the proposed regulations under § 10.7 Disposition—To a lineal descendant (removed in the final regulations). All these comments requested we require notices of intended disposition for lineal descendants.

DOI Response: We appreciate and agree with the need for transparency in these regulations. However, we reiterate that neither the Act nor the existing regulations require publication of a notice of intended disposition for a lineal descendant. On Federal land, a notice and a claim are only required when no lineal descendant has been ascertained. Considering comments related to disposition on Tribal land below, we do not believe we can extend the requirement for publication of a notice of intended disposition on Tribal land to the appropriate official for an Indian Tribe. Therefore, we have removed this paragraph entirely and integrated the procedure for disposition to lineal descendants into the two following paragraphs.

89. Comment: We received 18 comments on paragraph (c) in the proposed regulations under § 10.7 Disposition—On Tribal lands (in the final regulations, this is renumbered § 10.7(b)). Of that total, 10 comments requested we require notices of intended disposition on Tribal lands. The other eight comments requested we remove the unnecessary burdens placed on Indian Tribes for disposition on Tribal lands. Five submissions contained both requests, which seem inconsistent with each other.

DOI Response: We believe that requiring the appropriate official for an Indian Tribe or NHO to submit a notice of intended disposition for publication in the **Federal Register** is an unnecessary burden, and we decline to make this change. We cannot alleviate the entire burden on an Indian Tribe or NHO for the disposition process under this paragraph. As noted above, we have removed the requirement for disposition statement to be sent to a lineal descendant, yet these regulations must provide some procedure for an Indian Tribe or NHO to identify if there is a lineal descendant with priority for disposition, which is a requirement of the Act. The requirements in these regulations remain like those in the proposed regulations. On Tribal lands, an Indian Tribe or NHO must identify the lineal descendant, Indian Tribe, or NHO with priority for disposition and prepare and retain a written disposition statement. The written disposition statement is required because of the priority afforded to lineal descendants under the Act. When a lineal descendant has not been ascertained, an Indian Tribe or NHO must ensure a record is made of the disposition in case a lineal descendant wishes to assert a priority right later.

We believe this is the minimum burden these regulations can place on Indian Tribes or NHOs for human remains or cultural items removed from Tribal lands. We note that an Indian Tribe may delegate its responsibilities for disposition under this paragraph. In complex cases involving multiple potential lineal descendants or Indian Tribes with potential cultural affiliation, an Indian Tribe may prefer to delegate its responsibility to the Bureau of Indian Affairs or another Federal agency. This will alleviate the Indian Tribe of any additional burden and, as a result, require the appropriate official for the Federal agency to inform and consult with lineal descendants, Indian Tribe, or NHOs; publish a notice of intended disposition in the **Federal Register**; respond to any claims for disposition; resolve any competing claims; and send a disposition statement. We note in response to the comments on paragraph (a) of this section, while we were unable to change the priority order for disposition, this paragraph and the option of delegating responsibility to a Federal agency provide opportunity for an Indian Tribe to include Indian Tribes with cultural affiliation in the disposition from Tribal lands.

90. Comment: We received 12 comments on paragraph (d) in the proposed regulations under § 10.7 Disposition—On Federal lands in the United States or on Tribal lands in Hawai'i (in the final regulations, this is renumbered § 10.7(c) and retitled On Federal or Tribal lands). Five comments in the same submission questioned who is responsible for determinations in this paragraph and suggested the appropriate official should be a representative of an Indian Tribe or NHO in all circumstances. One of these comments stated six months is too long after a discovery or excavation to inform consulting parties in Step 1. Four comments requested adding criminal actions under NAGPRA to the deadline extension in Step 2. Two comments were in favor of requiring notices be published in the **Federal Register** while one comment opposed this change.

DOI Response: We have clarified that this paragraph, as in other paragraphs in this subpart, applies when a Federal agency or DHHL has responsibility for disposition of human remains or cultural items removed from Federal or Tribal lands. We have tried to clarify who ''the appropriate official'' represents at the beginning of each paragraph and with the paragraph headings that identify if the paragraph applies ''On Tribal lands'' or ''On Federal or Tribal lands.'' Because this paragraph covers a wide variety of circumstances under which human remains or cultural items are removed from Federal or Tribal lands, a longer timeline is necessary for identifying and informing consulting parties. In most cases, however, this can occur much faster based on the plan of action. We have added a criminal action under NAGPRA to Step 2. We have retained the requirement for publication of notices of intended disposition in the **Federal Register**. We believe the revised regulatory text will prevent the current delays in notice publication.

91. Comment: We received 13 comments on paragraph (e) in the proposed regulations under § 10.7

Disposition—Unclaimed human remains or cultural items removed from Federal lands in the United States or from Tribal lands in Hawai'i (in the final regulations, this is renumbered § 10.7(d) and retitled Unclaimed human remains or cultural items removed from Federal or Tribal lands). Five comments emphatically and some repeatedly objected to the concept of unclaimed human remains or cultural items and stated that any human remains or cultural items removed from Federal or Tribal lands can be identified and claimed through effective and meaningful consultation. Two comments objected to the provision for reinterment without Indian Tribes or NHOs making the decision to do so. Two comments objected to the inclusion of Indian groups without Federal recognition in this paragraph. One comment stated the Federal agency or DHHL has an obligation to reach out to Indian Tribes or NHOs before human remains or cultural items become unclaimed. Two comments requested a list of unclaimed cultural items be published on the National NAGPRA Program website. One comment requested a requirement for reinterment to be as close as possible to the original site.

DOI Response: We understand the objections raised by many comments to this provision, but we are unable to eliminate this paragraph because it is required by the Act (see 25 U.S.C. 3002(b)). Regulations concerning this part of the Act were proposed in 2013 and finalized in 2015 and contained very similar provisions. There may be circumstances where human remains or cultural items are removed from Federal or Tribal land and one year after publication of a notice of intended disposition, no Indian Tribe or NHO has made a claim for disposition. In other cases, particularly for Federal lands in the Eastern United States, when cultural affiliation cannot be determined and the Federal land is not the aboriginal land of an Indian Tribe as defined in § 10.7(a), the Federal agency may not be able to identify any Indian Tribe or NHO with priority for disposition and the human remains or cultural items may be unclaimed.

We believe the clarification and simplification of the disposition process for human remains or cultural items on Federal or Tribal lands that precedes this paragraph will address many of the concerns raised by these comments and that only a small number of human remains or cultural items will be unclaimed. To date, a total of 44 individuals and 164 funerary objects have been reported as unclaimed. Since 2015, the National NAGPRA Program has published a list of unclaimed human remains or cultural items from Federal or Tribal lands on its website (*https://www.nps.gov/subjects/nagpra/unclaimed-cultural-items.htm,* accessed 12/1/2023).

We have removed the option to transfer unclaimed human remains or cultural items to Indian groups without Federal recognition but we have retained the option to transfer to an Indian Tribe or NHO or to reinter. At the discretion of the Federal agency or DHHL and after following the requirements of this paragraph, unclaimed human remains or cultural items removed from Federal or Tribal land may be transferred or reinterred. As this is a discretionary action, these regulations cannot dictate where reinterment occurs.

J. Subpart C

92. Comment: We received 46 comments on the overall timelines in Subpart C. Of that total, 16 comments supported the timelines as proposed. Several of these comments felt the timelines were adequate and clearly explained, especially with tables. Four comments supported the requirements and timeline for updated inventories specifically. Two comments felt the timelines achieved a balance between a sense of urgency to repatriate and the practical limitations of the tasks involved. Two of these comments felt the timelines were too long and found the timelines to be extremely unbalanced and specifically aimed at benefitting museums and Federal agencies rather than lineal descendants, Indian Tribes, and NHOs. One comment felt the timelines provided sufficient opportunity for Indian Tribes and NHOs to submit requests for repatriation.

On the other hand, 30 comments felt the timelines were too short, unrealistic, unworkable, and unachievable. Many of these comments from individuals and museums believe the timelines do not provide adequate time for consultation or relationship building and will result in overwhelming Indian Tribes and NHOs with requests to consult. Many of the comments from Indian Tribes requested the timelines be based on Tribal priorities. Most of the comments from individuals and museums felt the timelines underestimate the work required for repatriation. One comment stated the changes to the regulations were too complicated to be done quickly. One comment stated the timelines were not based in the real world and provided an example of one Federal agency that needed six months just to acquire a signature on a letter. One comment stated the focus of these timelines on notice publication is misplaced and ignores the other parts of the process.

Some of these comments requested more flexible timelines with no set deadlines. Two comments predicted the tasks involved are more likely to take 20 or 50 years to complete. Suggestions in these comments included removing timelines entirely, doubling all the timelines provided, or retaining the timelines in the existing regulations. Three comments suggested a five-year timeline for updating inventories. One comment suggested changing the timelines to only require initiation of consultation and remove the subsequent timelines.

DOI Response: We have extended the deadline for museums and Federal agencies to update inventories of human remains and associated funerary objects from three years to five years after the effective date of these final regulations. We have made other changes to the deadlines in these regulations to account for the change from business days to calendar days discussed elsewhere. We have changed the deadline for a museum or Federal agency to respond to a request for repatriation from 60 days to 90 days for both human remains and associated funerary objects and for cultural items.

Tables 4 and 5 provide an overview of the general timeframes under Subpart C from the longest timeline to the shortest timeline. Table 4 relates to required reporting on holdings or collections and Table 5 relates to responding to requests for repatriation.

TABLE 4—TIMEFRAMES FOR REPORTING ON HOLDINGS OR COLLECTIONS

If a museum or Federal agency . . .	. . . it must . . .	. . . no later than . . .	See
Has human remains and associated funerary objects not published in a notice.	Update an inventory (including consultation)	5 years	§ 10.10(d)(3).
Receives Federal funds for the first time and has possession or control of human remains and associated funerary objects.	Complete an inventory (including consultation)	5 years	Table 1 to § 10.10(d)(2).

TABLE 4—TIMEFRAMES FOR REPORTING ON HOLDINGS OR COLLECTIONS—Continued

If a museum or Federal agency . . .	. . . it must . . .	. . . no later than . . .	See
Receives Federal funds for the first time and has cultural items.	Compile and submit a summary	3 years	Table 1 to § 10.9(a)(2).
Acquires or locates human remains and associated funerary objects.	Initiate consultation and complete an inventory	2 years	Table 1 to § 10.10(d)(2).
Has custody of a Federal agency holding or collection (museums only).	Submit a statement to the Federal agency and National NAGPRA.	1 year	§ 10.8(c).
Has custody of a holding or collection and cannot identify an entity with possession or control (museums only).	Submit a statement to National NAGPRA	1 year	§ 10.8(d).
Acquires or locates cultural items	Compile and submit a summary	6 months	Table 1 to § 10.9(a)(2).
Completes or updates an inventory	Submit a notice of inventory completion	6 months	§ 10.10(e).
Receives a statement from a museum with custody of a Federal agency holding or collection (Federal agencies only).	Respond to the museum and National NAGPRA	180 days	§ 10.8(c)(1).
Acquires previously reported human remains or cultural items.	Inform National NAGPRA (and initiate consultation on human remains).	30 days	§ 10.9(a)(3)(i); § 10.10(d)(4)(i).
Compiles a summary	Initiate consultation	30 days	§ 10.9(b).
Identifies new consulting parties	Initiate consultation	30 days	§ 10.9(b)(3); § 10.10(b)(3).

TABLE 5—TIMEFRAMES FOR RESPONDING TO REQUESTS FOR REPATRIATION

If a museum or Federal agency . . .	. . . it must . . .	. . . no later than . . .	See
Receives competing requests for repatriation	Send a written determination	180 days	§ 10.9(h)(4); § 10.10(i)(3).
Receives a request for repatriation	Respond to the request	90 days	§ 10.9(e); § 10.10(g).
Has completed all other steps	Send a repatriation statement	90 days	§ 10.9(g); § 10.10(h).
Agrees to a request for repatriation of cultural items	Submit a notice of intended repatriation	30 days	§ 10.9(f).
Receives competing requests for repatriation	Inform all requestors	14 days	§ 10.9(h)(3); § 10.10(i)(2).
Receives a returned notice	Resubmit a notice	14 days	§ 10.9(f)(3); § 10.10(e)(3).

While we understand the objections to the timelines and the concerns about insufficient staffing and funding, the Secretary, the Assistant Secretary, and the Department are committed to clearing a path to expeditious repatriation as Congress intended. In the 32 years since the passage of the Act, we have seen some of the largest repatriations occur when a museum or Federal agency changed course to invite and defer to the input of lineal descendants, Indian Tribes, and NHOs. By requiring that deference throughout these regulations, we hope more museums and Federal agencies will change course and complete the regulatory requirements for repatriation.

We must stress that most of the timelines and deadlines under these regulations are triggered by a request for repatriation from a lineal descendant, Indian Tribe, or NHO. If a museum or Federal agency is involved in meaningful and effective consultation with lineal descendants, Indian Tribes, and NHOs, pressure to complete repatriation within a set timeframe may be significantly alleviated. The one exception to the request requirement is the timeline for a museum or Federal agency to update an inventory of human remains and associated funerary objects. We further stress that an extension of this deadline may be requested by any museum that has made a good faith effort to update its inventory. We have added to the requirements for an extension the written agreement of consulting parties to the request. If a museum will need an additional 10 or 20 or even 50 years to complete its inventory, it can only do so by first engaging in meaningful and effective consultation with lineal descendants, Indian Tribes, and NHOs. With these changes to the regulations, we hope to provide a clear path to repatriation where lineal descendants, Indian Tribes, and NHOs, rather than museums and Federal agencies, can define what expeditious repatriation means.

93. Comment: We received 21 comments on the requirements in Subpart C for museums and Federal agencies to identify all holdings or collections that may contain human remains or cultural items. Most of these comments requested additional language to require museums and Federal agencies produce transparent information about the full extent of their holdings or collections, whether in their possession or control or custody. These comments requested the regulations eliminate the loophole that allows museums and Federal agencies to avoid disclosing information about their holdings or collections. One comment requested a requirement to identify items that may have been transferred, stolen, sold, or removed from a holding or collection. One comment requested standards and requirements for museums and Federal agencies to engage in some level of effort to identify holdings or collections subject to the Act and these regulations. One comment appreciated the inclusion of lost or unknown holdings or collections in this subpart but stated that ''negligence to care for native material culture is evident time and time again. The very fact that institutions like universities are continuing to discover Native American remains in their possession is absolutely unacceptable.'' Several comments stressed the importance of consultation in identifying holdings or collections and suggested consultation should be initiated when a museum or Federal agency has reason to believe that human remains or cultural items are present in a holding or collection. One comment requested clarification on how museums and Federal agencies can be held accountable for conducting a full review of holdings or collections.

On the other hand, a few comments questioned the Department's authority to require a review of all holdings or collections and that this subpart must be limited to only those holdings or collections that are known to have human remains or cultural items. A few comments provided details on how long it takes identify human remains or cultural items in a holding or collection. One comment stated it takes weeks or months to complete a full review of a holding or collection and if done too quickly, human remains and cultural items will be left behind. One comment stated it takes 10 hours to review a

single, standard box to identify the presence of human remains or cultural items. An additional six to eight hours is needed to document each individual or object in the box, and another 40 hours is needed to produce a final report of the boxes from the same site. The comment also stated a significant amount of space is needed for this kind of review and that can often impair the effort to review a holding or collection.

DOI Response: There is no ambiguity in the Act on the requirement for museums and Federal agencies to identify all human remains or cultural items in holdings or collections. The Act requires each museum or Federal agency that ''has possession or control over holdings or collections'' to identify all Native American human remains or cultural items. The Act required museums and Federal agencies to identify all cultural items within three years and all human remains and associated funerary objects within five years. The Act provided an option for museums to request an extension to identify human remains and associated funerary objects, provided the museum had made a good faith effort to do so.

We agree that the initial step requires producing factual and transparent information about the holdings or collections. While determining possession or control of a holding or collection is a jurisdictional requirement and must be done on a case-by-case basis, the Act and these regulations make clear that the evaluation applies to all holdings or collections. We agree that when a museum or Federal agency has reason to believe human remains or cultural items are present in a holding or collection it must provide information to lineal descendants, Indian Tribes, and NHOs.

We agree the Department does not have authority under the Act to require a museum or Federal agency review holdings or collections that are not subject to the Act. Only holdings or collections, or portions of holdings or collections, that may contain human remains or cultural items are required to be identified. If a museum or Federal agency knows that a certain holding or collection does not contain any human remains or cultural items, the holding or collection would not need to be included in a summary of cultural items or an itemized list of human remains and associated funerary objects. For example, a collection excavated from an historic era ranch that does not contain any Native American objects or items would not need to be included on a summary.

We disagree that the Act and these regulations do not already require a museum or Federal agency to review all holdings or collections in their possession or control. The Act and these regulations already impose standards and requirements for museums and Federal agencies to make an effort to identify human remains and cultural items. The standard is if a holding or collection may contain human remains or cultural items. The requirement is to comply with this subpart and complete a summary, an inventory, and notices. The mechanisms for ensuring accountability for a failure to comply with this subpart are civil penalties against museums or legal action against Federal agencies. Any museum or Federal agency that fails to identify a holding or collection that contains human remains or cultural items has failed to comply with the Act and these regulations.

Several comments provided examples of human remains or cultural items that were not identified by museums and Federal agencies. In one case, an ''archeological collection'' was excluded from a summary because the museum assumed it did not contain any cultural items. However, archival information about the person who made the collection clearly identifies the collector removed objects from a funerary context and those objects are likely unassociated funerary objects. In another case, human remains were found during a physical review of a collection after the inventory was completed and a notice published.

Museums and Federal agencies have discretion on which holdings or collections they include in a summary or inventory. When a museum or Federal agency decides to exclude a holding or collection from a summary or inventory, it is deciding that the Act and these regulations are not applicable to that holding or collection. If that holding or collection contains human remains or cultural items, the museum or Federal agency has failed to comply and could be subject to civil penalties or other legal action. Museums and Federal agencies also have discretion on how to evaluate the contents of a holding or collection. A museum or Federal agency can choose to review each box in a holding or collection to determine if it contains human remains or cultural items, but it must do so within the timeframes required by the Act and the regulations. Neither the Act nor the regulations require a physical review of a holding or collection to comply with the summary and inventory requirements.

Under the final regulations, consent from lineal descendants, Indian Tribes, or NHOs is required prior to allowing any research on human remains or cultural items. We have defined ''research'' to mean any study, analysis, examination, or other means of acquiring or preserving information. ''Research'' includes any activity to generate new or additional information beyond the information that is already available, for example, osteological analysis of human remains, physical inspection or review of collections, examination or segregation of comingled material (such as soil or faunal remains), or rehousing of collections.

94. Comment: We received 42 comments on specific steps in the repatriation process. Six comments from one submission made repeated requests to require unassociated funerary objects be listed in the inventory so they can be repatriated with the human remains and associated funerary objects. One comment requested testing for hazardous substances be required and two comments requested removal of hazardous substances must be required at the expense of museums and Federal agencies. One comment requested ''acquisition'' be replaced with ''accession'' so as not to disrespectfully identify human remains as objects. One comment requested additional information on documentation, analysis, or exhibition be included in a summary or an inventory.

Six comments suggested changes to the steps for consultation. One comment stated identifying consulting parties is a difficult task that requires additional time than what is provided. One comment requested clarification on who identifies new consulting parties. Two comments requested clarification on if the regulations require re-initiation of consultations that are ongoing as of the effective date of these regulations. One comment requested how to proceed when consulting parties do not respond to invitations to consult. One comment requested clarification on the timeline for responding to an invitation to consult and that Indian Tribes and NHOs must be allowed to move at their own pace according to each sovereign's capacity and resources. Three comments suggested changes to the kinds of information a consulting party can request from a museum or Federal agency, including that accession records be specifically included or the limitations on the use of the information be removed.

Nine comments requested changes to the notices and requests for repatriation under this subpart. Four comments requested lineal descendants not be identified by name, and four comments requested amended notices be required when additional pieces of previously repatriated human remains or cultural

items are found. One comment requested additional information on documentation, analysis, or exhibition be included in a notice. Two comments requested that all Indian Tribes or NHOs with cultural affiliation be notified or consent to a request for repatriation. Two comments suggested requests for repatriation need not be in writing. One comment requested changing the timeline for sending a repatriation statement from the variable 30 to 90 days to 60 days.

Three comments expressed concern about the timelines for competing requests and stays of repatriation. Two comments requested changes to the deadline for evaluating competing requests to either remove the deadline in favor of a deadline agreed upon in consultation or to include a timeline for requestors to submit additional information to support their requests. Two comments on stays of repatriation asked who determines if a court of competent jurisdiction enjoins the repatriation. One comment requested decisions made during a stay of repatriation must be made in consultation with requesting parties.

DOI Response: We cannot include unassociated funerary objects in an inventory as that would be inconsistent with the Act. We cannot require testing for or removal of hazardous substances or who should pay for that testing or removal as there is no such requirement in the Act. We can and do require information about hazardous substances be shared, but only when a museum or Federal agency knows about the presence of any potentially hazardous substances. Testing or removal should be a part of consultation on human remains or cultural items, specifically under the duty of care requirements in § 10.1(d). We do not agree that ''accession'' is less disrespectful than ''acquisition'' since both are generally applied to property or collections. The use of ''accession'' could lead to confusion over human remains or cultural items that were not formally accessioned into a holding or collection. The Act uses the word ''acquisition,'' and we have retained that word in these regulations. We have not required additional information on documentation, analysis, or exhibition be included in a summary or inventory, but that information may be requested by a lineal descendant, Indian Tribe, or NHO and discussed during consultation on the duty of care for human remains or cultural items.

We have not made changes to timeline or requirements for initiating consultation. Depending on the provenience and provenance of the human remains or cultural items, identifying Indian Tribes or NHOs with potential cultural affiliation is not complex and a museum or Federal agency must make a good faith effort to identify consulting parties within the timeframe provided. There are several resources that can assist museums and Federal agencies with identifying consulting parties, including previously prepared summaries or inventories and published notices. Museums and Federal agencies are responsible for determining if a new consulting party can be identified. When consultation is ongoing as of the effective date of these regulations, there is no requirement to re-initiate consultation, provided the ongoing consultation included all consulting parties.

We do not intend to impose timelines on lineal descendants, Indian Tribes, or NHOs to respond to an invitation to consult and can engage in the repatriation process at their own discretion. However, museums and Federal agencies are required to act under § 10.10 within certain timelines, and those timelines are required even if there is no response from a lineal descendant, Indian Tribe, or NHO to an invitation to consult. A museum or Federal agency must initiate consultation prior to completing or updating an inventory under § 10.10, but if there is no response to the invitation to consult, the museum or Federal agency must complete or update the inventory by the deadlines required under § 10.10(d) and submit a notice of inventory completion under § 10.10(e). As the Department noted in 1995 for the first deadline to complete an inventory if there is no response after repeated attempts to contact Tribal officials by telephone, fax, and mail, the museum or Federal agency official may be required to complete the inventory without consultation to meet the regulatory deadline. The Department suggested museum and Federal agency officials document attempts to contact Tribal officials to demonstrate good faith compliance with these regulations and the Act. (1995 Final Rule, 60 FR 62151).

Although the methods to contact an Indian Tribe or NHO have changed since 1995, this advice continues to be applicable. Museums and Federal agencies must document attempts to contact lineal descendants, Indian Tribes, or NHOs to demonstrate a good-faith effort to consult prior to the deadlines in these regulations.

We have not made changes to the additional information consulting parties can request. The language in the regulations is taken directly from the Act, including the limitations. The regulations do not prevent a consulting party from requesting any other information not explicitly identified here. We feel accession records are a type of ''records.'' As noted elsewhere, we advise lineal descendants, Indian Tribes, and NHOs to make their requests as broad as possible to ensure all information about human remains or cultural items is available to them when making a request for repatriation.

We have revised the required content of a notice to simplify the regulatory text, and we have included language to allow for the name of a lineal descendant to be withheld. In response to the comments on amended notices and to coincide with the overall changes in the process for repatriation, we have removed the requirement for amending a notice. After publication of a notice under this subpart, if additional human remains or cultural items are identified that were not previously included in a summary, inventory, or notice, the museum or Federal agency must begin with Step 1 in each process for the newly identified human remains or cultural items to ensure adequate consultation and notification occurs. We have not required additional information on documentation, analysis, or exhibition be included in the notice and feel it is important that these regulations require only the minimum amount of information required in a notice to prevent unnecessary delays or public disclosure of information. If an Indian Tribe or NHO wishes to have additional information included in a notice, it should inform the museum or Federal agency during consultation of this preference. The proposed regulations included requirements for notifying other Indian Tribes or NHOs of a request for repatriation of human remains and associated funerary objects. We have added these same requirements for requests for repatriation of cultural items; both the response to a request and the notice of intended repatriation must be sent to the requestor and any other consulting party. We cannot require museums and Federal agencies obtain consent from other consulting parties to a request for repatriation. Any consulting party may submit an additional, competing request for repatriation before a repatriation statement is sent. We have not removed the requirement for a request for repatriation to be submitted in writing. The existing regulations contain this same requirement, and the Act is clear that a request for repatriation is a requirement, although it does not specify the request be in writing. To require the actions that follow a request

for repatriation be completed by a certain date, the request for repatriation must be in writing. Throughout these regulations, we have provided flexibility in the timeline for sending a repatriation statement (between 30 and 90 days), and we have retained that timeline.

In response to several comments, we reiterate that competing requests for repatriation must occur before a repatriation statement is sent and when a competing request is received, the timeline for a repatriation statement changes. If a competing request for repatriation is received the day before a repatriation statement is sent, the museum or Federal agency must wait to send the repatriation statement and evaluate the competing requests in accordance with the procedures and deadlines for evaluating competing requests for repatriation. One comment remarked that ''[g]iven the busy schedules of Tribes and museums, and planning costs associated with repatriation, allowing requests a day before a repatriation statement is scheduled to be submitted would make decisions and obligations between museums and Tribe hollow and a potential point of contention.'' This comment is precisely the main reason the regulations require a repatriation statement separate from physical transfer. Scheduling and incurring costs associated with physical transfer should wait until after a repatriation statement is sent, assuring all parties that their decisions and obligations can be upheld. In addition, we recommend a museum or Federal agency send a repatriation statement as early as possible under the regulations to ensure expeditious return. We further recommend that in a request for repatriation, the lineal descendant, Indian Tribe, or NHO request a repatriation statement be sent as early as possible under the regulations. As discussed elsewhere, if no competing requests are received, 31 days is the minimum amount of time between notice publication and sending a repatriation statement.

We decline to remove the timeline for evaluating competing requests. We believe it is important to require museums and Federal agencies to make determinations within a set timeframe, even if that determination is that they cannot determine the most appropriate requestor. This option allows parties to continue consultation but ensures all parties have been informed of the museum or Federal agency's decision. We have not added a timeline for submission of additional information, but we have included an option for submission of additional information in the appropriate paragraphs and in § 10.3(e) Competing claims or requests. We note that any request for repatriation must provide information to meet the criteria and that information, along with the record of determining cultural affiliation, should be used to determine the most appropriate requestor. Where competing requests are between Indian Tribes or NHOs with cultural affiliation, the priority order under § 10.3(e) Competing claims or requests, as revised, relies on how the cultural affiliation determination was made (clearly identified or reasonably identified). Any party may seek assistance of a court of competent jurisdiction to resolve a conflict under these regulations. Given the variables in how a stay of repatriation might be resolved, we cannot require consultation after a resolution but we can and do require notification and repatriation within set timeframes.

95. Comment: We received 20 comments requesting that the Department create a repository for information related to repatriation under this subpart. Some of these comments requested that the repository include information on Indian Tribes with cultural affiliation to a geographical location. Other comments requested a contact database that is updated every six months. Many of these comments requested a digital repository with detailed information from inventories, summaries, and notices that is accessible only to Indian Tribes and NHOs and is protected from public release under the Freedom of Information Act. Four comments requested the Department publish a list of the museums and Federal agencies with the largest collections of human remains or cultural items.

DOI Response: We decline to add any such requirement to the regulations as this is a matter of policy, subject to a wide variety of other laws, regulations, and policy for information technology, protection of personally identifiable information, and special relationships between the United States and Indian Tribes and NHOs. The Department, through the National NAGPRA Program, is responsible for receiving and maintaining many documents related to repatriation, including inventories, summaries, and notices. These documents are not exempt from public disclosure, as discussed under Comment 5, and we are unable to produce the kind of protected database some of the comments requested.

We do, and have for nearly 20 years, provided information about repatriation through the National NAGPRA Program website. After nearly 33 years, one of the best sources for information about cultural affiliation are the over 4,400 notices that have been published in the **Federal Register**. Fully text searchable beginning in 1994, notices can easily be searched at *https://www.federalregister.gov/* (accessed 12/1/2023). The National NAGPRA Program has and will continue to improve digital maintenance and access to data about repatriation through its website. Since 2020, the National NAGPRA Program has provided real-time data on inventories, summaries, and notices at *https://www.nps.gov/subjects/nagpra/databases.htm* (accessed 12/1/2023). In addition to the databases, since 2019, the National NAGPRA Program has provided annual data in searchable data visualization tools at *https://public.tableau.com/app/profile/nationalnagpra* (accessed 12/1/2023). We are committed to developing useful and innovative tools to share available data securely, safely, and publicly.

96. Comment: We received 35 comments on the provisions for a museum or Federal agency to request the Assistant Secretary's written concurrence that human remains or cultural items are indispensable for completion of a specific scientific study. Most of these comments requested the Assistant Secretary consult with Indian Tribes and NHOs prior to issuing written concurrence or that the request from the museum or Federal agency include written consent from the appropriate Indian Tribe or NHO to the study. A few comments requested this section be removed entirely and the regulations should prohibit any scientific study of human remains or cultural items.

DOI Response: We cannot remove the provisions for ''scientific study'' from these regulations as that would be inconsistent with the Act. ''Scientific study'' is used twice in the Act itself:

- First, the Act explicitly and specifically does not require new scientific studies on human remains or associated funerary objects to complete an inventory or determine cultural affiliation (25 U.S.C. 3003(b)(2)).
- Second, the Act requires that when a specific scientific study of human remains, associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony will result in a major benefit to the United States, a museum or Federal agency may postpone repatriation but may not deny the request for repatriation (25 U.S.C. 3005(b)).

The first statutory provision only applies to human remains and associated funerary objects (25 U.S.C.

3003(b)(2)). Similar language does not appear in the Act for unassociated funerary objects, sacred objects, and cultural patrimony (25 U.S.C. 3004(b)(2)). This is likely due to the difference between a summary and an inventory. As noted in the 1995 Final Rule, the difference between a summary and an inventory ''reflects not only their subject matter, but also their detail (brief overview vs. item-by-item list), and place within the process'' (60 FR 62140). Since a summary is a brief overview of a holding or collection, there is no need to include the first provision for unassociated funerary objects, sacred objects, and cultural patrimony.

The second statutory provision for ''scientific study'' applies to all ''Native American cultural items,'' which are defined in the Act as human remains, associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony (25 U.S.C. 3005(b)). The Act refers to this exception in each of the four paragraphs that require expeditious repatriation (25 U.S.C. 3005(a)). As any elimination or restriction of 25 U.S.C. 3005(b) would require an act of Congress, we cannot remove the provisions that allow for ''scientific study'' entirely. We understand that ''scientific study'' in both §§ 10.9 and 10.10 is adverse to Tribal interests and may seem to allow or authorize scientific studies. While we cannot remove these statutorily required exceptions to expeditious repatriation, we can limit the implementation of these exceptions through the regulations.

First, we have made changes to § 10.1(d) Duty of care to require museums and Federal agencies obtain consent from lineal descendants, Indian Tribes, or NHOs prior to conducting any research on human remains or cultural items. In that paragraph, we state ''research'' equates to the term ''scientific study'' in the Act and means any study, analysis, examination, or other means of acquiring or preserving information. ''Research'' includes any activity to generate new or additional information beyond the information that is already available, for example, osteological analysis of human remains, physical inspection or review of collections, examination or segregation of comingled material (such as soil or faunal remains), or rehousing of collections. ''Research'' is not required to identify the number of individuals or cultural items, or to determine cultural affiliation.

Second, the proposed regulations provided procedures to administer the second statutory provision as a stay of the repatriation timeline under §§ 10.9 and 10.10. A request to exercise this stay of repatriation must be submitted before publication of a notice of intended repatriation or a notice of inventory completion. This means that for human remains and associated funerary objects, a request must be made before the deadline to publish a notice of inventory completion (in the final regulations, this is five years and six months after the effective date of the final regulations). After the notice is published, this exemption cannot be used to delay repatriation. The proposed regulations and these final regulations require the Assistant Secretary's written concurrence with the request and stipulates the specific requirements for such a request, including explaining the ''major benefit'' and why the human remains or cultural items are ''indispensable.'' The request must also state that the study has in place the requisite funding and a completion schedule and completion date.

Third, we agree with the comments that the request must demonstrate consent from lineal descendants, Indian Tribes, or NHOs and that the Assistant Secretary must consult with Indian Tribes or NHOs before concurring with the request. We have added these requirements to the regulations in §§ 10.9 and 10.10.

K. Section10.8 General

97. Comment: We received six comments on § 10.8 General. Four comments requested a deadline be imposed for museums and Federal agencies to determine possession or control of holdings or collections. One comment requested ''authorized representatives'' be replaced with ''appropriate official.'' One comment requested the regulations prohibit museums and Federal agencies from engaging with NAGPRA consultants or, if consultants are engaged, they be required to comport with the law and the regulations, and any violations be reviewed by the National NAGPRA Program.

DOI Response: We have not made any of the requested changes. Museums and Federal agencies have deadlines to determine possession or control of holdings or collections under paragraphs (c) and (d) of this section and through the timelines requiring repatriation under §§ 10.9 and 10.10. The term ''appropriate official'' applies only to Subpart B and includes Indian Tribes and NHOs. Although this paragraph requires an authorized representative be identified, Subpart C does not use this term but instead makes the subject of these regulations the museum or Federal agency to reinforce who is responsible for acting under these regulations. We cannot prohibit or require review of NAGPRA consultants in these regulations. A museum or Federal agency may identify any authorized representative it chooses to, but the museum or Federal agency is responsible for the actions of that representative. Any failure to comply with these regulations is a failure of the museum or Federal agency who has responsibility under this subpart.

98. Comment: We received two comments on § 10.8(a) Museum holding or collections, in addition to those discussed elsewhere. One comment requested instructions on reporting newly acquired holdings or collection where the museum asserts a right of possession through donation or excavation conducted under State law. One comment requested clear guidelines for museums to determine possession or control.

DOI Response: We have not made changes to this paragraph. We believe this paragraph provides clear guidelines for museums to determine possession or control, including for any new holdings or collections or previously lost or unknown holdings or collections. As discussed elsewhere, the Act and these regulations define a right of possession and apply it in some manner to human remains, funerary objects, sacred objects, and objects of cultural patrimony. When a museum or Federal agency asserts a right of possession to cultural items in its holding or collection, the museum or Federal agency must include those cultural items in its summary. When a museum or Federal agency can prove it has a right of possession to human remains, it may exclude those physical remains from its inventory. We note that when human remains and associated funerary objects are excavated from State or private land, requirements under State law may not equate to right of possession and a museum (including a State or local agency) should ensure it can prove it has a right of possession to human remains and associated funerary objects independent of such requirements.

99. Comment: We received eight comments requesting clarification on § 10.8(b) Federal agency holding or collection. All the comments questioned why a Federal agency must determine when or where a holding or collection was acquired.

DOI Response: We have made clarifying changes to this paragraph. For a holding or collection, a Federal agency must determine if the human remains or

cultural items are subject to disposition under Subpart B or repatriation under Subpart C. To make this determination, the Federal agency must determine when and where the human remains or cultural items were removed. If the human remains or cultural items were removed from Federal or Tribal land after November 16, 1990, the Federal agency must use Subpart B to complete the disposition of those human remains or cultural items. If the human remains or cultural items were removed from Federal lands on or before November 16, 1990, or after that date from an unknown location or from lands that are not Federal or Tribal lands, the Federal agency must use Subpart C to complete the repatriation of those human remains or cultural items.

For example, if a museum has custody of a holding or collection that was excavated from Federal land in 1991, the Federal agency who has responsibility for that Federal land must comply with Subpart B and identify the lineal descendant, Indian Tribe, or NHO that has priority for disposition of the human remains or cultural items by following the requirements of § 10.7. Regardless of how long the human remains or cultural items have been in the custody of the museum, the Federal agency has responsibilities for ensuring the disposition of those human remains or cultural items that were removed from Federal land after November 16, 1990.

A Federal agency cannot apply the summary and inventory requirements in Subpart C to any human remains or cultural items that were removed from Federal or Tribal land after November 16, 1990. Under the Act, those human remains or cultural items are subject to disposition under Subpart B.

100. Comment: We received 18 comments on § 10.8(c) Museums with custody of a Federal agency holding or collection. Of the total comments, eight comments were supportive, although most referred to corresponding comments on the definition of ''custody.'' One supportive comment highlighted the presumptive language when a Federal agency fails to decide within the set timeline. Four comments requested publication of museum statements in the **Federal Register** or otherwise provided to Indian Tribes and NHOs. One comment was supportive but concerned that Federal agencies would be unable to respond within the timeframe while one comment felt the timeframe was too long and should be much shorter. One comment questioned how this would be enforced while one comment was concerned this would make Federal agencies responsible for holdings or collections they haven't yet taken responsibility for. One comment requested the statement be more than a statement and align with the requirements for a summary and inventory. One comment questioned the Department's authority to require statements on non-NAGPRA collections, requested more information on joint possession or control, suggested changing possession or control to ownership or legal title, and posited Federal agencies must first request these statements under 36 CFR 79 rather than through these regulations.

DOI Response: We have not made changes to this paragraph. Elsewhere in these regulations, we have addressed the definition of ''custody.'' We have not changed the deadline for a museum to issue a statement (one year after the effective date of the final regulations) or for a Federal agency to respond (six months or 180 calendar days after receipt of the museum's statement). Both deadlines are important to ensure resolution to this long-standing barrier to repatriation. We understand and share the concern expressed by one comment that a Federal agency who has not shouldered responsibility for a collection to date will be required to take responsibility for it in the future. We believe that this requirement will result in increased awareness by Federal agencies of their responsibilities for these holdings or collections but also in an opportunity to hold Federal agencies accountable for those holdings or collections. We have not required publication of those statements in the **Federal Register**, but the statements will be added to the records kept by the National NAGPRA Program and will be available upon request. We plan to provide information on the program website, like what we provide for other records.

The Department has authority for both these regulations and for 36 CFR part 79 and the Department recognizes the overlapping nature of these regulations for Federal agency holdings or collections that contain human remains or cultural items. We disagree that the Department does not have authority to require statements of holdings or collections that contain human remains or cultural items. As discussed elsewhere, when a Federal agency holding or collection is known to not contain human remains or cultural items, it is not subject to the Act or these regulations.

101. Comment: We received eight comments on § 10.8(d) Museums with custody of other holdings or collections. Five comments generally supported this requirement but suggested it be broadened to include holdings or collections that are under the control of another entity or when control cannot be identified, except for those under Federal agency control. In addition, these comments requested custody be replaced with possession, consistent with comments on those definitions. Two comments opposed this requirement and thought the deadline was unrealistic. Both comments stated the requirement for a museum to identify legal ownership status of its holdings or collections was onerous and would require significant resources. One of these comments stated the issue was not a lack of information so much as it was too much information that required significant time to analyze and synthesize to decide. One comment specifically opposed any requirement for museums to notify State and local governments of holdings or collections, questioned how this would work with State repatriation laws, and suggested it could result in legal disputes. The comment stated many State and local governments are unaware of NAGPRA and do not have funding or staff to comply with these regulations. The comment questioned how these regulations would apply to criminal investigations and medical examiners who may hold samples of biological materials.

DOI Response: We have not made changes to this paragraph. This paragraph requires museums to provide statements describing those holdings or collections for which it cannot identify an entity with possession or control. Where a museum can identify that a person, institution, or State or local government agency has possession or control of the holding or collection, no statement is required. We encourage a museum with custody of a holding or collection that contains human remains or cultural items to notify the entity that has possession or control, but we do not require that notification because doing so would exceed the Secretary's authority under the Act. The entity that has possession or control of the human remains or cultural items is responsible for complying with these regulations. We understand that many museums do not have clear documentation for holdings or collections, and as one comment stated, museums may be required to undertake a comprehensive review of the legal ownership status to determine if the owner is, indeed, known. This is not only a requirement for purposes of these regulations, but is, in general, a professional and ethical requirement for museums. A central tenant of collections management and

care is documentation of not only the objects in a holding or collection, but of the legal ownership status of those holdings or collections. For holdings or collections that contain human remains or cultural items, a museum must ensure it can identify the legal ownership of the holding or collection or risk a failure to comply with these regulations.

State and local government agencies are included in the definition of museum in the Act and these regulations and where such agencies have possession or control of human remains or cultural items, regardless of their physical location, and those agencies receive Federal funds, they must comply with the requirements for repatriation under this subpart. Any museum, including State or local government agencies, that fail to comply with these requirements are subject to the civil penalty provisions.

As discussed elsewhere, unless local or State authorities obtain the full knowledge and consent of the next of kin or the official governing body of the appropriate Indian Tribe or NHO, coroners, medical examiners, and other local or State agencies should consider their requirements under the Act and these regulations for any Native American human remains, including biological samples.

102. Comment: We received six comments on adding a new paragraph to § 10.8 related to making grants to Indian Tribes, NHOs, and museums. In addition to the statutory language on grants, the comments suggested including a limitation on initiation of any new scientific study of human remains and associated funerary objects.

DOI Response: We have not added the requested paragraph. We do not see a value in repeating the statutory language regarding grants in these regulations. We have addressed the issues of new scientific studies under § 10.1(d) Duty of care. The Notice of Funding Opportunity for NAGPRA grants provides guidance and limitations on potential use of grant funds and is the best place for any additional requirements to be added.

L. Section 10.9 Repatriation of Unassociated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony

103. Comment: We received 11 comments generally on § 10.9 Repatriation of unassociated funerary objects, sacred objects, or objects of cultural patrimony. Four comments objected to preparation of a summary prior to consultation with lineal descendants, Indian Tribes, or NHOs. One of these comments suggested reordering the steps so consultation occurs before a summary is developed. Another of these comments suggested changing ''Complete a summary'' to ''Draft a summary'' to recognize the need for consultation. On the other hand, seven comments supported the proposed regulations because it was clear that the requirement of a summary as a general description and the following step-by-step procedures were sufficient to ensure consultation prior to any determinations.

DOI Response: We have not changed the order of the steps as that would be inconsistent with the Act. We have changed ''Complete a summary'' to ''Compile a summary.'' We agree with most of these comments that the proposed regulations are clear that a summary is a general description of a holding or collection and must be followed by consultation with lineal descendants, Indian Tribes, and NHOs. As the step-by-step procedures make clear, determinations related to specific cultural items come after a request for repatriation is received. In its response to the request, a museum or Federal agency must determine if the request meets the required criteria and, if not, must explain why.

104. Comment: We received nine comments on § 10.9(a) Step 1—Complete a summary of a holding or collection. Four comments requested that summaries should be published in the **Federal Register** or otherwise shared with Indian Tribes and NHOs by the National NAGPRA Program after they are submitted. One comment requested the summary be expanded to include all Native American objects in a collection. One comment requested a better definition of when a summary is complete because that will trigger other deadlines. One comment stated that when a holding or collection is transferred, the previously prepared summary can only be relied on if it was sufficient in the first place. One comment requested updated summaries be required in these regulations while one comment asked if previously submitted summaries were sufficient and did not require updates.

DOI Response: We have not included a requirement for summaries to be published in the **Federal Register** or otherwise shared by the National NAGPRA Program. Museums and Federal agencies must send the summary with an invitation to consult to any lineal descendant and any Indian Tribe or NHO with potential cultural affiliation no later than 30 days after submitting the summary to the National NAGPRA Program. The National NAGPRA Program retains copies of all summaries it has received since 1990 and will provide them upon request. The National NAGPRA Program maintains an online database that identifies which museums and Federal agencies have submitted summaries and which Indian Tribes or NHOs were invited to consult. We cannot require a summary include all Native American objects in a holding or collection as this would be inconsistent with the Act. These regulations require a summary to include the entire holding or collection which may include cultural items. We note that only holdings or collections, or portions of holdings or collections, that may contain cultural items are required to be identified in a summary.

Table 1 to § 10.9(a)(2) identifies the deadlines for compiling a summary after the effective date of these final regulations for holdings or collections that are newly acquired, previously lost or unknown, or in the possession or control of a museum or Federal agency that receives Federal funds for the first time. Prior to the effective date of these final regulations, summaries must have been submitted by the dates identified in paragraph (a)(3) of this section. When a holding or collection is transferred to a museum or Federal agency, the museum or Federal agency must inform the National NAGPRA Program by submitting the previously compiled summary within 30 days of acquiring the holding or collection. The museum or Federal agency must compile its own summary by the deadline in Table 1 to ensure that the contents of the summary are accurate, include any additional information available, and reflect the newly acquired holding or collection.

Six months is the deadline in the existing regulations for submitting a summary for a newly acquired or previously lost or unknown holding or collection and has been since 2007 (see Future Applicability Final Rule, RIN 1024–AC84 (72 FR 13184, March 21, 2007). Anytime a museum or Federal agency becomes aware of a holding or collection that may contain cultural items and that has not been submitted in a summary, it must treat the holding or collection as a previously lost or unknown collection and compile a summary within six months of becoming aware of the holding or collection. As discussed in other responses, a museum or Federal agency is responsible for complying with the requirements of this subpart for all holdings or collections in its possession or control that may contain human remains or cultural items.

Updated summaries are not required by the existing regulations or by these

final regulations. As discussed above, there are requirements for a summary to be submitted for newly acquired or previously lost or unknown holdings or collections. Similarly, when a new consulting party is identified, either based on new information or a newly federally recognized Indian Tribe, a museum or Federal agency must send an invitation to consult to the new consulting parties. Because a summary is a general description of a holding or collection, it does not require updates provided the initial summary adequately described the holding or collection. While many museums have submitted updated summaries under the existing regulations, these are better identified as new summaries covering new or previously unreported collections. More detailed information about specific cultural items in a holding or collection is more appropriate for consultation and a notice of intended repatriation and does not require an updated summary.

105. Comment: We received nine comments on § 10.9(d) Step 4—Receive and consider a request for repatriation. Seven comments noted that geographical affiliation, as used in the proposed regulations, was not one of the criteria for a request for repatriation. Two comments related to the third criterion for information to support a finding that the museum or Federal agency does not have right of possession. One comment felt this would require significant resources for Indian Tribes and NHOs while the other comment suggested stating that if an object meets the definition of one of the cultural items, the definition alone is sufficient to meet the criteria.

DOI Response: Under the Act, there are three criteria for the repatriation of an unassociated funerary object, sacred object, and object of cultural patrimony: the establishment, as appropriate, of lineal descent or cultural affiliation; the establishment of the identity of the object as a cultural item; and the presentation of evidence which, if standing alone before the introduction of evidence to the contrary, could support a finding that the museum or Federal agency did not have a right of possession to the cultural item (25 U.S.C. 3005(a)(2) and (c)). Concerning this last criterion, the lineal descendant, Indian Tribe, or NHO making the request for repatriation is not required to do additional research on the object and can likely use the information provided by the museum or Federal agency about the object to satisfy all three criteria.

For example, a museum has information that a pipe was acquired and accessioned in 1985 from an individual donor, a doctor, who originally received the pipe in 1965 as a gift. During consultation, a traditional religious leader identified the pipe as a sacred object needed by present-day pipe carriers for a traditional pipe ceremony. By speaking with elders, the traditional religious leader learned that in 1954, the U.S. Government terminated the Indian Tribe of the last Native American to own the pipe. Termination resulted in the Tribe's land base being sold, relocation of the Tribe's people to multiple urban areas throughout the U.S., and the forced suspension of the traditional religious practice associated with the pipe. The Native American owner relocated to the metropolitan area of the museum in 1957 and was unemployed from 1963 until the end of his life in 1966. The terminated Indian Tribe and the Indian Tribe who identified the traditional religious leader have a relationship of shared group identity through their origin stories, inter-marriage, and pipe ceremonies. The historical context surrounding the acquisition of the sacred object by the museum would be evidence to support a finding that, while the Native American owner had the authority to alienate the pipe, this transaction was not made voluntarily or fully freely. Consequently, in making its request for repatriation of this sacred object, the Indian Tribe could state (1) the pipe is a sacred object, (2) the Indian Tribe has cultural affiliation to the pipe based on historical information, kinship, and expert opinion, and (3) the historical information surrounding the acquisition of the sacred object shows that the museum does not have a right of possession to the sacred object.

106. Comment: We received seven comments on § 10.9(e) Step 5—Respond to a request for repatriation. One comment stated that any request from a federally recognized Indian Tribe satisfies the criteria for repatriation and no other criteria should be required. Four comments believe the option for a museum or Federal agency to assert a right of possession was either impossible, a loophole, absurd, or intentionally obtuse. One comment stated a museum or Federal agency must show right of possession by a preponderance of the evidence. One comment stated that no museum or Federal agency could have possession or control of an object of cultural patrimony based on the definition of such an object.

DOI Response: The criteria identified in paragraph (d) of this section are drawn from the Act itself at 25 U.S.C. 3005(a)(2)—requiring identification of the specific type of cultural item and cultural affiliation to the requestor and 25 U.S.C. 3005(c)—requiring information regarding right of possession. Right of possession is not intended to be a loophole or intentionally obtuse, but it is a standard that must be applied to requests for repatriation. The legal language of the Act ''presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the Federal agency or museum did not have the right of possession'' has been interpreted here to fit within the steps of receiving and responding to a request for repatriation. As discussed in the previous response, a request must include information to support a finding that the museum or Federal agency does not have right of possession to the unassociated funerary object, sacred object, or object of cultural patrimony.

In response to the information in the request for repatriation, a museum or Federal agency has an opportunity to ''overcome such inference and prove that it has a right of possession to the objects.'' The standard applied to right of possession is distinct from and in some ways harder to satisfy than preponderance of the evidence. A museum or Federal agency must prove it has a right of possession to refuse to repatriate a cultural item.

A museum or Federal agency may have possession or control of an object of cultural patrimony, as those terms are defined in the Act and these regulations. It is unlikely that a museum or Federal agency will have a right of possession to an object of cultural patrimony, given the definition of that term. Nevertheless, each request for repatriation of an object of cultural patrimony must be evaluated based on the information available.

107. Comment: We received one comment on § 10.9(h) Evaluating competing requests for repatriation, objecting to the priority order that includes lineal descendants as it differs from the priority order in the Act at 25 U.S.C. 3002(a).

DOI Response: We cannot make the requested change to remove lineal descendants from the priority order for unassociated funerary objects or sacred objects. The referenced priority order applies to human remains or cultural items removed from Federal or Tribal lands under Subpart B of these regulations. For holdings or collections under Subpart C of these regulations, the Act provides for lineal descendants to request sacred objects under 25 U.S.C. 3005(a)(5). By definition, an object of cultural patrimony cannot be connected to a lineal descendant. By

definition, an unassociated funerary object could be connected to a lineal descendant, provided that the related human remains are those of a known individual whose ancestry can be traced. The circumstances under which a lineal descendant can be identified for unassociated funerary objects is limited, but where possible, those lineal descendants have priority when there are competing requests.

For example, in 1880, funerary objects were removed from the marked grave site of a known individual shortly after the individual's death and burial. The human remains were not removed. In 1940, the family of the person who removed the funerary objects from the grave site donated the objects to a local historical society. Accession records and exhibit labels at the historical society identify the individual who was buried with the funerary objects by name. A lineal descendant who can trace ancestry to the known individual requests repatriation of the unassociated funerary objects. After the notice of intended repatriation is published in the **Federal Register**, the Indian Tribe with cultural affiliation also requests repatriation of the funerary objects. Using this paragraph, the historical society determines the lineal descendant is the most appropriate requestor.

M. Section 10.10 Repatriation of Human Remains or Associated Funerary Objects

108. Comment: We received six comments on § 10.10(a) Step 1—Compile an itemized list of any human remains and associated funerary objects. Two comments supported this paragraph as proposed. Two comments requested additional language to require the inclusion of human remains and associated funerary objects that are identified in documentation that cannot be located or are known to have been destroyed. Two comments requested that this paragraph require consultation prior to any analysis and allow Indian Tribes and NHOs to dictate the level of documentation or analysis required to complete the itemized list.

DOI Response: We have not made the requested changes. Based on the information available, a museum or Federal agency must determine if human remains or cultural items that are destroyed, deaccessioned, lost, or in any other way removed are under its possession or control and therefore subject to these regulations. As discussed elsewhere, a museum or Federal agency must ensure the itemized list is comprehensive and covers any holding or collection that may contain human remains and associated funerary objects. We note that an itemized list may be prepared using only documentation identifying human remains and associated funerary objects and there is no requirement to physically locate the human remains and associated funerary objects.

We have not added the requested requirement for consultation to this paragraph but have, nevertheless, provided that lineal descendants, Indian Tribes, and NHOs must consent to any analysis of human remains and associated funerary objects. As provided in this paragraph, museums and Federal agencies must identify the number of individuals in a reasonable manner based on the information available. No additional study or analysis is required to identify the number of individuals. If human remains are present in a holding or collection, the number of individuals is at least one. We have made changes to § 10.1(d) Duty of care to require museums and Federal agencies obtain consent from lineal descendants, Indian Tribes, or NHOs prior to conducting any research on human remains or cultural items. ''Research'' includes any activity to generate new or additional information beyond the information that is already available, for example, osteological analysis of human remains, physical inspection or review of collections, examination or segregation of comingled material (such as soil or faunal remains), or rehousing of collections. ''Research'' is not required to identify the number of individuals or cultural items, or to determine cultural affiliation.

109. Comment: We received three comments on § 10.10(b) Step 2—Initiate consultation. All three comments requested guidance on how to identify consulting parties for human remains and associated funerary objects with no known geographical location or a broad geographical location such as ''Southwestern.'' One of these comments recommended that human remains with no geographical location information should be assumed to be from a geographical location near the museum or Federal agency. ''For human remains believed to be Native American such as those with no provenance, it makes sense to establish a presumption for return and reburial rather than indefinite curation of these ancestral human remains.'' The comment stated broad consultation with all Indian Tribes and NHOs ''. . . is an inefficient manner of handling disposition of Native American human remains with no provenance'' (NPS–2022–0004–0166). Another comment agreed stating ''[s]ending consultation letters to all 574 Tribes and engaging in consultation with respondents would be extremely burdensome for the museum or Federal agency and could impede other repatriation efforts'' (NPS–2022–0004–0125).

On the other hand, one comment stated Indian Tribes and NHOs prefer for museums and Federal agencies to consult broadly with all 347 Indian Tribes in the contiguous 48 States, 227 Indian Tribes in Alaska, and all Native Hawaiian organizations. The comment stated ''[w]hile only approximately 4% of individuals have no geographic location information, they deserve to be treated with equal respect.'' The comment asked for clarification because ''inconsistent guidance is provided by the Review Committee, which encourages broad consultation, and the National NAGPRA Program, which encourages making arrangements with the Tribe or Tribes whose aboriginal homeland includes the location of the museum'' (NPS–2022–0004–0135).

DOI Response: We have not made changes to this paragraph. We want to stress that broad consultation with all 574 Indian Tribes and all NHOs is not a requirement of either the existing regulations or the final regulations. We disagree that the Review Committee and the National NAGPRA Program have provided inconsistent guidance. Both the Review Committee and the National NAGPRA Program support consultation that leads to expeditious repatriation. Both the Review Committee and the National NAGPRA Program advise that broad consultation helps alleviate the potential for competing requests or disagreements. Under the existing regulations and these final regulations, a museum or Federal agency is responsible for identifying consulting parties and initiating consultation based on the information available. Museums and Federal agencies can choose to consult broadly, even if doing so is burdensome and less efficient.

Under these final regulations, there is a specific timeframe for museums and Federal agencies to consult on human remains and associated funerary objects. Yet, it is still up to a museum or Federal agency to identify lineal descendants and Indian Tribes and NHOs with potential cultural affiliation and invite them to consult. For example, based only on acquisition history and the current location of the museum, a museum could decide its preference is to only invite Indian Tribes who currently reside in the county and State where the museum is located. Alternately, a museum could decide to invite all Indian Tribes who previously occupied the State where the museum is

located to participate in consultation. Or a museum could decide to invite all Indian Tribes who reside in the wider geographic region (northeast or southwest, for example) or all 574 Indian Tribes and all NHOs to participate in consultation. Provided the museum is acting in good faith, any of these options are sufficient, but a museum or Federal agency should keep in mind the deadline for completing or updating an inventory and publishing a notice of inventory completion.

110. Comment: We received four comments on § 10.10(d) Step 4—Complete an inventory of human remains and associated funerary objects that expressed concern about the determinations that are required in an inventory under paragraph (d)(1)(iii) of this section.

DOI Response: We have revised the list of determinations in an inventory under paragraph (d)(1)(iii) to correspond to the changes in § 10.3 Determining cultural affiliation. For each entry in an itemized list, the inventory must include a determination identifying one of the following:

1. A known lineal descendant (whose name may be withheld);
2. The Indian Tribe or Native Hawaiian organization with cultural affiliation that is clearly identified by the information available;
3. The Indian Tribe or Native Hawaiian organization with cultural affiliation that is reasonably identified by the geographical location or acquisition history; or
4. No lineal descendant or any Indian Tribe or Native Hawaiian organization with cultural affiliation can be clearly or reasonably identified.

The two options for identifying cultural affiliation come directly from the Act, which we have also used in defining cultural affiliation and in § 10.3 Determining cultural affiliation. In the Act, cultural affiliation of human remains may be (1) clearly identified or (2) not clearly identified but determined by a reasonable belief given the ''circumstances surrounding acquisition'' (25 U.S.C. 3003(d)(2)(B) and (C)). Throughout this section of the Act, there is reference to an inventory identifying ''geographical and cultural affiliation,'' ''geographical origin,'' ''basic facts surrounding acquisition and accession,'' ''[T]ribal origin,'' and ''totality of circumstances surrounding acquisition of the remains or objects'' (25 U.S.C. 3003). The existing regulations require an inventory to include accession and catalogue entries and information related to the acquisition of each object, including: the name of the person from whom the object was obtained, if known; the date of acquisition; the place each object was acquired; and the means of acquisition.

The proposed regulations revised this into two separate and simplified requirements under § 10.10(a): (1) the county and State where the human remains and associated funerary objects were removed and (2) the acquisition history (provenance) of the human remains and associated funerary objects. In these final regulations, the requirements under § 10.10(a) are (1) the geographical location (provenience) by county or State where the human remains and associated funerary objects were removed; and (2) the acquisition history (provenance) of the human remains and associated funerary objects. ''Acquisition'' is not defined in the Act or these regulations and should be understood to have a standard, dictionary definition of ''to get as one's own; to come into possession or control of.'' To elaborate and clarify what information the Act requires, we have separated the concept of acquisition into two separate parts: ''provenience'' and ''provenance'' which both mean ''origin, source.'' Provenance also means ''the history of ownership of a valued object or work of art or literature'' (*https://www.merriam-webster.com/dictionary/acquire, https://www.merriam-webster.com/dictionary/provenience,* and *https://www.merriam-webster.com/dictionary/provenance,* accessed 12/1/2023).

Therefore, under § 10.10(a) and (d), a museum or Federal agency must identify both the geographical location (provenience) from which the human remains and associated funerary objects were removed, but also the acquisition history (provenance) of the human remains and associated funerary objects. Even in the small number of cases where geographical location (provenience) of human remains and associated funerary objects is unknown, all human remains and associated funerary objects (as well as other cultural items) will have some kind of acquisition history or provenance. Even when the only information about human remains and associated funerary objects is that they were ''found in collections'' of a museum, that information is sufficient to identify the Indian Tribes or NHOs with potential cultural affiliation for consultation based solely on the location of or general collection practices of the museum.

111. Comment: We received nine other comments on § 10.10(d) Step 4—Complete an inventory of human remains and associated funerary objects. One comment objected to the requirement for updating an inventory under paragraph (d)(4) of this section as work formerly deemed ''complete'' will now be ''incomplete'' and this undermines the goal of improving implementation and compliance with the Act. One comment requested changes to require the Assistant Secretary to monitor the work of museums who requested an extension. Seven comments requested clarification of the requirements when a holding or collection is transferred.

DOI Response: We disagree that the requirement to update an inventory undermines the goal of improving implementation and compliance with the Act and these regulations. Just as they were required to do in 1990, museums and Federal agencies must initiate consultation, consult on human remains and associated funerary objects, and make determinations about cultural affiliation. In updating an inventory, the museums or Federal agencies already have a significant amount of information available in the previously prepared and submitted inventories. No additional research or analysis is required by these regulations. To fulfill this requirement, a museum could send its original inventory from 1995 along with the other required information to initiate consultation. In response, a consulting party might identify those human remains and associated funerary objects that it wishes to consult on and assert it has cultural affiliation to the human remains and associated funerary objects.

The Assistant Secretary will decide on any request for an extension to the inventory deadlines and will publish a list of all museums who request an extension in the **Federal Register**. This will provide both the Assistant Secretary and the public with information needed to monitor the progress of museums who have not completed the inventory requirements by the deadline.

We have clarified how a museum or Federal agency may rely on a previously completed or updated inventory after a transfer. The museum or Federal agency must still complete the inventory by the required deadline but only after initiating consultation. The criminal provisions of NAGPRA (18 U.S.C. 1170) clearly prohibit the sale, purchase, use for profit, or transportation for sale or profit of Native American human remains. Any museum or Federal agency that acquires possession or control of human remains must ensure they are not violating those provisions in any transfer of human remains.

112. Comment: We received five comments on the requirement to repatriate associated funerary objects

with all human remains, regardless of cultural affiliation. Two of these comments objected to the requirement. One comment stated the Department made a gross oversimplification of the issues raised in a taking of property in adding this requirement and that ''[i]t is a blanket grab for objects not previously deemed covered under NAGPRA'' (NPS–2022–0004–0188). Another objecting comment believes this change to the existing regulations ''. . . is being made without a formal review of its Fifth Amendment takings implications under Executive Order 12630'' and will ''create an opportunity for lawsuits to overturn these rules—especially now that '*Chevron* deference' has been significantly weakened. Experience has shown that such litigation is detrimental to the relationships that have been built between museums and Native groups over the past 30 years'' (NPS–2022–0004–0172). On the other hand, three comments supported this requirement, although one comment expressed concern over the legal review of this change.

DOI Response: We have not made any change to the requirement for associated funerary objects to be repatriated with human remains. We have conducted a thorough, formal review of this requirement and these regulations. Information and analysis related to that review can be found in the 2022 Proposed Rule (87 FR 63226).

113. Comment: We received one comment on § 10.10(f) Step 6—Receive and consider a request for repatriation. The comment stated that any request from an Indian Tribe satisfies the criteria for repatriation and no other criteria should be required.

DOI Response: In this section for human remains and associated funerary objects, the only criteria for a request for repatriation is that the lineal descendant, Indian Tribe, or NHO is identified in the notice of inventory completion. The lineal descendant, Indian Tribe, or NHO that is identified in a notice of inventory completion is determined in the inventory under § 10.10(d)(1) of this section and as discussed in detail in Comment 110. The procedures in this paragraph are necessary to set up an opportunity for additional requests for repatriation to be made.

This paragraph provides an option for a requestor that is not identified in a notice of inventory completion. The requestor must show, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or NHO with cultural affiliation. A museum or Federal agency may determine in an inventory and a notice of inventory completion that for certain human remains and associated funerary objects there is no lineal descendant or any Indian Tribe or NHO with cultural affiliation. This paragraph provides that any lineal descendant, Indian Tribe, or NHO can make a request for repatriation of those human remains or cultural items. The museum or Federal agency must respond in writing to the request within 90 days.

114. Comment: We received 17 comments on § 10.10(k) Transfer or reinter human remains and associated funerary objects. Of that total, two comments supported this paragraph as proposed. Two comments requested we remove the option for reinternment as museums and Federal agencies should not be authorized to reinter human remains or cultural items. Two comments missed or misunderstood this paragraph and expressed concern that by removing the options under the existing regulations for culturally unidentifiable human remains, these regulations would eradicate a way forward for transfer of human remains without cultural affiliation or that have a relationship of shared group identity to Indian groups without Federal recognition. The Review Committee objected to the option in this paragraph for transfer of human remains to Indian groups without Federal recognition and requested a thorough legal review of this option. The Review Committee and others requested this paragraph include a requirement for the Review Committee and the Secretary to review agreements for transfer or reinterment prior to publication of a notice of intended transfer or reinterment. The Review Committee and one other comment also requested that any notice for reinterment include the specific law allowing for reinterment. Four comments requested that the regulations specifically protect information about any reinterment under this section or under § 10.7 from disclosure or dissemination and that reinterment be as close as possible to the location where the human remains and associated funerary objects were removed.

DOI Response: We have revised this paragraph to apply only to human remains and associated funerary objects with no lineal descendant or no Indian Tribe or NHO with cultural affiliation. We believe the clarification and simplification of the cultural affiliation and repatriation processes for human remains and associated funerary objects that precedes this paragraph will address many of the concerns raised by these comments and that this paragraph will apply only to a small number of human remains and associated funerary objects.

We reiterate that cultural affiliation as defined in the Act only applies to an NHO or an Indian Tribe, which means a federally recognized Indian Tribe. An Indian group without Federal recognition may have a shared group identity to an earlier group, but such an Indian group cannot have a cultural affiliation as defined under the Act or these regulations. As noted elsewhere, Indian groups without Federal recognition, including State recognized tribes, are not completely excluded from the repatriation processes. As is the current practice, Indian groups without Federal recognition can work with federally recognized Indian Tribes as part of a joint request for repatriation.

We have removed the option to transfer unclaimed human remains or cultural items to Indian groups without Federal recognition. This change is in response to the strong objections we received from federally recognized Indian Tribes and discussed in Comment 3. This change also emphasizes and recognizes that the Act reflects the unique relationship between the Federal government and Indian Tribes and NHOs (25 U.S.C. 3010). This change is also based on experience over the last 13 years with repatriation involving Indian groups without Federal recognition.

We have retained the option to transfer to an Indian Tribe or NHO or to reinter. At the discretion of the museum or Federal agency and after following the requirements of this paragraph, human remains and associated funerary objects may be transferred or reinterred. In Texas, for example, conflicts between federally recognized Indian Tribes and Indian groups without Federal recognition have resulted in a preference for reinterment rather than for transfer. In California, State law provides for more involvement of State recognized groups in repatriation and in many cases Indian Tribes have worked jointly with Indian groups without Federal recognition to complete repatriations and reburials. This paragraph provides for any Indian Tribe or NHO to request and receive physical transfer of human remains and associated funerary objects that have no cultural affiliation. We hope that this will allow for even more collaboration between federally recognized Indian Tribes and Indian groups without Federal recognition to achieve repose for these human remains and associated funerary objects.

As reinterment is a discretionary action, these regulations cannot dictate where reinterment occurs. The

regulations do not require identification of the reinterment location and do require sensitive information be protected from disclosure. After a thorough legal and policy review of this paragraph, we have determined neither the Review Committee nor the Secretary must review agreements between the parties prior to publication of a notice of intended transfer or reinterment.

N. Section 10.11 Civil Penalties

115. Comment: We received 30 comments on § 10.11 Civil penalties. Of that total, 12 comments supported the section as proposed. Nine comments requested the regulations add procedures for investigating a Federal agency's failure to comply with the requirements of the Act. Three comments objected to the revisions to this section and requested we reinstate or identify more limited categories for failure to comply. One comment stated that as proposed, the regulations ensure all museums will fail to comply with the requirements of the Act. Three comments requested clarification if certain actions, like releasing sensitive information, would be a failure to comply. One comment requested clarification if museums with custody of a Federal holding or collection are subject to civil penalties. One comment provided specific suggestions for this section to include (1) a fixed timeline, (2) a transparent procedure for investigations, (3) involvement of an aggrieved party, and (4) options for aggrieved parties to appeal a final decision.

DOI Response: We cannot expand this section to include Federal agencies. As noted in the regulations, Federal agencies are not subject to the civil penalty provisions of the Act and any change would be inconsistent with the Act. It is not appropriate for this section to reference or include other Federal laws. The most broadly applicable way to allege that a Federal agency has failed to comply with the Act or these regulations is to send an allegation to the head of the appropriate Federal agency or to the Federal agency's Office of the Inspector General.

We have not revised the broad options for a failure to comply. All the requirements in Subpart C of these regulations can be the subject of a civil penalty. We have provided clear timelines for museums, after the effective date of these final regulations, to ensure they are in compliance with all these requirements. Museums should carefully consider these timelines when exercising the discretion they have on how to complete the required tasks. For example, as discussed elsewhere, a museum has discretion in how it compiles an itemized list of human remains and associated funerary objects. Whether a specific action, like failing to protect sensitive information, constitutes a failure to comply will depend on the specific circumstances. A museum that has custody of a Federal agency holding or collection is responsible for sending the required statement under § 10.8(c) and a failure to do so could constitute a failure to comply under this section. As discussed in the following responses, this section provides timelines and transparency whenever possible. However, we note that given the nature of investigations and civil penalties, not all tasks can be made public.

We have made edits to this section and the definitions to identify the Assistant Secretary as the individual with delegated authority under this section. We have made additional updates related to the address for the Department's Office of Hearings and Appeals.

116. Comment: We received 30 comments on § 10.11(a) File an allegation. Most of these comments (25) requested we remove the requirement for an allegation to include the full name, mailing address, telephone number, and (if available) email address of the person alleging the failure to comply. A few of these comments also requested we reduce the requirements for an allegation to identify and enumerate violations in an allegation or to identify and enumerate the aggrieved parties. One comment requested that allegations be sent to the Department's Office of the Inspector General, rather than the Manager, National NAGPRA Program. Two comments requested the regulations include a procedure for the Department to inspect or investigate museums proactively, rather than depending on allegations. Two comments requested a procedure for Indian Tribes to report when a request to a museum is denied or ignored.

DOI Response: We cannot provide for anonymous allegations in these regulations. To ensure the Assistant Secretary can gather necessary information on an allegation, we require that a person alleging the failure to comply identify themselves and provide a method for us to contact them. However, that does not preclude any individual from submitting an anonymous tip regarding a failure to comply. While not an allegation, an anonymous tip could provide information for the Assistant Secretary to investigate and determine if a failure to comply has occurred. We have revised the requirement to only include contact information (telephone or email) in an allegation. We have revised the requirements to enumerate violations, but we cannot revise the requirement to identify violations. The allegation must contain some information to determine if an investigation is warranted. Again, we note that any individual could submit a tip regarding a failure to comply where the individual has no information to identify a violation.

An allegation may be submitted by an Indian Tribe or NHO when a museum denies or ignores a request, depending on the circumstances. Under these regulations, a museum must respond to a request for repatriation, and, if a museum determines the request does not meet the required criteria, it must provide a detailed explanation and provide an opportunity for the requestor to submit additional information. If a response to a request for repatriation is not sent by the deadline required or if it does provide detailed information, the Indian Tribe or NHO could allege a failure to comply.

Under the Act, the Secretary has discretion for assessing a civil penalty pursuant to the procedures established in these regulations. The Secretary has delegated responsibility for receiving allegations of failure to comply to the Manager, National NAGPRA Program, but the Secretary has delegated responsibility for assessing a civil penalty to the Assistant Secretary. While these regulations do not require the Assistant Secretary inspect or investigate museums proactively, the Assistant Secretary may assess a civil penalty to any museum that fails to comply.

117. Comment: We received 12 comments on § 10.11(b) Respond to an allegation. Seven comments supported this paragraph as proposed, specifically the timeline for the Assistant Secretary to respond to an allegation. Four comments requested the regulations clarify what action the Assistant Secretary must take in 90 days. One comment stated that a civil penalty must always be the appropriate remedy to a failure to comply.

DOI Response: We have made edits to clarify that no later than 90 days after receiving an allegation, the Assistant Secretary must determine if the allegation meets the requirements and must respond to the person making the allegation. After that, the Assistant Secretary may conduct any investigation that is necessary. We cannot place time constraints on the investigation, but we have ensured that the Assistant Secretary will decide on all allegations that meet the requirements for an allegation. The Assistant Secretary has

reserved the option to determine that a failure to comply is substantiated, but a penalty is not an appropriate remedy.

118. Comment: We received nine comments on § 10.11(c) Calculate the penalty amount. Four comments requested an increase in the base penalty amount while two comments requested penalties be calculated on a per day, per violation basis. One comment requested that since no monetary value can be placed on cultural items, the regulations should use civil penalties primarily to facilitate repatriation. One comment requested the regulations not reference the commercial value of human remains or cultural items. One comment requested the regulations make a connection between the options for increasing or decreasing a penalty amount so that the increasing factors can be used to justify denying any of the decreasing factors.

DOI Response: We have not increased the base penalty amount or changed the calculation to per day and per violation. We believe the regulations provide sufficient means for the Assistant Secretary to calculate a penalty based on the number of separate violations and the factors for increasing the base amount. Coupled with the broadening of this section to include any failure to comply, we believe civil penalties will be an effective tool to facilitate repatriation. We cannot remove commercial value because that language is in the Act itself and must be a part of these regulations.

119. Comment: We received four comments on § 10.11(d) Notify a museum of a failure to comply that requested aggrieved parties be notified as well. We received two comments on § 10.11(e) Respond to a notice of failure to comply that requested aggrieved parties be included in any informal discussion of the failure to comply.

DOI Response: We have included a requirement for any lineal descendant, Indian Tribe, or NHO named in a notice of failure to comply to receive a copy of the notice. If an aggrieved party is identified in an allegation or through the investigation of an allegation, that party would be named in the notice of failure to comply and receive a copy of the notice. We cannot require aggrieved parties be included in informal discussions regarding the notice of failure to comply. Prior to assessing a civil penalty, the Assistant Secretary may request information from any party and must consider that information in assessing the civil penalty. After receiving a copy of a notice of failure to comply, any aggrieved party may provide information to the Assistant Secretary related to the failure to comply, especially if it will inform the penalty assessment.

120. Comment: We received two comments related to § 10.11(h) Respond to an assessment and four comments on § 10.11(n) Additional remedies. Two comments requested clarification on where money collected under a civil penalty goes. Four comments requested the Department use other civil penalties authorized under law beyond this section.

DOI Response: Any payments for civil penalties are by certified check made payable to the U.S. Treasurer and the funds go to the general account of the U.S. Treasury. The Department reserves the right to pursue other available legal or administrative remedies in the final paragraph of this section.

O. Section 10.12 Review Committee

121. Comment: We received 16 comments on § 10.12 Review Committee. Seven comments requested that the monitoring responsibilities of the Review Committee be added to this section. Four comments requested we expand this section to include other responsibilities or at least caveat the final paragraph to indicate it is not the only action the Review Committee can take. Three comments requested the duty to report to Congress be added to this section. One comment requested the responsibilities for compiling an inventory for certain human remains and recommending specific actions be added to this section, although the comment was clear the term ''culturally unidentifiable'' should not be used. One comment suggested the Review Committee take on regional cases, like the Review Committee's finding for Moundville, to assist both Indian Tribes and NHOs and museums and Federal agencies to determine cultural affiliation and publish those decisions.

DOI Response: We do not see a reason to simply add the language of the Act to these regulations. The enumerated responsibilities in the Act are still required regardless of their inclusion in the regulations. However, we do agree with many of the comments that providing additional procedures in these regulations for the Review Committee may further the goals of disposition or repatriation. Although some comments provided suggestions for adding language, we decline to add any additional procedures at this time. We commit to working with the Review Committee to develop additional paragraphs for this section of the regulations. Any additions will require additional consultation with Indian Tribes and NHOs as well as public comment.

122. Comment: We received four comments on § 10.12(a) Recommendations requesting that we revise 90 days to 30 days. We received four comments discussed above that supported the 90-day timeframe.

DOI Response: We decline to make this change. Under the Federal Advisory Committee Act, meeting minutes must be certified 90 days after a public meeting. Using this same time frame for publication of related notices will ensure that the meeting minutes that support the recommendations or findings are also available.

123. Comment: We received four comments on § 10.12(b) Nominations. Two comments related to the requirement that two traditional Indian religious leaders be nominated, at the exclusion of a traditional Native Hawaiian religious leader. One comment suggested that the seventh member be appointed from a list developed by only the three members nominated by Indian Tribes, NHOs, and traditional religious leaders. One comment requested clarification on the limitations of national museum or scientific organizations.

DOI Response: We cannot make the changes requested to either the first or last category of nominations as doing so would be inconsistent with the Act. When Congress expressly identified traditional Indian religious leaders as being eligible to serve in two of the three specified slots, it excluded traditional Native Hawaiian religious leaders. The Act also specifies that the Secretary choose the seventh member from a list developed and consented to by all the other members. The Act did not provide any requirements beyond ''national museum organizations and scientific organizations.'' The additional information on these organizations was added in response to the Government Accountability Office report in 2010. ''Lesser geographic scope'' refers to a scope that is less than national. Similarly, the membership of the organization cannot be limited to one region of the United States.

124. Comment: We received three comments on § 10.12(c) Findings of fact or disputes on repatriation. One comment supported the paragraph as proposed. One comment requested grammatical changes. One comment requested we add scientists as affected parties under this paragraph.

DOI Response: We decline to make any of the requested changes. The Act specifically limits the parties who may seek facilitation of disputes to lineal descendants, Indian Tribes, NHOs, museums, and Federal agencies. For findings of fact, the request must be

from an affected party and relate to the identity, cultural affiliation, or return of human remains or cultural items. We do not find that scientists alone are affected parties in either circumstance.

III. Response to Public Engagement and Request for Comments

A. Public Engagement

Between October 18, 2022, and January 31, 2023, the Department conducted consultation sessions with Indian Tribes and the Native Hawaiian Community. The Department conducted additional consultation sessions, upon request, with Indian Tribes or the Native Hawaiian Community to ensure sufficient opportunity to engage and comment in advance of this final rule and to respond to the previous requests received for additional consultation sessions. During consultation, the Department requested feedback from Indian Tribes and NHOs on how to further allow Indian Tribes and NHOs flexibility and discretion regarding the regulatory requirements and the new responsibilities under Subpart B and the deadlines under Subpart C.

We received several comments related to these specific requests and have responded to them directly elsewhere in this document (see Comments 4, 30, 64, 65, 80, 85, 92, 94, 105, and 111). Other comments from Indian Tribes provided additional input on these specific requests, and we have incorporated any suggestions, to the extent possible, to provide Indian Tribes and NHOs with flexibility and discretion in these regulatory requirements. One comment provided specific and direct feedback related to these specific requests, and we are providing a summary of that comment and a direct response here as an illustrative example.

In the comment, the Indian Tribe expressed concerns about the timelines for updating inventories, specifically, and the potential for the burden of consultation to be placed on Indian Tribes. The Indian Tribe requested that the regulations provide options for Indian Tribes to determine if or when they wished to consult and to delay consultation as needed. The Indian Tribe felt that some of the regulatory procedures were streamlined and simplified but did not feel that consultation was any more efficient than the existing regulations. The Indian Tribe believed the proposed regulations stressed consultation and repatriation requests at the end of the inventory, rather than at the beginning, and requested that the regulations be revised to stress the requirement for consultation at the beginning of the process. The Indian Tribe also asked to extend the deadline for the updated inventory and that the regulations make clear that a request for an extension of the deadline is an option. The Indian Tribe stated, ''At issue is not the regulatory process, but the fact that the majority of museums do not know what they have in their collections. Any attempts to project a budget or timeframe for resources needed tend to be woefully inadequate. Museums also seem unwilling to review their collection boxes physically or lack the expertise to review osteological material'' (NPS–2022–0004–0185). The Indian Tribe provided an example of a recent consultation that resulted in the identification of an additional 19 sites and 500 funerary objects during a cursory review. The Indian Tribe expressed a concern echoed in many comments from all constituents that the new deadlines would result in ancestors being left behind and a general lack of due diligence on the part of museums and Federal agencies.

As discussed elsewhere in this document, we do not intend to impose requirements on lineal descendants, Indian Tribes, or NHOs to respond to invitations to consult or to submit requests for repatriation. Those are actions that lineal descendants, Indian Tribes, and NHOs may choose to take, but are not required. However, museums and Federal agencies are required to act within certain timelines, and those timelines are required even if there is no response from a lineal descendant, Indian Tribe, or NHO to an invitation to consult. In § 10.10, a museum or Federal agency must initiate consultation prior to completing or updating an inventory, but if there is no response to the invitation to consult, the museum or Federal agency must complete or update the inventory by the deadlines required under § 10.10(d) and submit a notice of inventory completion under § 10.10(e). We stress that an extension of this deadline may be requested by any museum that has made a good faith effort to update its inventory. We have added to the requirements for an extension the written agreement of consulting parties to the request. If a museum will need additional time to complete its inventory, it can only do so by first engaging in meaningful and effective consultation with lineal descendants, Indian Tribes, and NHOs. With these changes to the regulations, we hope to provide a clear path to repatriation where lineal descendants, Indian Tribes, and NHOs, rather than museums or Federal agencies, define what ''expeditious'' repatriation means.

Regarding due diligence and the potential for human remains or cultural items to be left behind, we note that the Act and these regulations impose standards and requirements for museums and Federal agencies to make an effort to identify human remains and cultural items. Any museum or Federal agency that fails to identify a holding or collection that contains human remains or cultural items has failed to comply with the Act and these regulations. It is therefore advantageous for a museum or Federal agency to be broadly inclusive of collections, especially those that might contain human remains.

The Department proactively engaged with a subset of affected entities, including Indian Tribes, NHOs, museums, and Federal agencies, to understand if the regulatory revisions could impact these entities' capacity and resources. The Department requested feedback from Indian Tribes, NHOs, museums, and Federal agencies on how to ensure the step-by-step process for repatriation is streamlined and simplified by the regulatory revisions under Subpart C. In preparing the proposed regulations, the Department was not aware of any capacity and resource limitations that would prevent these entities from completing the new requirement to update inventories, submit requests to consult, engage in consultation, and publish notices following the effective date of a final rule.

As discussed elsewhere in this document, but especially in Comment 4, we received substantial and specific feedback on the impact to capacity and resources under these regulations. We have addressed many of these comments in the revised Cost-Benefit and Regulatory Flexibility Threshold Analyses for the final regulations. We have incorporated any suggestions, to the extent possible, to ensure the step-by-step process for repatriation is streamlined and simplified under Subpart C. The same submission from an Indian Tribe provided specific and direct feedback related to this specific request as well, and we are providing a summary of that comment and a direct response here as an illustrative example.

The Indian Tribe stated its staff would be overwhelmed by requests to consult and requested that the regulations make clear that, after receiving an invitation to consult from a museum or Federal agency, Indian Tribes should be allowed to move at their own pace according to each sovereign's capacity and resources. The Indian Tribe stated that it currently consults or has consulted with 347

entities on NAGPRA collections, and every year that number increases. The Indian Tribe explained that, depending on size, scope, and context of the collection, some consultations require mere hours while others require years of sustained work. The Indian Tribe believes there is no way to truly calculate the costs or to accurately forecast if there will be sufficient opportunity to submit requests and engage in meaningful consultation. The Indian Tribe explained that, based on experience, review of collections is often necessary as museums fail to accurately identify funerary objects and other cultural items. The Indian Tribe requested that the regulations allow flexibility, to be guided by considerations and consultations with Indian Tribes.

Throughout these regulations, we require museums and Federal agencies to defer to the Native American traditional knowledge of lineal descendants, Indian Tribes, and NHOs. We have required museums and Federal agencies to not only consult but also obtain consent prior to allowing exhibition of, access to, or research on Native American human remains or cultural items. We have reiterated the requirements of the Act for museums and Federal agencies to rely on the information available (previous inventories, catalog cards, accession records, etc.) to identify consulting parties, conduct consultation, determine cultural affiliation, update the inventory, and submit a notice of inventory completion. Any museum or Federal agency that fails to identify a holding or collection that contains human remains or cultural items has failed to comply with the Act and these regulations. It is therefore advantageous for a museum or Federal agency to be broadly inclusive of collections, especially those that might contain funerary objects or other cultural items.

B. Requests for Comments

In addition to the public engagement and outreach discussed above, the Department solicited comment from the public on the entirety of the proposed rule. The Department received comments from the public on the cost-benefit and regulatory flexibility analyses, including the conclusions about the expected costs of complying with the rule. In particular, the Department requested responses to the following questions about the proposed regulations (labeled a through g):

a. For each regulatory requirement, does the estimated time per response seem reasonable? If not, what range of time per response would be more reasonable for a specific regulatory requirement?

As noted elsewhere in this document, we received several comments that provided input or alternative estimates for specific tasks. Two comments stated the rate used to calculate costs should be increased to $100 to $120 per hour. A few comments provided estimated costs to Indian Tribes and NHOs of $17.2 million per year. This estimate was developed using grant awards from 2011 to 2021 to estimate the average cost for a notice of inventory completion ($14,416 per notice). After calculating an estimated cost for museums and Federal agencies to comply with the regulations, the estimate calculated the costs for Indian Tribes and NHOs by applying the percentage of funding awarded in grants from 2011–2021 to museums (58%) and Indian Tribes or NHOs (42%) to estimate a total burden for the regulations at $91.4 million over 30 months or $36.6 million per year (NPS–2022–004–0174).

One museum provided a variety of estimates based on current project budgets which ranged from $200,000 to $500,000 per project per year for one museum. The comment estimated the burden for the single museum at 19,000 hours per year ($1.273 million per year per museum assuming an hourly rate of $67/hour). When applied to all 407 museums that will be required to update inventories under these regulations, that amounts to the highest estimate of $518.1 million per year for museums alone, although the comment noted that not all museums will require the same number of hours (NPS–2022–004–0125).

One individual detailed the hours involved in one part of a two-part project over 15 months. While a total estimated cost was not provided, elsewhere the comment suggested at minimum $100 to $120 an hour should be used in dollar estimates. Using the lower hourly figure and the rough number of hours provided, the estimate for the first phase of the project is $123,000 over 15 months or $98,400 per year. When applied to all 407 museums that will be required to update inventories under these regulations, it equals an estimated $40 million per year for museums. The comment noted that these estimates do not include the hours involved in preparation of the original inventory of human remains and associated funerary objects completed in the early 1990s (NPS–2022–004–0135).

Each of these estimates uses a different method to estimate the costs for repatriation of human remains and associated funerary objects, but we do not feel they accurately estimate the costs of compliance with either the existing regulations or this regulatory action. We believe that any estimate based on current practice or past grant awards is inherently flawed and does not account for the specific objective of this regulatory action to simplify and improve the systematic processes within specific timeframes. We agree that our estimates do not reflect the actual amount of time some museums and Federal agencies currently spend on compliance with these regulations. We strongly disagree, however, that our estimates do not reflect what is required by these regulations. In the 33 years since the passage of the Act, each museum or Federal agency has approached the requirements of these regulations in different ways, and, as a result, there is a wide variation in how much time and money is spent to comply with these regulations. As one of the goals for this regulatory action is to improve efficiency and consistency in meeting these requirements, this will necessarily mean a difference between the estimated costs and current practices.

b. For Subpart B, is the estimated number of annual discoveries on Federal or Tribal lands reasonable? We used the average number of notices on Federal lands over the last three years, but we have no data on the number of discoveries on Tribal lands to inform this estimate.

Our initial estimate relied on an average of 11 notices of intended disposition submitted by Federal agencies in the three years (FY2019 = 13, FY2020 = 9, and FY2021 = 10). In the most recent year, seven notices were submitted (FY2022). We received input from Federal agencies that the estimate is low, likely because of underreporting. Federal agencies provided higher estimates for the number of annual discoveries and the time per response which are incorporated into the revised Cost-Benefit and Regulatory Flexibility Threshold Analyses for the final regulations. The number of discoveries and excavations on Tribal lands remains unknown.

For example, in estimating the number of responses to a discovery on Federal lands, we relied on input from Federal agencies and increased the estimated number from 11 responses to 60 responses each year. One Federal agency with a large land area reported an average of 20 discoveries per year, leaving most stabilized in place and not excavated or removed, and thus not listed in notices of intended disposition. Another Federal agency with a smaller land area reported an average of 5 discoveries per year. This change to the number of responses for one regulatory

requirement impact others that build off this number. For example, we estimate that the number of Federal agencies conducting consultation is 50% of the discoveries on Federal lands.

Federal agencies also provided estimates on the time per response for each regulatory requirement. For responding to a discovery, they estimated it spanned from 8 hours to 40 hours. Given that a response is required within 3 days, we feel the maximum amount of time may not exceed 30 hours (one person for 8 hours for 3 days plus one person for 6 hours total). We estimate the time per response ranges from 10 hours to 30 hours, depending on the size and complexity of the discovery, for a median of 20 hours. As Table 6 below shows, changes to both the number of responses and to the time per response resulted in a significant increase to our estimated costs under Subpart B.

TABLE 6—CHANGES TO ESTIMATED COSTS IN SUBPART B

Estimate	Number of responses	Annual hours	Annual costs
2022 Proposed Regulations*	65	465.5	$29,738
2023 Final Regulations*	318	6,599.5	473,568
Change	+253	+6,134	+443,830

*See the Appendix to the two Cost-Benefit and Regulatory Flexibility Threshold Analyses for detailed information on each regulatory requirement and the method for creating this estimate.

c. For Subpart C, is the estimated number of museums and Federal agencies required to update inventory data under the proposed regulations reasonable? We assume fewer inventory records will require less time to update. We assume museums previously prepared and submitted inventories in accordance with the existing regulations and an update to that inventory requires less time than submission of a new inventory. We estimate the time per response will range from less than one hour to 100 hours, depending on the size and complexity of the update, for a median of 50.25 hours.

As discussed elsewhere in this document, we received several comments on our estimated costs in Subpart C. One of these comments noted that a previously prepared inventory did not reduce the necessary time, as previous inventories are generally ''woefully inadequate.'' Two comments stated that the estimates should not rely on responses from the last three years to estimate costs due to the pandemic. We received consistent feedback that the estimate is low and does not reflect real costs. Some comments provided alternative estimates on the time per response which we incorporated into our estimate or explained why we were unable to incorporate the suggestion. Despite the concerns that the pandemic has resulted in fewer submissions, the available information does not support this, and in fact, we have had more submissions in the last two years than in any previous year. Our estimate relies on the average number of submissions by museums and Federal agencies over the last four or five years or calculates an estimate based on those submissions (NPS, National NAGPRA Program Annual Reports, *https://www.nps.gov/subjects/nagpra/reports.htm,* accessed 12/1/2023).

Specifically for the number of museums and Federal agencies required to update an inventory, we estimate 407 museums and 122 Federal agencies will be required to update inventories within five years after promulgation of a final rule. The final regulatory action will allow for inventory updates to be combined by geographic location or other defining features. We have revised the estimated number of updated inventories based on comments.

As the size of collections vary greatly, we analyzed previously reported inventory data to estimate the number of updated inventories as both a high estimate (by inventory records) and a low estimate (by geographic location). We calculated a high estimate using the number of inventory records, according to the original inventory submission and previous updates, and for every 10 inventory records, we estimate one updated inventory will be required. We calculated a low estimate using the number of unique geographical States from which the human remains were removed, according to the original inventory submission and previous updates, and for each State represented, we estimated one updated inventory will be required. We calculated a median value for each estimate and divided the total number of updated inventories by five years for an estimated number of annually updated inventories in each estimate.

While we modified our estimate for the number of updated inventories between the baseline conditions and the final regulatory action, we did not change the time required for each response. Federal agencies provided estimates on the time per response that spanned from 50 hours to 218 hours, but some of those estimates included time for preparing a notice which is calculated separately. In response to comments, we increased the estimated time per response to range from 5 hours to 200 hours, depending on the size and complexity of the update, for a median of 102.5 hours. As Table 7 below shows, this resulted in a smaller change to the baseline costs estimate in the number of responses, but much larger changes in the number of hours and costs.

TABLE 7—CHANGES TO ESTIMATED COSTS IN SUBPART C

Estimate	Number of responses	Annual hours	Annual costs
2022 Baseline: Proposed Regulations*	1,218	36,750.25	$2,361,014
2023 Baseline: Final Regulations*	1,232	73,475.50	4,916,458
Change	+14	+36,725.25	+2,555,444

*See the Appendix to the two Cost-Benefit and Regulatory Flexibility Threshold Analyses for detailed information on each regulatory requirement and the method for creating this estimate.

In other cases, we relied on other available data to calculate an estimated number of responses. In estimating the responses to a request for repatriation, we relied on the number of notices as the two requirements have a direct connection. We estimate requests for repatriation are 80% of the total number of notices of inventory completion (which precede a request) and 100% of the notice of intended repatriation (which follow a request). Depending on the regulatory framework (baseline conditions under the existing regulations or under the final regulatory action), the same calculation applies but results in a different number of estimated responses.

In the final regulatory action, museums and Federal agencies have specific options for responding to a request and responses should be based on information available in previously prepared summaries, inventories, and notices. Federal agencies provided estimates on the time per response that spanned from 8 hours to 25 hours. One comment requested the timeframe for responding to a request for repatriation be increased to a minimum of one year. We disagree with this suggestion and have not adopted it. Throughout the final regulatory action, a response to a request for repatriation is required within 90 days of receiving the request, or at maximum, 480 hours for one full time employee (12 weeks × 40 hours per week). We find this maximum estimate to be an extreme circumstance for an action based only on available information and with set options for a response. We estimate the time per response will range from 4 hours to 150 hours, depending on the complexity of the request, for a median of 77 hours. Table 8 shows the change in our estimate from the 2022 Proposed Rule to the final regulations.

TABLE 8—CHANGES TO ESTIMATED COSTS IN SUBPART C

Estimate	Number of responses	Annual hours	Annual costs
2022 Regulatory Action years 1–3: Proposed Regulations *	2,962	46,262.25	$2,971,955
2023 Regulatory Action years 1–5: Final Regulations *	3,086	172,360.50	11,536,684
Change	+124	+126,098.25	+8,564,729

* See the Appendix to the two Cost-Benefit and Regulatory Flexibility Threshold Analyses for detailed information on each regulatory requirement and the method for creating this estimate.

d. For Subpart C, many museums and Federal agencies update inventories at their own discretion, going beyond what is required by the Act and the existing regulations, which only requires use of ''information possessed by such museum or Federal agency'' (25 U.S.C. 3003(a)). Given the potential expense of more extensive studies not required by the Act or the revised regulations, how should the Department account for these costs in this rulemaking? We also request public data about the potential costs of updating inventories under the revised regulations.

We did not receive specific comments on how to account for costs that go beyond what is required by the Act. A few comments stated they did not understand this question as museums and Federal agencies only do the minimum required by the Act and these regulations. As discussed elsewhere in this document, we received several estimates on the costs of updating inventories, but these estimates were, with two exceptions, not based on actual expenses incurred.

The Society for American Archaeology (SAA) estimated annual costs to museums and Federal agencies of $250 million for repatriation of human remains and funerary objects. This estimate is based on the current museum completion rate of 21%, the amount of funding awarded through grants ($50 million since 1994), and a multiplying factor of 10, representing additional funds provided by museums, Federal agencies, and Indian Tribes outside of grant funds (*https://documents.saa.org/container/docs/default-source/doc-governmentaffairs/final_scia_testimony_02162022.pdf?sfvrsn=63d7c331_2,* accessed 12/1/2023).

One museum estimated annual costs to museums and Federal agencies of more than $117 million for repatriation of human remains and funerary objects. This estimate is based on the costs incurred by the museum over the past 20 years to repatriate 3,490 items multiplied by the total number of human remains and associated funerary objects currently pending repatriation (Field Museum of Natural History (FMNH) Background062722 available at *https://www.reginfo.gov/public/do/viewEO12866Meeting?viewRule=true&rin=1024-AE19&meetingId=139323&acronym=1024-DOI/NPS,* accessed 12/1/2023).

One comment from an individual estimated annual costs to museums and Federal agencies of nearly $20 million for repatriation of human remains and funerary objects. This estimate is based on a detailed analysis of grants awarded to museums since 2011 and the resulting number of notices published by those museums. The estimate then applies an average cost per notice to the number of human remains pending notification under the existing regulations. The shorter timeframe in this estimate (30 months) is based on the proposed regulatory action requiring notice publication within two years and six months after promulgation of final regulations (*https://www.regulations.gov/comment/NPS-2022-0004-0174,* accessed 12/1/2023). Given the enormous variation in these estimates and past estimates related to these regulations, we have continued to employ the method used in the initial estimate but revised the number of responses and time per response based on comments. We believe we have accounted for all actions that are required under the existing regulations to calculate the baseline conditions and under these final regulations to estimate the future costs. Table 9 shows a summary of other annual estimates for inventories.

TABLE 9—OTHER ANNUAL ESTIMATES FOR INVENTORIES

Estimated costs	Reference
$524,380	2010 Final Rule (75 FR 12402).
2,971,955	2022 Proposed Rule Analysis (see NPS–2022–0004–0002).
5,300,000	1993 Proposed Rule (58 FR 31124).
6,000,000	1990 H. Rpt. 101–877, at 22.
11,536,684	2023 Final Rule Analysis.
19,400,000	NPS–2022–0004–0174.
25,000,000	NPS–2022–0004–0131.
40,048,800	NPS–2022–0004–0135.
117,000,000	NPS–2022–0004–0136.
250,000,000	SAA (cited above).
518,111,000	NPS–2022–0004–0125.

e. For Subpart C, is the estimated number of museums required to report on Federal holdings or collections reasonable? We estimate the number of museums required to submit statements is 5% of all museums that previously

submitted information under the existing regulations.

We only received specific input from Federal agencies on this estimate. A few stated the estimate was too low or unreasonable but did not offer any alternative estimates or related data. One Federal agency stated it has more than 150 non-federal repositories. Another Federal agency stated only 10% of the 170 identified non-federal repositories have submitted inventory and summary information. Another Federal agency stated only a small percentage of the 175 non-federal repositories have been reviewed and the estimate doesn't anticipate identification of new non-federal repositories. One Federal agency stated it knows of only 13 non-federal repositories with unresolved collections and that the 5% estimate seemed reasonable. Another Federal agency stated it believes there are 24 non-federal repositories holding its collections.

We estimate the number of museums (n=140) required to submit statements is 10% of all museums (n=1,388, rounded up) that previously submitted information under the existing regulations. A statement is a simple written document describing a holding or collection. These statements are required no later than one year after the effective date of the final rule, but we have annualized the cost over five years for purposes of this estimate so as not to compound the costs in calculating the total costs over five years.

We estimated the time per response for both museums to generate the statement and Federal agencies to respond to statements. We note that some comments estimated museums would need multiple staff members working full-time for the entire year to complete these statements. We disagree with this estimate and have not adopted it. We estimate the time per response for museums will range from 10 hours to 500 hours, depending on the size and complexity of a collection, for a median of 255 hours. Federal agencies provided estimates on the time per response that spanned from 8 hours to 30 hours. We estimate the time per response will range from 8 hours to 30 hours, depending on the size and complexity of a collection, for a median of 19 hours. Table 10 shows the estimated costs for statements of Federal agency holdings or collections to both museums and Federal agencies.

TABLE 10—CHANGES TO ESTIMATED COSTS FOR STATEMENTS OF FEDERAL AGENCY HOLDINGS OR COLLECTIONS

Estimate	Number of responses	Annual hours	Annual costs
2022 Regulatory Action: Proposed Regulations *	140	735	$47,232
Museums	70	367.5	23,616
Federal agencies	70	367.5	23,616
2023 Regulatory Action: Final Regulations *	280	38,360	5,570,504
Museums	140	35,700	2,392,257
Federal agencies	140	2,660	178,247
Change	+140	+37,625	+5,523,272

* See the Appendix to the two Cost-Benefit and Regulatory Flexibility Threshold Analyses for detailed information on each regulatory requirement and the method for creating this estimate.

f. Is the estimated number of competing claims for disposition or competing requests for repatriation reasonable?

We received specific input from Federal agencies on this estimate, and most stated it seemed reasonable or that they did not have experience or data related to it. One Federal agency believed the estimate is too low given the changes to the regulations, especially as it relates to Tribal land of an NHO where they anticipate an increase in competing claims or requests to occur. One Federal agency estimated that 20% of discoveries result in competing claims on Federal lands. On Federal lands, Federal agencies provided estimates on the time per response that spanned from 25 hours to 40 hours. Federal agencies provided estimates on the time per response that spanned from 25 hours to 80 hours. One comment from a museum stated evaluating competing requests and resolving stays of repatriation required significantly more time, estimating between 100 and 1,000 hours, especially when considering the involvement of legal departments, executives, and board members in those tasks.

When a competing claim or request is received, the timeline for a disposition or repatriation statement changes, but we believe it is important to require museums and Federal agencies to decide on competing claims or requests within a set timeframe (six months or 180 calendar days after informing the claimants or requestors of the competing claims or requests). Under Subpart C, one option for a museum or Federal agency is to determine a most appropriate requestor cannot be determined. This option would allow parties to continue consultation but ensure all parties have been informed of the museum or Federal agency's decision in a timely manner or to seek assistance of a court of competent jurisdiction to resolve a conflict under these regulations. The information needed to evaluate competing requests is submitted by requestors and evaluated against the criteria in the regulations. Where competing requests are between Indian Tribes or NHOs with cultural affiliation, the priority order under § 10.3(e), as revised, relies on how the cultural affiliation determination was made (clearly identified or reasonably identified). We intended for these final regulations to provide adequate guidance and procedures for museums and Federal agencies to follow in determining the most appropriate requestor, and as a result, lessen the burden and expense of those determinations. We estimate the time per response ranges from 25 hours to 100 hours, depending on the size and complexity of the competing claims, for a median of 62.5 hours.

Under Subpart B, the information needed to evaluate competing claims is submitted by claimants and evaluated against the priority of custody. However, Federal agencies must identify the most appropriate claimant or claimants. While this is not a new requirement, we do expect, as one Federal agency stated, the added procedures in these final regulations for resolving competing claims on Federal lands will likely increase the time per response from baseline conditions. Given that competing claims follow notification and consultation, we estimate the time per response ranges 40 hours to 500 hours for a median of 270 hours.

g. Using data on implementation since 2012, we estimate it will take an

additional 26 years to complete consultation and notification for all 117,000 Native American human remains currently pending in the existing regulatory framework. Is this 26-year time horizon reasonable? Will the proposed regulatory requirements result in a change in consultation activities per year, and if so, how should the Department account for the change in costs to Indian Tribes or NHOs for engaging in consultation?

We did not receive specific feedback on the estimate under the existing regulatory framework. We did receive many comments on the timelines under Subpart C in general (see Comment 92 and 93). Most comments felt the two-year timeline in the proposed regulations was too short, unrealistic, unworkable, and unachievable. Two comments predicted it would take 20 or 50 years to complete consultation and notification for all Native American human remains. Most comments on the timelines expressed concerns about insufficient staffing and funding to complete the work of repatriation.

As discussed elsewhere in this document, we have changed the deadline for museums and Federal agencies to update inventories of human remains and associated funerary objects to five years after the effective date of these final regulations. We have also revised our estimate for the timeline under the existing regulations. In Fiscal Year 2022, the largest number of human remains in the history of the Act and these regulations completed the regulatory process. As of August 2023, we expect Fiscal Year 2023 to surpass the previous year. We therefore adjusted our estimate in the Cost-Benefit and Regulatory Flexibility Threshold Analyses for these final regulations. Using data on implementation since 2012, the Department estimates it will take an additional *20 years* to complete consultation and notification for all approximately 108,000 Native American human remains currently pending in the existing regulatory framework. Over the last 11 years, the average number of human remains completing the existing regulatory process for repatriation per year is 5,460 individual sets of Native American human remains (NPS, National NAGPRA Program Annual Reports, *https://www.nps.gov/subjects/nagpra/reports.htm,* accessed 12/1/2023). As Table 11 shows, the number of human remains completing the existing regulatory process varies from year to year, depending on the decision-making of museums and Federal agencies on repatriation.

TABLE 11—NATIVE AMERICAN HUMAN REMAINS

Fiscal year	Total published in notices	Annual change
2012	43,525	3,220
2013	45,975	2,450
2014	48,588	2,613
2015	51,558	2,970
2016	56,336	4,778
2017	63,885	7,549
2018	67,077	3,192
2019	79,093	12,016
2020	83,076	3,983
2021	84,677	1,601
2022	100,370	15,693

Regarding the costs for lineal descendants, Indian Tribes, and NHOs to participate in consultation, we have added an estimate to the Cost-Benefit and Regulatory Flexibility Threshold Analyses for these final regulations. In the existing regulations, consultation is required throughout the regulatory processes in both Subpart B and C for any decision-making action by a Federal agency or museum. However, the existing regulations do not require any Indian Tribe or NHO to participate in such consultation. Choosing to participate in consultation is an act of sovereignty and these regulations, either existing or revised, do not require any Indian Tribe or NHO to consult. Our initial estimates did not include the costs to lineal descendants, Indian Tribes, or NHOs to participate in consultation as the variables of this estimate are too great and dependent on many factors. For example, one Tribal official stated publicly that under the existing regulations, consultation can require one email exchange or, in the most extreme case, eight years of regular consultation meetings. As discussed elsewhere in this section, a comment from an Indian Tribe stated consultations can require mere hours while some require years of sustained work. In addition to the varying time required to consult with museums and Federal agencies, the costs for Indian Tribes and NHOs to consult internally with religious leaders or to develop their own procedure and protocol for conducting consultation cannot and should not be estimated by the Federal government. In preparing our initial and revised estimate, we reviewed other regulations for any estimate on the costs to Indian Tribes or NHOs to engage in consultation but were unable to find a relevant example. Our estimate is based on a 1:1 relationship between the number of participants and the number of museums and Federal agencies conducting consultation. We know this is an underestimate and that consultation requires participation by more than one lineal descendant, Indian Tribe, or NHO. However, we have no way to estimate this number. While we have provided an estimate on the costs to participate in consultation, we maintain we do not have sufficient information to adequately quantify these costs to lineal descendants, Indian Tribes, or NHOs.

C. Use of Received Feedback

The Department used all received feedback to inform this final rule and made changes to this final rule based on received feedback.

IV. Compliance With Other Laws, Executive Orders and Department Policy

A. Regulatory Planning and Review (Executive Orders 12866 and 13563 and 14094)

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in OMB will review all significant regulatory actions. OIRA has determined that this rule is a significant regulatory action.

Executive Order 14094 amends Executive Order 12866 and reaffirms the

principles of Executive Order 12866 and Executive Order 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 Executive Order 12866, Executive Order 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law.

Executive Order 13563 reaffirms the principles of Executive 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 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 rule in a manner consistent with these requirements.

B. Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Executive Order 13985)

This final rule is expected to advance racial equity in agency actions and programs, in accordance with the Executive Order 13985.

C. Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on the cost-benefit and regulatory flexibility analyses found in the report entitled ''Benefit-Cost and Regulatory Flexibility Threshold Analyses: Native American Graves Protection and Repatriation Act Regulations'' that may be viewed online at *https://www.regulations.gov.*

The analyses conclude that this final regulatory action will likely generate benefits for museums, Federal agencies, Indian Tribes, and NHOs that are greater than the temporary increase in reporting costs for museums. For all entities, the NPS anticipates a temporary increase of $6.948 million in annual costs for the first five years under the final regulatory action compared to baseline conditions. Starting year six, NPS anticipates a $2.978 million benefit in reduced annual costs compared to baseline conditions. This final regulatory action would produce a net benefit when reduced annual costs exceed the total increase in costs from the first five years. We estimate that this would occur after 17 years (for undiscounted costs and benefits), 21 years (for 3% discounting), or 47 years (for 7% discounting). Across the horizon of 50 years, the net savings in costs of the final regulatory action totals $99.3 million (for undiscounted costs and benefits), $31.2 million (for 3% discounting), or $0.4 million (for 7% discounting). Therefore, the results of this cost-benefit analysis indicate that positive net benefits will be generated by implementing the final regulatory action. Given that, NPS concludes that the benefits associated with the final regulatory action justify the associated costs. Further, this final regulatory action is not expected to have an annual economic effect of $100 million.

Most of the state, local, and private museums required to report under NAGPRA are large not-for-profit enterprises, part of a university or college, or state or local government entities. The Small Business Administration size standard for museums is $34 million in average annual receipts (see *https://www.sba.gov/document/support-table-size-standards,* accessed 12/1/2023). However, using available information, NPS analyzed the 1,388 museums reporting under NAGPRA and determined that 419 are classified as state entities, 382 as local government entities, and 587 as private museums. Of the private museums, 141 are classified as universities or colleges, 18 as large urban museums, 42 as large historical societies, 247 as not-for profit museums or organizations that are large or dominant in the field, and the remaining 139 entities would be considered small museums, historical societies, or nature parks. We received 1 comment on the proposed rule from a small entity which was generally supportive of the changes.

Based on this analysis, we estimate that the average annual cost per small entity is $2,191 under baseline conditions, $5,844 under the final action in years one through five, and $916 beginning in year six. For each small entity, this is an increase in years one through five of $3,653 per year and a decrease beginning in year six of $1,275 per year compared to baseline conditions. The impact on these small entities aligns with their normal duties of collections management. In an effort to reduce respondent burden, we provide templates and technical assistance to direct inquiries by phone and email. We assist many small entities directly with drafting and completing the notice requirements, which generally fall outside the scope of normal collections management duties. The increase in costs associated with the new requirements is temporary and will not exist after the small entities complete the required inventory updates which is expected to happen within five years of implementation.

We assume the majority of small entities impacted by this rule also have a small number of employees. According to the available data summarized in Table 12 below, smaller firms also have smaller payroll costs. Even in the most extreme scenario (establishments with less than 5 employees) the annual costs of compliance during the first five years of the final regulatory action would be no more than 10% the average entities payroll costs.

TABLE 12—MUSEUMS NAICS 712110: EMPLOYMENT SIZES AND PAYROLL *

Employment size	Number of establishments	Annual payroll ($1,000) **	Mean payroll per establishment ($1,000)
All establishments	5,297	$3,346,074	$632
Less than 5 employees	3,188	194,629	61
5 to 9 employees	910	197,668	217
10 to 19 employees	551	294,715	535
20 to 49 employees	372	507,049	1,363
50 to 99 employees	141	468,509	3,323
100 to 249 employees	102	772,161	7,570

TABLE 12—MUSEUMS NAICS 712110: EMPLOYMENT SIZES AND PAYROLL *—Continued

Employment size	Number of establishments	Annual payroll ($1,000) **	Mean payroll per establishment ($1,000)
250 to 499 employees	27	506,069	18,743
500 to 999 employees	5	257,054	51,411

* 2021 Economic Census Business Survey, *https://data.census.gov/table/CBP2021.CB2100CBP?q=712110:%20Museums,* accessed 12/1/2023.

** Sales data are not available by employment size.

The U.S. Census Bureau has a Quarterly Services Survey that reports on revenues for NAICS 712 ''Museums, historical sites, and similar institutions.'' For 2022, total revenue (Q1–Q4) was $21,468 million. Dividing this by 7,062 (the total number of employer firms in the 3-digit NAICS code 712), the mean annual revenue per firm is $3 million. While we recognize there may be a wide range of revenues at the individual firm level, this data suggest that for the average firm in this category, compliance costs will be small when compared to annual revenue. We do not have data that would allow a more rigorous analysis.

D. Congressional Review Act (CRA)

This rule does not meet the criteria set forth in 5 U.S.C. 804(2), the CRA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more;

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

E. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or Tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

F. Takings (Executive Order 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

G. Federalism (Executive Order 13132)

Under the criteria in Section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

H. Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of Section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of Section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

I. Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have identified direct Tribal implications. Accordingly, we have developed this final rule after consulting with federally recognized Indian Tribes. In addition, we developed this final rule in consultation with the Native American Graves Protection and Repatriation Review Committee, which includes members nominated by Indian Tribes.

From March to July of 2011, the Department consulted with Indian Tribes and the Review Committee, as well as others, on full revisions to the regulations implementing the Act. In April 2012 (77 FR 12378), the Department published a proposed rule to revise the regulations for accuracy and consistency based on some of those comments. Additional comments on that proposed rule requested changes that went beyond the scope of accuracy and consistency.

Since 2012, the Department has heard repeatedly from Indian Tribes, NHOs, museums, and Federal agencies on the implementation of the Act through the regulations. From 2012 to 2019 at 21 meetings of the Review Committee, public commenters have highlighted concerns with the regulations or challenges in implementing its procedures. The Review Committee has heard frequently that the regulations themselves pose barriers to successful and expedient repatriation.

As a result of previous consultation, public comment, and input from the Review Committee, the Department developed a draft text of regulatory revisions and on July 8, 2021, invited Indian Tribes to consult on the draft text. Along with the draft text, the Department provided a summary of the 2011 consultation with Indian Tribes and how the draft text was responsive to that input. The Department hosted virtual consultation sessions with Indian Tribes on August 9, 13, and 16, 2021. In addition, the Department accepted written input until September 30, 2021. In total, we received 71 individual comment letters, which when combined with oral comments from consultation sessions, yielded over 700 specific comments on sections of the draft text. The Department reviewed each comment provided during consultation and in writing and, wherever possible, adjusted the proposed regulations to address them. In a separate document available in the docket for the proposed rule, the Department provided a summary of each comment and specific detailed responses.

During the comment period on the proposed rule, the Department scheduled Review Committee meetings, Tribal consultation sessions, Native Hawaiian consultation sessions, and public listening sessions. Review Committee meetings were held virtually on January 5 and 10, 2023, from 2 p.m. to 6 p.m. ET. Tribal consultation sessions were held virtually on

December 15, 2022, from 3 p.m. to 5 p.m. EST, and December 19, 2022, from 1 p.m. to 4 p.m. EST, and in person on January 12, 2023, from 10 a.m. to 1 p.m. MST in Phoenix, Arizona. Native Hawaiian consultation sessions were held virtually on January 9, 2023, from 9 a.m. to 11 a.m. HST and on January 10, 2023, from 6 p.m. to 8 p.m. HST.

At all sessions, the Department provided a short overview of the proposed regulation, highlighted the major changes, and provided an opportunity for questions. The Department provided additional resources related to the proposed regulations on the National NAGPRA Program website. Review Committee meetings, Tribal Consultation sessions, and Native Hawaiian Consultation sessions were recorded and transcribed to ensure a record of all comments were available to the Department in preparing the final rule. All of the oral comments received during the meetings and consultation sessions were repeated in the written comments submitted by the Review Committee and Indian Tribes and are summarized in this document.

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

1. Overview

The Paperwork Reduction Act (PRA) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a ''collection of information,'' unless it displays a currently valid OMB control number. Collections of information include any request or requirement that persons obtain, maintain, retain, or report information to an agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)). These final regulations contain existing and new information collection requirements that are subject to review by OMB under the PRA. OMB previously reviewed and approved information collection related to 43 CFR part 10 and assigned the following OMB control number 1024–0144 (expires 4/30/2025).

The information collection activities in these final regulations are described below along with estimates of the annual burdens. These activities, along with annual burden estimates, do not include activities that are considered usual and customary industry practices. Included in the burden estimates are the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each component of the proposed information collection requirements.

The Department of the Interior requests comment on any aspect of this information collection, including:

a. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

b. The accuracy of the estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

2. Summary of Information Collection Requirements

Title of Collection: Native American Graves Protection and Repatriation Regulations.

OMB Control Number: 1024–0144.

Form Number: None.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Any person, any affected party, lineal descendants, Indian Tribes, Native Hawaiian organizations, and State and local governments, universities, and museums, that receive Federal funds and have possession or control of Native American human remains and cultural items.

Respondent's Obligation: Mandatory, voluntary, and required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Number of Annual Responses: 3,008.

Estimated Completion Time per Response: Varies from 1 hour to 270 hours depending on respondent and/or activity.

Total Estimated Number of Annual Burden Hours: 161,195.

Total Estimated Annual Non Hour Burden Cost: None.

Subpart	Information collections	Respondents
Subpart A—General	0	None.
Subpart B—Protection of Human Remains or Cultural Items on Federal or Tribal Lands	1	Any person
	6	Indian Tribes or NHOs.
Subpart C—Repatriation of Human Remains or Cultural Items by Museums or Federal Agencies	1	Any person.
	2	Lineal descendants.
	2	Indian Tribes/NHOs.
	14	Museums.
Subpart D—Review Committee	1	Any affected party.

Subpart A—General does not contain any information collection requirements subject to the PRA. References to written documents in this Subpart refer to the specific information collection requirements in the three subparts below.

Subpart B—Protection of Human Remains or Cultural Items on Federal or Tribal Lands contains seven information collection requirements subject to the PRA. On Federal or Tribal lands, any person who knows or has reason to know of the discovery of human remains or cultural items must provide specified information to third parties. On Federal lands, an Indian Tribe or NHO may participate in consultation or submit a claim for disposition by disclosing specified information to third parties. On Tribal lands, an Indian Tribe or NHO must maintain specified records related to discoveries, excavations, and dispositions.

Subpart C—Repatriation of Human Remains or Cultural Items by Museums or Federal Agencies contains 19 information collection requirements subject to the PRA. State and local governments, universities, and museums that receive Federal funds and have possession or control of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony must submit information to the Federal government, maintain specified records, and disclose specified information to third parties. Lineal descendants, Indian Tribes, or

NHOs may participate in consultation and submit a request for repatriation by disclosing specified information to third parties. Any person alleging a failure to comply may voluntarily submit information to the Federal government. Museums may respond to a civil penalty action by submitting information to the Federal government.

Subpart D—Review Committee contains one information collection requirements subject to the PRA. Any affected party may voluntarily submit information to the Federal government.

Information collection requirement	Final regulations
New information collection requirements in Subpart B	
Participate in consultation	§ 10.4(b)(2).
Report a discovery on Federal or Tribal lands	§ 10.5(a)–(b).
Respond to a discovery	§ 10.5(c)(1) and § 10.5(e).
Consent to an excavation	§ 10.6(a).
Submit a claim for disposition	§ 10.7(c)(3).
Delegate or accept responsibility on Tribal land	§ 10.5(c); § 10.6(a); § 10.7(b).
Complete a disposition statement	§ 10.7(b).
Currently approved information collections requirements in Subpart C	
New Summary/Inventory	§ 10.9(a) and § 10.10(d).
Updated Inventory Data	§ 10.10(d).
Notices for publication in the **Federal Register**	§ 10.9(f) and § 10.10(e).
Updated Summary Data	Removed.
Notify Tribes and Request Information	Removed.
Response to requests for information	Removed.
New information collection requirements in Subpart C	
Conduct consultation	§ 10.9(c) and § 10.10(c)
Participate in consultation	§ 10.9(c) and § 10.10(c).
Submit a request for repatriation	§ 10.9(d) and § 10.10(f).
Document physical transfer	§ 10.9(g) and § 10.10(h).
File an allegation of failure to comply	§ 10.11(a).
Respond to a civil penalty action	§ 10.11(e), (h), (i), and (k).
Submit statements describing holdings or collection	§ 10.8(c)–(d).
Make a record of consultation	§ 10.9(c)(3) and § 10.10(c)(3).
Respond to a request for repatriation	§ 10.9(e) and § 10.10(g).
Send a repatriation statement	§ 10.9(g) and § 10.10(h).
Evaluate competing requests and resolve stays of repatriation	§ 10.9(h)–(i); § 10.10(i)–(j).
Transfer or reinter human remains and associated funerary objects	§ 10.10(k).
New information collection requirements in Subpart D	
Request assistance of the Review Committee	§ 10.12(c).

3. Information That Is Not an Information Collection Subject to the PRA

Lineal descendants, Indian Tribes, and Native Hawaiian organizations may take certain actions that are not information collections subject to the PRA. Requesting to consult is an acknowledgement that entails no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the consultation.

Federal agencies and the Department of Hawaiian Home Lands (DHHL) must take certain actions that are not information collections subject to the PRA. The Hawaiian Homes Commission Act, 1920 (HHCA), 42 Stat. 108, is a cooperative federalism statute, a compound of interdependent Federal and State law that establishes a Federal law framework but also provides for implementation through State law (see 81 FR 29777 and 29787, May 13, 2016, 43 CFR 47 and 48, Land Exchange Procedures and Procedures to Amend the Hawaiian Homes Commission Act, 1920). These written documents are required by employees of the Federal government or DHHL when acting within the scope of their employment.

Indian Tribes, Native Hawaiian organizations, traditional religious leaders, national museum organizations, and national scientific organizations may take certain actions that are not information collections subject to the PRA. These actions are generally solicited through a notice in the **Federal Register,** impact fewer than ten persons, and occur less often than annually.

4. Burden Estimates

The Department has identified 27 information collections in the final regulations. In total, we estimate that we will receive, annually, 3,008 responses totaling 161,195 annual hour burden. We estimate the annual dollar value is $10,786,570 (rounded). We estimate the frequency of response for each of the information collections is once per year, but the number of respondents may not be the same as the number of responses, depending on the type of information collected. In our estimate, we have only used the number of responses to simplify our estimate and remain consistent across the types of information collected. For some information collections, the time per response varies widely because of differences in activity, size, and complexity.

5. Written Comments or Additional Information

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 information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR–ICCO), 13461 Sunrise Valley Drive, (MS–242) Reston, VA 20191 (mail); or *phadrea_ponds@nps.gov* (email). Please include OMB Control Number 1024–0144 in the subject line of your comments.

To request additional information about this ICR, contact Melanie O'Brien, Manager, National NAGPRA Program by email at *melanie_o'brien@nps.gov,* or by telephone at (202) 354–2204. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *https://www.reginfo.gov/public/do/PRAMain.*

K. National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because the rule is covered by a categorical exclusion under 43 CFR 46.210(i): ''Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.'' We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under the National Environmental Policy Act.

L. Effects on the Energy Supply (Executive Order 13211)

This rulemaking is not a significant energy action under the definition in Executive Order 13211; the rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the rule has not otherwise been designated by the Administrator of OIRA as a significant energy action. A Statement of Energy Effects in not required.

Drafting Information

This final rule was prepared by staff of the National NAGPRA Program, National Park Service; Office of Regulations and Special Park Uses, National Park Service; Office of Native Hawaiian Relations; Office of Regulatory Affairs & Collaborative Action, Office of the Assistant Secretary—Indian Affairs; Office of the Assistant Secretary for Fish and Wildlife and Parks; and Office of the Solicitor, Division of Parks and Wildlife and Division of Indian Affairs, Department of the Interior. This final rule was prepared in consultation with the Native American Graves Protection and Repatriation Review Committee under the Act (25 U.S.C. 3006(c)(7)).

List of Subjects in 43 CFR Part 10

Administrative practice and procedure, Alaska, Cemeteries, Citizenship and naturalization, Colleges and universities, Hawaiian Natives, Historic preservation, Human remains, Indians, Indians—claims, Indians—law, Indians—lands, Museums, Penalties, Public lands, Reporting and recordkeeping requirements, Treaties.

■ In consideration of the foregoing, the Department of the Interior revises 43 CFR part 10 to read as follows:

PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS

Sec.

Authority: 25 U.S.C. 3001 *et seq.* and 25 U.S.C. 9.

Subpart A—General

§ 10.1 Introduction.

(a) *Purpose.* The Native American Graves Protection and Repatriation Act (Act) of November 16, 1990, recognizes the rights of lineal descendants, Indian Tribes, and Native Hawaiian organizations in Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony.

(1) The Act and these regulations provide systematic processes to:

(i) Protect Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony; and

(ii) Restore Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony to lineal descendants, Indian Tribes, and Native Hawaiian organizations.

(2) The Act and these regulations require consultation with lineal descendants, Indian Tribes, and Native Hawaiian organizations.

(3) Consistent with the Act, these regulations require deference to the Native American traditional knowledge of lineal descendants, Indian Tribes, and Native Hawaiian organizations.

(b) *Applicability.* These regulations pertain to Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony.

(1) These regulations require certain actions by:

(i) Any institution or State or local government agency (including any institution of higher learning) within the United States that receives Federal funds and has possession or control of a holding or collection;

(ii) Any Federal agency that has possession or control of a holding or collection or that has responsibilities on Federal or Tribal lands;

(iii) Indian Tribes on Tribal lands in Alaska and the continental United States; and

(iv) The State of Hawai'i Department of Hawaiian Home Lands (DHHL) on Tribal lands in Hawai'i.

(2) Lineal descendants, Indian Tribes, and Native Hawaiian organization may, but are not required to, consult, submit claims for disposition, or submit requests for repatriation.

(c) *Accountability.* These regulations are applicable to and binding on all museums, Federal agencies, and DHHL for implementing the systematic processes for disposition and

repatriation of human remains or cultural items under this part.

(d) *Duty of care.* These regulations require a museum, Federal agency, or DHHL to care for, safeguard, and preserve any human remains or cultural items in its custody or in its possession or control. A museum, Federal agency, or DHHL must:

(1) Consult with lineal descendants, Indian Tribes, or Native Hawaiian organizations on the appropriate storage, treatment, or handling of human remains or cultural items;

(2) Make a reasonable and good-faith effort to incorporate and accommodate the Native American traditional knowledge of lineal descendants, Indian Tribes, or Native Hawaiian organizations in the storage, treatment, or handling of human remains or cultural items; and

(3) Obtain free, prior, and informed consent from lineal descendants, Indian Tribes, or Native Hawaiian organizations prior to allowing any exhibition of, access to, or research on human remains or cultural items. Research includes, but is not limited to, any study, analysis, examination, or other means of acquiring or preserving information about human remains or cultural items. Research of any kind on human remains or cultural items is not required by the Act or these regulations.

(e) *Delivery of written documents.* These regulations require written documents to be sent, such as requests for repatriation, claims for disposition, invitations to consult, or notices for publication.

(1) Written documents must be sent by one of the following:

(i) Email, with proof of receipt,

(ii) Personal delivery with proof of delivery date,

(iii) Private delivery service with proof of date sent, or

(iv) Certified mail.

(2) Communication to the Manager, National NAGPRA Program, must be sent electronically to *nagpra_info@nps.gov.* If electronic submission is not possible, physical delivery may be sent to 1849 C Street NW, Mail Stop 7360, Washington, DC 20240. If either of these addresses change, a notice with the new address must be published in the **Federal Register** no later than 7 days after the change.

(f) *Deadlines.* These regulations require certain actions be taken by a specific date. Unless stated otherwise in these regulations:

(1) Days mean calendar days. If a deadline falls on a Saturday, Sunday, or Federal holiday, the action is deemed timely if taken no later than the next calendar day that is not a Saturday, Sunday, or Federal holiday. For purposes of this part, Federal holidays include any days during which the Federal government is closed because of a Federal holiday, lapse in appropriations, or other reasons.

(2) Written documents are deemed timely based on the date sent, not the date received.

(3) Parties sending or receiving written documents under these regulations must document the date sent or date received, as appropriate, when these regulations require those parties to act based on the date sent or date received.

(g) *Failure to make a claim or a request.* Failure to make a claim for disposition or a request for repatriation before disposition, repatriation, transfer, or reinterment of human remains or cultural items under this part is deemed an irrevocable waiver of any right to make a claim or a request for the human remains or cultural items once disposition, repatriation, transfer, or reinterment of the human remains or cultural items has occurred.

(h) *Judicial jurisdiction.* The United States district courts have jurisdiction over any action by any person alleging a violation of the Act or this part.

(i) *Final agency action.* For purposes of the Administrative Procedure Act (5 U.S.C. 704), any of the following actions by a Federal agency constitutes a final agency action under this part:

(1) A final determination making the Act or this part inapplicable;

(2) A final denial of a claim for disposition or a request for repatriation; and

(3) A final disposition or repatriation determination.

(j) *Information collection.* The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned control number 1024–0144. A Federal agency may not conduct or sponsor, and you are not required to respond to, the collection of information under this part unless the Federal agency provides a currently valid OMB control number.

(k) *Severability.* If a court holds any provisions of the regulations in this part or their applicability to any person or circumstances invalid, the remainder of the regulations and their applicability to other people or circumstances are intended to continue to operate to the fullest possible extent.

§ 10.2 Definitions for this part.

Act means the Native American Graves Protection and Repatriation Act.

Ahupua'a (singular and plural) means a traditional land division in Hawai'i usually extending from the uplands to the sea.

Appropriate official means any representative authorized by a delegation of authority within an Indian Tribe, Native Hawaiian organization, Federal agency, or Department of Hawaiian Home Lands (DHHL) that has responsibility for human remains or cultural items on Federal or Tribal lands.

ARPA means the Archaeological Resources Protection Act of 1979, as amended (16 U.S.C. 470aa–mm) and the relevant Federal agency regulations implementing that statute.

ARPA Indian lands means lands of Indian Tribes, or individual Indians, which are either held in trust by the United States Government or subject to a restriction against alienation imposed by the United States Government, except for any subsurface interests in lands not owned or controlled by an Indian Tribe or an individual Indian.

ARPA Public lands means lands owned and administered by the United States Government as part of:

(1) The national park system;

(2) The national wildlife refuge system;

(3) The national forest system; and

(4) All other lands the fee title to which is held by the United States Government, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution.

Assistant Secretary means the official of the Department of the Interior designated by the Secretary of the Interior as responsible for exercising the Secretary of the Interior's authority under the Act.

Consultation or consult means the exchange of information, open discussion, and joint deliberations made between all parties in good-faith and in order to:

(1) Seek, discuss, and consider the views of all parties;

(2) Strive for consensus, agreement, or mutually acceptable alternatives; and

(3) Enable meaningful consideration of the Native American traditional knowledge of lineal descendants, Indian Tribes, and Native Hawaiian organizations.

Cultural affiliation means there is a reasonable connection between human remains or cultural items and an Indian Tribe or Native Hawaiian organization based on a relationship of shared group identity. Cultural affiliation may be identified clearly by the information available or reasonably by the geographical location or acquisition

history of the human remains or cultural items.

Cultural items means a funerary object, sacred object, or object of cultural patrimony according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.

Custody means having an obligation to care for the object or item but not a sufficient interest in the object or item to constitute possession or control. In general, custody through a loan, lease, license, bailment, or other similar arrangement is not a sufficient interest to constitute possession or control, which resides with the loaning, leasing, licensing, bailing, or otherwise transferring museum or Federal agency.

Discovery means exposing, finding, or removing human remains or cultural items whether intentionally or inadvertently on Federal or Tribal lands without a written authorization for an excavation under § 10.6 of this part.

Disposition means an appropriate official recognizes a lineal descendant, Indian Tribe, or Native Hawaiian organization has ownership or control of human remains or cultural items removed from Federal or Tribal lands.

Excavation means intentionally exposing, finding, or removing human remains or cultural items on Federal or Tribal lands with a written authorization under § 10.6 of this part.

Federal agency means any department, agency, or instrumentality of the United States Government. This term does not include the Smithsonian Institution.

Federal lands means any lands other than Tribal lands that are controlled or owned by the United States Government. For purposes of this definition, control refers to lands not owned by the United States Government, but in which the United States Government has a sufficient legal interest to permit it to apply these regulations without abrogating a person's existing legal rights. Whether the United States Government has a sufficient legal interest to control lands it does not own is a legal determination that a Federal agency must make on a case-by-case basis. Federal lands include:

(1) Any lands selected by, but not yet conveyed to, an Alaska Native Corporation organized under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*);

(2) Any lands other than Tribal lands that are held by the United States Government in trust for an individual Indian or lands owned by an individual Indian and subject to a restriction on alienation by the United States Government; and

(3) Any lands subject to a statutory restriction, lease, easement, agreement, or similar arrangement containing terms that grant to the United States Government indicia of control over those lands.

Funerary object means any object reasonably believed to have been placed intentionally with or near human remains. A funerary object is any object connected, either at the time of death or later, to a death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. This term does not include any object returned or distributed to living persons according to traditional custom after a death rite or ceremony. Funerary objects are either associated funerary objects or unassociated funerary objects.

(1) *Associated funerary object* means any funerary object related to human remains that were removed and the location of the human remains is known. Any object made exclusively for burial purposes or to contain human remains is always an associated funerary object regardless of the physical location or existence of any related human remains.

(2) *Unassociated funerary object* means any funerary object that is not an associated funerary object and is identified by a preponderance of the evidence as one or more of the following:

(i) Related to human remains but the human remains were not removed, or the location of the human remains is unknown,

(ii) Related to specific individuals or families,

(iii) Removed from a specific burial site of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization, or

(iv) Removed from a specific area where a burial site of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization is known to have existed, but the burial site is no longer extant.

Holding or collection means an accumulation of one or more objects, items, or human remains for any temporary or permanent purpose, including:

(1) Academic interest;
(2) Accession;
(3) Catalog;
(4) Comparison;
(5) Conservation;
(6) Education;
(7) Examination;
(8) Exhibition;
(9) Forensic purposes;
(10) Interpretation;
(11) Preservation;
(12) Public benefit;
(13) Research;
(14) Scientific interest; or
(15) Study.

Human remains means any physical part of the body of a Native American individual. This term does not include human remains to which a museum or Federal agency can prove it has a right of possession.

(1) Human remains reasonably believed to be comingled with other materials (such as soil or faunal remains) may be treated as human remains.

(2) Human remains incorporated into a funerary object, sacred object, or object of cultural patrimony are considered part of the cultural items rather than human remains.

(3) Human remains incorporated into an object or item that is not a funerary object, sacred object, or object of cultural patrimony are considered human remains.

Indian Tribe means any Tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)), recognized as eligible for the special programs and services provided by the United States Government to Indians because of their status as Indians by its inclusion on the list of recognized Indian Tribes published by the Secretary of the Interior under the Act of November 2, 1994 (25 U.S.C. 5131).

Inventory means a simple itemized list of any human remains and associated funerary objects in a holding or collection that incorporates the results of consultation and makes determinations about cultural affiliation.

Lineal descendant means:

(1) A living person tracing ancestry, either by means of traditional Native American kinship systems, or by the common-law system of descent, to a known individual whose human remains, funerary objects, or sacred objects are subject to this part; or

(2) A living person tracing ancestry, either by means of traditional Native American kinship systems, or by the common-law system of descent, to all the known individuals represented by comingled human remains (example: the human remains of two individuals have been comingled, and a living person can trace ancestry directly to both of the deceased individuals).

Manager, National NAGPRA Program, means the official of the Department of the Interior designated by the Secretary of the Interior as responsible for administration of the Act and this part.

Museum means any institution or State or local government agency (including any institution of higher learning) that has possession or control of human remains or cultural items and receives Federal funds. The term does not include the Smithsonian Institution.

Native American means of, or relating to, a Tribe, people, or culture that is indigenous to the United States. To be considered Native American under this part, human remains or cultural items must bear some relationship to a Tribe, people, or culture indigenous to the United States.

(1) A Tribe is an Indian Tribe.

(2) A people comprise the entire body of persons who constitute a community, Tribe, nation, or other group by virtue of a common culture, history, religion, language, race, ethnicity, or similar feature. The Native Hawaiian Community is a ''people.''

(3) A culture comprises the characteristic features of everyday existence shared by people in a place or time.

Native American traditional knowledge means knowledge, philosophies, beliefs, traditions, skills, and practices that are developed, embedded, and often safeguarded by or confidential to individual Native Americans, Indian Tribes, or the Native Hawaiian Community. Native American traditional knowledge contextualizes relationships between and among people, the places they inhabit, and the broader world around them, covering a wide variety of information, including, but not limited to, cultural, ecological, linguistic, religious, scientific, societal, spiritual, and technical knowledge. Native American traditional knowledge may be, but is not required to be, developed, sustained, and passed through time, often forming part of a cultural or spiritual identity. Native American traditional knowledge is expert opinion.

Native Hawaiian organization means any organization that:

(1) Serves and represents the interests of Native Hawaiians, who are descendants of the indigenous people who, before 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawai'i;

(2) Has as a primary and stated purpose the provision of services to Native Hawaiians; and

(3) Has expertise in Native Hawaiian affairs, and includes but is not limited to:

(i) The Office of Hawaiian Affairs established by the constitution of the State of Hawai'I;

(ii) Native Hawaiian organizations (including 'ohana) who are registered with the Secretary of the Interior's Office of Native Hawaiian Relations; and

(iii) Hawaiian Homes Commission Act (HHCA) Beneficiary Associations and Homestead Associations as defined under 43 CFR 47.10.

Object of cultural patrimony means an object that has ongoing historical, traditional, or cultural importance central to a Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization. An object of cultural patrimony may have been entrusted to a caretaker, along with the authority to confer that responsibility to another caretaker. The object must be reasonably identified as being of such importance central to the group that it:

(1) Cannot or could not be alienated, appropriated, or conveyed by any person, including its caretaker, regardless of whether the person is a member of the group, and

(2) Must have been considered inalienable by the group at the time the object was separated from the group.

'Ohana (singular and plural) means a group of people who are not asserting that they are lineal descendants but comprise a Native Hawaiian organization whose members have a familial or kinship relationship with each other.

Person means:

(1) An individual, partnership, corporation, trust, institution, association, or any other private entity; or

(2) Any representative, official, employee, agent, department, or instrumentality of the United States Government or of any Indian Tribe or Native Hawaiian organization, or of any State or subdivision of a State.

Possession or control means having a sufficient interest in an object or item to independently direct, manage, oversee, or restrict the use of the object or item. A museum or Federal agency may have possession or control regardless of the physical location of the object or item. In general, custody through a loan, lease, license, bailment, or other similar arrangement is not a sufficient interest to constitute possession or control, which resides with the loaning, leasing, licensing, bailing, or otherwise transferring museum or Federal agency.

Receives Federal funds means an institution or State or local government agency (including an institution of higher learning) directly or indirectly receives Federal financial assistance after November 16, 1990, including any grant; cooperative agreement; loan; contract; use of Federal facilities, property, or services; or other arrangement involving the transfer of anything of value for a public purpose authorized by a law of the United States Government. This term includes Federal financial assistance provided for any purpose that is received by a larger entity of which the institution or agency is a part. For example, if an institution or agency is a part of a State or local government or a private university, and the State or local government or private university receives Federal financial assistance for any purpose, then the institution or agency receives Federal funds for the purpose of these regulations. This term does not include procurement of property or services by and for the direct benefit or use of the United States Government or Federal payments that are compensatory.

Repatriation means a museum or Federal agency relinquishes possession or control of human remains or cultural items in a holding or collection to a lineal descendant, Indian Tribe, or Native Hawaiian organization.

Review Committee means the advisory committee established under the Act.

Right of possession means possession or control obtained with the voluntary consent of a person or group that had authority of alienation. Right of possession is given through the original acquisition of:

(1) An unassociated funerary object, a sacred object, or an object of cultural patrimony from an Indian Tribe or Native Hawaiian organization with the voluntary consent of a person or group with authority to alienate the object; or

(2) Human remains or associated funerary objects which were exhumed, removed, or otherwise obtained with full knowledge and consent of the next of kin or, when no next of kin is ascertainable, the official governing body of the appropriate Indian Tribe or Native Hawaiian organization.

Sacred object means a specific ceremonial object needed by a traditional religious leader for present-day adherents to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. While many items might be imbued with sacredness in a culture, this term is specifically limited to an object needed for the observance or

renewal of a Native American religious ceremony.

Summary means a written description of a holding or collection that may contain an unassociated funerary object, sacred object, or object of cultural patrimony.

Traditional religious leader means a person needed to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.

Tribal lands means:

(1) All lands that are within the exterior boundaries of any Indian reservation;

(2) All lands that are dependent Indian communities; and

(3) All lands administered by the Department of Hawaiian Home Lands (DHHL) under the Hawaiian Homes Commission Act of 1920 (HHCA, 42 Stat. 108) and Section 4 of the Act to Provide for the Admission of the State of Hawai'i into the Union (73 Stat. 4), including ''available lands'' and ''Hawaiian home lands.''

Tribal lands of an NHO means Tribal lands in Hawai'i that are under the stewardship of a Native Hawaiian organization through a lease or license issued under HHCA section 204(a)(2), second paragraph, second proviso, or section 207(c)(1)(B).

Unclaimed human remains or cultural items means human remains or cultural items removed from Federal or Tribal lands whose disposition has not occurred under this part.

United States means the 50 States and the District of Columbia.

§ 10.3 Determining cultural affiliation.

Throughout this part, cultural affiliation ensures that disposition or repatriation of human remains or cultural items is based on a reasonable connection with an Indian Tribe or Native Hawaiian organization. Cultural affiliation must be determined by the information available, including information provided by an Indian Tribe or Native Hawaiian organization. Cultural affiliation does not require exhaustive studies, additional research, or continuity through time. Cultural affiliation is not precluded solely because of reasonable gaps in the information available.

(a) *Step 1: Collect information available.* A museum, Federal agency, or DHHL must collect information it holds about human remains or cultural items, including, but not limited to, records, catalogues, relevant studies, and other pertinent data. Additional information may be provided by an Indian Tribe or Native Hawaiian organization.

(1) One or more of the following equally relevant types of information about human remains or cultural items may be available:

(i) Anthropological;

(ii) Archaeological;

(iii) Biological;

(iv) Folkloric;

(v) Geographical;

(vi) Historical;

(vii) Kinship;

(viii) Linguistic;

(ix) Oral Traditional; or

(x) Other relevant information or expert opinion, including Native American traditional knowledge.

(2) A lack of any type of information does not preclude a determination of cultural affiliation. One type of information may be used to determine cultural affiliation when no other relevant information is available.

(b) *Step 2: Identify the required criteria.* Using the information available, including information provided by an Indian Tribe or Native Hawaiian organization, a museum, Federal agency, or DHHL must identify the three criteria for cultural affiliation.

(1) Each of the following criteria must be identified in the information available:

(i) One or more earlier groups connected to the human remains or cultural items;

(ii) One or more Indian Tribes or Native Hawaiian organizations; and

(iii) A relationship of shared group identity between the earlier group and the Indian Tribe or Native Hawaiian organization that can be reasonably traced through time.

(2) One type of information may be sufficient to reasonably identify the required criteria when no other relevant information is available. For example, geographical information about human remains or cultural items may identify:

(i) The earlier groups of people connected to a geographical location;

(ii) The Indian Tribe or Native Hawaiian organization connected to a geographical location; and

(iii) A relationship of shared group identity between the two traced through time.

(c) *Step 3: Make a determination of cultural affiliation.* A museum, Federal agency, or DHHL must make a written record of its determination of cultural affiliation that briefly describes the information available under paragraph (a) of this section and the criteria identified under paragraph (b) of this section.

(1) The determination must be one of the following:

(i) Cultural affiliation is identified clearly by the information available,

(ii) Cultural affiliation is identified reasonably by the geographical location or acquisition history, or

(iii) Cultural affiliation cannot be clearly or reasonably identified.

(2) Cultural affiliation of human remains or cultural items may be with more than one Indian Tribe or Native Hawaiian organization. For example, an identifiable earlier group may have a relationship to more than one Indian Tribe or Native Hawaiian organization, or two or more earlier groups may be connected to human remains or cultural items and a relationship may be reasonably traced to two or more Indian Tribes or Native Hawaiian organizations that do not themselves have a shared group identity. In Hawai'i, two or more Native Hawaiian organizations may be part of the same Native Hawaiian Community, but may have distinct beliefs, protocols, and other cultural practices passed down through different familial, cultural, and geographical lineages.

(d) *Joint disposition or repatriation.* When a museum, Federal agency, or DHHL determines cultural affiliation of human remains or cultural items with two or more Indian Tribes or Native Hawaiian organizations, any Indian Tribe or Native Hawaiian organization with cultural affiliation may submit a claim for disposition or a request for repatriation. Any Indian Tribe or Native Hawaiian organization with cultural affiliation may agree to joint disposition or joint repatriation of the human remains or cultural items. Claims or requests for joint disposition or joint repatriation of human remains or cultural items are considered a single claim or request and not competing claims or requests. A single claim or request may be on behalf of multiple Indian Tribes or Native Hawaiian organizations. Disposition or repatriation statements required under this part must identify all joint claimants or requestors.

(e) *Competing claims or requests.* When there are competing claims for disposition or competing requests for repatriation of human remains or cultural items, a museum, Federal agency, or DHHL must determine the Indian Tribe or Native Hawaiian organization with the closest cultural affiliation. In support of a competing claim or request, each claimant or requestor may provide information to show by a preponderance of the evidence that it has a stronger relationship of shared group identity to the human remains or cultural items.

(1) The Indian Tribe with the closest cultural affiliation, in the following order, is:

(i) The Indian Tribe whose cultural affiliation is clearly identified by the information available.

(ii) The Indian Tribe whose cultural affiliation is reasonably identified by the geographical location and acquisition history of the human remains or cultural items.

(iii) The Indian Tribe whose cultural affiliation is reasonably identified by only the geographical location of the human remains or cultural items.

(iv) The Indian Tribe whose cultural affiliation is reasonably identified by only the acquisition history of the human remains or cultural items.

(2) The Native Hawaiian organization with the closest cultural affiliation, in the following order, is:

(i) The ʻohana that can trace an unbroken connection of named individuals to one or more of the human remains or cultural items, but not necessarily to all the human remains or cultural items from a specific site.

(ii) The ʻohana that can trace a relationship to the ahupuaʻa where the human remains or cultural items were removed and a direct kinship to one or more of the human remains or cultural items, but not necessarily an unbroken connection of named individuals.

(iii) The Native Hawaiian organization with cultural affiliation only to the earlier occupants of the ahupuaʻa where the human remains or cultural items were removed, and not to the earlier occupants of any other ahupuaʻa.

(iv) The Native Hawaiian organization with cultural affiliation to either:

(A) The earlier occupants of the ahupuaʻa where the human remains or cultural items were removed, as well as to the earlier occupants of other ahupuaʻa on the same island, but not to the earlier occupants of all ahupuaʻa on that island, or to the earlier occupants of any other island of the Hawaiian archipelago; or

(B) The earlier occupants of another island who accessed the ahupuaʻa where the human remains or cultural items were removed for traditional or customary practices and were buried there.

(v) The Native Hawaiian organization with cultural affiliation to the earlier occupants of all ahupuaʻa on the island where the human remains or cultural items were removed, but not to the earlier occupants of any other island of the Hawaiian archipelago.

(vi) The Native Hawaiian organization with cultural affiliation to the earlier occupants of more than one island in the Hawaiian archipelago that has been in continuous existence from a date prior to 1893.

(vii) Any other Native Hawaiian organization with cultural affiliation.

Subpart B—Protection of Human Remains or Cultural Items on Federal or Tribal Lands

§ 10.4 General.

Each Indian Tribe, Native Hawaiian organization, Federal agency, and the State of Hawai'i Department of Hawaiian Home Lands (DHHL) that has responsibility for Federal or Tribal lands must comply with the requirements of this subpart. Any permit, license, lease, right-of-way, or other authorization issued for an activity on Federal or Tribal lands must include a requirement to report any discovery of human remains or cultural items under § 10.5 of this part. Prior to any excavation of human remains or cultural items on Federal or Tribal lands, a written authorization is required under § 10.6 of this part. When human remains or cultural items are removed from Federal or Tribal lands, a disposition statement is required under § 10.7 of this part.

(a) *Appropriate official.* To ensure compliance with the Act, the Indian Tribe, Native Hawaiian organization, Federal agency, or DHHL that has responsibility for Federal or Tribal lands must designate one or more appropriate officials to carry out the requirements of this subpart, as shown in table 1 of this paragraph (a).

TABLE 1 TO § 10.4(a)—APPROPRIATE OFFICIAL

For human remains or cultural items on . . .	the appropriate official is a representative for the . . .
Federal lands in the United States	Federal agency with primary management authority.
Tribal lands in Alaska and the continental United States	Indian Tribe.
Tribal lands in Hawai'i	DHHL.
Tribal lands of an NHO	DHHL or a Native Hawaiian organization that has agreed in writing to be responsible for its Tribal lands.

(b) *Plan of action.* When a Federal agency or DHHL has responsibility for a discovery or excavation on Federal or Tribal lands, a plan of action is required. A plan of action is not required when an Indian Tribe or Native Hawaiian organization has responsibility for a discovery or excavation on Tribal lands. The Federal agency or DHHL must prepare a plan of action before any planned activity that is likely to result in a discovery or excavation of human remains or cultural items. The likelihood of a discovery or excavation must be based on previous studies, discoveries, or excavations in the general proximity of the planned activity and in consultation with the lineal descendant, Indian Tribe, or Native Hawaiian organization. If not part of a planned activity, a plan of action is required after a discovery of human remains or cultural items. After consultation with the lineal descendant, Indian Tribe, or Native Hawaiian organization, the Federal agency or DHHL must approve and sign a plan of action.

(1) *Step 1—Initiate consultation.* Before a planned activity or after a discovery, the Federal agency or DHHL must identify consulting parties and invite the parties to consult.

(i) Consulting parties are any lineal descendant and any Indian Tribe or Native Hawaiian organization with potential cultural affiliation.

(ii) An invitation to consult must be in writing and must include:

(A) A description of the planned activity or discovery and its geographical location by county and State;

(B) The names of all consulting parties; and

(C) A proposed timeline and method for consultation.

(2) *Step 2—Consult on the plan of action.* The Federal agency or DHHL must respond to any consulting party, regardless of whether the party has received an invitation to consult. Consultation on the plan of action may continue until the Federal agency or DHHL sends a disposition statement to a claimant under § 10.7(c)(5) of this subpart.

(i) In response to a consulting party, the Federal agency or DHHL must ask for the following information, if not already provided:

(A) Preferences on the proposed timeline and method for consultation; and

(B) The name, phone number, email address, or mailing address for any authorized representative, traditional religious leader, and known lineal descendant who may participate in consultation.

(ii) Consultation must address the content of the plan of action under paragraph (b)(3) of this section.

(iii) The Federal agency or DHHL must prepare a record of consultation that describes the concurrence, disagreement, or nonresponse of the consulting parties to the content of the plan of action.

(3) *Step 3—Approve and sign the plan of action.* Before a planned activity or after a discovery, the Federal agency or DHHL must approve and sign a plan of action and must provide a copy to all consulting parties. At a minimum, the written plan of action must include:

(i) A description of the planned activity or discovery and its geographical location by county and State;

(ii) A list of all consulting parties under paragraph (b)(1) of this section;

(iii) A record of consultation under paragraph (b)(2) of this section;

(iv) The preference of consulting parties for:

(A) Stabilizing, securing, and covering human remains or cultural items in situ, or

(B) Protecting, securing, and relocating human remains or cultural items, if removed;

(v) The duty of care under § 10.1(d) for any human remains or cultural items; and

(vi) The timeline and method for:

(A) Informing all consulting parties of a discovery;

(B) Evaluating the potential need for an excavation; and

(C) Completing disposition, to include publication of a notice of intended disposition, under § 10.7 of this part.

(c) *Comprehensive agreement.* A Federal agency or DHHL may develop a written comprehensive agreement for all land managing activities on Federal or Tribal lands, or portions thereof, under its responsibility. The written comprehensive agreement must:

(1) Be developed in consultation with the lineal descendant, Indian Tribe, or Native Hawaiian organization identified under paragraph (b)(1) of this section;

(2) Include, at minimum, a plan of action under paragraph (b)(3) of this section;

(3) Be consented to by a majority of consulting parties under paragraph (b)(2) of this section. Evidence of consent means the authorized representative's signature on the agreement or by official correspondence to the Federal agency or DHHL; and

(4) Be signed by the Federal agency or DHHL.

(d) *Federal agency coordination with other laws.* To manage compliance with the Act, a Federal agency may coordinate its responsibility under this subpart with its responsibilities under other relevant Federal laws. Compliance with this subpart does not relieve a Federal agency of the responsibility for compliance with the National Historic Preservation Act (54 U.S.C. 306108, commonly known as Section 106) or the Archeological and Historic Preservation Act (54 U.S.C. 312501–312508).

§ 10.5 Discovery.

When a discovery of human remains or cultural items on Federal or Tribal lands occurs, any person who knows or has reason to know of the discovery must inform the appropriate official for the Indian Tribe, Native Hawaiian organization, Federal agency, or DHHL and the additional point of contact. The appropriate official must respond to a discovery and, if applicable, certify when an activity may resume.

(a) *Report any discovery.* Any person who knows or has reason to know of a discovery of human remains or cultural items on Federal or Tribal lands must:

(1) Immediately report the discovery in person or by telephone to the appropriate official and any additional point of contact shown in table 1 of this paragraph (a).

TABLE 1 TO § 10.5(a)(1)—REPORT A DISCOVERY ON FEDERAL OR TRIBAL LANDS

Where the discovery is on . . .	the appropriate official is the representative for the . . .	and the additional point of contact is the . . .
Federal lands in the United States *	Federal agency with primary management authority.	Any Indian Tribe or Native Hawaiian organization with potential cultural affiliation, if known.
Tribal lands in Alaska and the continental United States.	Indian Tribe	Bureau of Indian Affairs or the Federal agency with primary management authority, if any.
Tribal lands in Hawai'i	DHHL	Any Native Hawaiian organization with potential cultural affiliation, if known.
* Federal lands in Alaska selected but not yet conveyed under the Alaska Native Claims Settlement Act (ANCSA, 43 U.S.C. 1601).	Bureau of Land Management or Federal agency with primary management authority.	Alaska Native Corporation organized under ANCSA.

(2) Make a reasonable effort to secure and protect the human remains or cultural items, including, as appropriate, stabilizing or covering the human remains or cultural items; and

(3) No later than 24 hours after the discovery, send written documentation of the discovery to the appropriate official and the additional point of contact shown in Table 1 to paragraph (a)(1) of this section stating:

(i) The geographical location by county and State;

(ii) The contents of the discovery; and

(iii) The steps taken to secure and protect the human remains or cultural items.

(b) *Cease any nearby activity.* If a discovery is related to an activity (including but not limited to construction, mining, logging, or agriculture), the person responsible for the activity must:

(1) Immediately stop any activity that could threaten the discovery;

(2) Report the discovery according to paragraph (a) of this section; and

(3) In the written documentation of the discovery required under paragraph (a)(3) of this section include:

(i) The related activity and any potential threats to the discovery; and

(ii) Confirmation that all activity around the discovery has stopped and must not resume until the date in a written certification issued under paragraph (e) of this section.

(c) *Respond to a discovery.* No later than three days after receiving written documentation of a discovery, the appropriate official must respond to a

discovery. The appropriate official must comply with the requirements of this section immediately upon learning of the discovery even if the discovery has not been properly reported.

(1) The appropriate official must make a reasonable effort to:

(i) Secure and protect the human remains or cultural items;

(ii) Verify that any activity around the discovery has stopped; and

(iii) Notify the additional point of contact shown in table 1 to paragraph (a)(1) of this section.

(2) On Tribal lands in Alaska and the continental United States, the Indian Tribe may delegate its responsibility for the discovery to the Bureau of Indian Affairs or the Federal agency with primary management authority. If both the Federal agency and the Indian Tribe consent in writing, the Bureau of Indian Affairs or the Federal agency with primary management authority is responsible for completing the requirements in paragraphs (d) and (e) of this section.

(3) On Tribal lands of an NHO, the Native Hawaiian organization may agree in writing to be responsible for discoveries on its Tribal lands and then must respond to any discovery under this paragraph. If the Native Hawaiian organization has not agreed in writing to be responsible for discoveries, DHHL is responsible for completing the requirements in paragraph (d) and (e) of this section for any discoveries on those Tribal lands of an NHO.

(d) *Approve and sign a plan of action.* When a Federal agency or DHHL has responsibility for a discovery on Federal or Tribal lands, a plan of action is required. A plan of action is not required when an Indian Tribe or Native Hawaiian organization has responsibility for a discovery on Tribal lands. The Federal agency or DHHL must carry out the plan of action for any human remains or cultural items that are removed.

(1) No later than 30 days after receiving written documentation of a discovery, the Federal agency or DHHL, in consultation with the lineal descendant, Indian Tribe, or Native Hawaiian organization, must approve and sign a plan of action under § 10.4(b).

(2) This requirement does not apply if, before receiving written documentation of the discovery, the Federal agency or DHHL signed:

(i) A plan of action under § 10.4(b); or

(ii) A comprehensive agreement under § 10.4(c).

(e) *Certify when an activity may resume.* No later than 30 days after receiving written documentation of a discovery, the appropriate official must send a written certification if the discovery is related to an activity (including but not limited to construction, mining, logging, or agriculture). Written certification must be sent to the person responsible for the activity and the additional point of contact shown in table 1 to paragraph (a)(1) of this section. The written certification must provide:

(1) A copy of the signed plan of action or comprehensive agreement with redaction of any confidential or sensitive information;

(2) Instructions for protecting, securing, stabilizing, or covering the human remains or cultural items, if appropriate; and

(3) The date (no later than 30 days after the date of the written certification) on which lawful activity may resume around the discovery.

§ 10.6 Excavation.

When an excavation of human remains or cultural items on Federal or Tribal lands is needed, the appropriate official must comply with this section when authorizing the excavation. A permit under Section 4 of ARPA (16 U.S.C. 470cc) is required when the excavation is on Federal or Tribal lands that are also ARPA Indian lands or ARPA Public lands, and there is no applicable permit exception or exemption under the ARPA uniform regulations at 18 CFR part 1312, 32 CFR part 229, 36 CFR part 296, or 43 CFR part 7. When the excavation is on Federal or Tribal lands that are not ARPA Indian lands or ARPA Public lands, an equivalent permit from the relevant jurisdiction is required, if applicable.

(a) *On Tribal lands.* Before an excavation of human remains or cultural items may occur, the Indian Tribe or Native Hawaiian organization must consent in writing by providing a written authorization for the excavation.

(1) At minimum, the written authorization must document:

(i) The reasonable steps taken to evaluate the potential need for an excavation of human remains or cultural items; and

(ii) Any permit that the Indian Tribe or Native Hawaiian organization legally requires.

(2) On Tribal lands in Alaska and the continental United States, the Indian Tribe may delegate its responsibility for authorizing the excavation to the Bureau of Indian Affairs or the Federal agency with primary management authority. If both the Federal agency and the Indian Tribe consent in writing, the Bureau of Indian Affairs or the Federal agency with primary management authority is responsible for completing the requirements in paragraph (b) of this section.

(3) On Tribal lands of an NHO, the Native Hawaiian organization may agree in writing to be responsible for excavations on its Tribal lands and then must provide written authorizations under this paragraph. If the Native Hawaiian organization has not agreed in writing to be responsible for excavations, DHHL is responsible for completing the requirements in paragraph (b) of this section for any excavations on those Tribal lands of an NHO.

(b) *On Federal or Tribal lands.* When a Federal agency or DHHL has responsibility for an excavation on Federal or Tribal lands, a plan of action and a written authorization are required. When an Indian Tribe or Native Hawaiian organization has responsibility for an excavation on Tribal lands, no plan of action is required and the Indian Tribe or Native Hawaiian organization must comply with paragraph (a) of this section.

(1) *Approve and sign a plan of action.* Prior to authorizing an excavation, the Federal agency or DHHL, in consultation with the lineal descendant, Indian Tribe, or Native Hawaiian organization, must approve and sign a plan of action under § 10.4(b). The Federal agency or DHHL must carry out the plan of action for any human remains or cultural items that are excavated and removed.

(i) This requirement does not apply if, prior to authorizing the excavation, the Federal agency or DHHL signed:

(A) A plan of action under § 10.4(b); or

(B) A comprehensive agreement under § 10.4(c).

(ii) For an excavation on Tribal lands, the plan of action must include written consent to the excavation by the appropriate Indian Tribe or Native Hawaiian organization.

(2) *Authorize an excavation.* At minimum, the written authorization must include:

(i) A copy of the signed plan of action or comprehensive agreement with redaction of any confidential or sensitive information,

(ii) The reasonable steps taken to evaluate the potential need for an excavation of human remains or cultural items, and

(iii) Any permit that the Federal agency or DHHL legally requires.

§ 10.7 Disposition.

When human remains or cultural items are removed from Federal or

Tribal lands, as soon as possible (but no later than one year) after the discovery or excavation of the human remains or cultural items, the appropriate official must identify the lineal descendant, Indian Tribe, or Native Hawaiian organization that has priority for disposition of human remains or cultural items using this section.

(a) *Priority for disposition.* The disposition of human remains or cultural items removed from Federal or Tribal lands must be in the following priority order:

(1) The known lineal descendant, if any, for human remains or associated funerary objects;

(2) The Indian Tribe or Native Hawaiian organization from whose Tribal lands the human remains or cultural items were removed;

(3) The Indian Tribe or Native Hawaiian organization with the closest cultural affiliation according to the priority order at § 10.3(e) of this part;

(4) On Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of some Indian Tribe, the Indian Tribe with the strongest relationship to the human remains or cultural items, which is:

(i) The Indian Tribe recognized as aboriginally occupying the geographical location where the human remains or cultural items were removed; or

(ii) A different Indian Tribe who shows by a preponderance of the evidence a stronger relationship to the human remains or cultural items; or

(5) Any Indian Tribe or Native Hawaiian organization that requests transfer of the human remains or cultural items as unclaimed under paragraph (d) of this section.

(b) *On Tribal lands.* The Indian Tribe or Native Hawaiian organization from whose Tribal lands the human remains or cultural items were removed must identify the lineal descendant, Indian Tribe, or Native Hawaiian organization with priority for disposition under paragraph (a) of this section.

(1) The Indian Tribe or Native Hawaiian organization must complete and retain a written disposition statement to recognize:

(i) A lineal descendant (whose name may be withheld) has ownership or control of the human remains or associated funerary objects removed from Tribal lands; or

(ii) A lineal descendant could not be ascertained, and the Indian Tribe or Native Hawaiian organization has ownership or control of the human remains or cultural items removed from Tribal lands.

(2) On Tribal lands in Alaska and the continental United States, the Indian Tribe may delegate its responsibility for disposition of human remains or cultural items to the Bureau of Indian Affairs or the Federal agency with primary management authority. If both the Federal agency and the Indian Tribe consent in writing, the Bureau of Indian Affairs or the Federal agency with primary management authority is responsible for completing the requirements in paragraph (c) of this section.

(3) On Tribal lands of an NHO, the Native Hawaiian organization may agree in writing to be responsible for disposition of human remains or cultural items from its Tribal lands and then must provide written disposition statements under this paragraph. If the Native Hawaiian organization has not agreed in writing to be responsible for dispositions, DHHL is responsible for completing the requirements in paragraph (c) of this section for any dispositions from those Tribal lands of an NHO.

(4) After completing a disposition statement, nothing in the Act or this part:

(i) Limits the authority of an Indian Tribe or Native Hawaiian organization to enter into any agreement with the lineal descendant or another Indian Tribe or Native Hawaiian organization concerning the human remains or cultural items;

(ii) Limits any procedural or substantive right which may otherwise be secured to the lineal descendant, Indian Tribe, or Native Hawaiian organization; or

(iii) Prevents the governing body of an Indian Tribe or Native Hawaiian organization from expressly relinquishing its ownership or control of human remains, funerary objects, or sacred objects.

(c) *On Federal or Tribal lands.* When a Federal agency or DHHL has responsibility for disposition of human remains or cultural items from Federal or Tribal lands, the Federal agency or DHHL must inform and notify the lineal descendant, Indian Tribe, or Native Hawaiian organization with priority for disposition under paragraph (a) of this section.

(1) *Step 1—Inform consulting parties.* As soon as possible but no later than six months after removal of human remains or cultural items from Federal or Tribal lands, the Federal agency or DHHL must send a written document informing all consulting parties listed in the plan of action under § 10.4(b)(3) of this part. Consultation on disposition of human remains or cultural items may continue until the Federal agency or DHHL sends a disposition statement to a claimant under paragraph (c)(5) of this section.

(i) The written document must include:

(A) A description of the human remains or cultural items, including the date and geographical location by county and State of removal; and

(B) The lineal descendant (whose name may be withheld), Indian Tribe, or Native Hawaiian organization identified as having priority for disposition of the human remains or cultural items.

(ii) For human remains or cultural items removed from Federal or Tribal lands whose disposition is not complete prior to January 12, 2024, the Federal agency or DHHL must:

(A) Identify the lineal descendant, Indian Tribe, or Native Hawaiian organization with priority for disposition under paragraph (a) of this section; and

(B) No later than July 12, 2024, send a written document under paragraph (c)(1)(i) of this section.

(iii) If the Federal agency or DHHL cannot identify any lineal descendant, Indian Tribe, or Native Hawaiian organization with priority for disposition of human remains or cultural items, the Federal agency or DHHL must report the human remains or cultural items as unclaimed under paragraph (d) of this section.

(2) *Step 2—Submit a notice of intended disposition.* No earlier than 30 days and no later than six months after informing consulting parties, the Federal agency or DHHL must submit a notice of intended disposition. If the human remains or cultural items are evidence in an ongoing civil or criminal action under ARPA or a criminal action under NAGPRA, the deadline for the notice is extended until the conclusion of the ARPA or NAGPRA case.

(i) A notice of intended disposition must be sent to any consulting parties and to the Manager, National NAGPRA Program, for publication in the **Federal Register**.

(ii) A notice of intended disposition must conform to the mandatory format of the **Federal Register** and include:

(A) An abstract of the information in the written document under paragraph (c)(1)(i) of this section;

(B) The name, phone number, email address, and mailing address of the appropriate official for the Federal agency or DHHL who is responsible for receiving claims for disposition;

(C) The date (to be calculated by the **Federal Register** 30 days from the date of publication) after which the Federal agency or DHHL may send a disposition statement to a claimant; and

(D) The date (to be calculated by the **Federal Register** one year from the date of publication) on which the human remains or cultural items become unclaimed human remains or cultural items if no claim for disposition is received from a lineal descendant, Indian Tribe, or Native Hawaiian organization.

(iii) No later than 21 days after receiving a notice of intended disposition, the Manager, National NAGPRA Program, must:

(A) Approve for publication in the **Federal Register** any submission that conforms to the requirements under paragraph (c)(2)(ii) of this section; or

(B) Return to the Federal agency or DHHL any submission that does not conform to the requirements under paragraph (c)(2)(ii) of this section. No later than 14 days after the submission is returned, the Federal agency or DHHL must resubmit the notice of intended disposition.

(3) *Step 3—Receive and consider a claim for disposition.* After publication of a notice of intended disposition in the **Federal Register**, any lineal descendant, Indian Tribe, or Native Hawaiian organization may submit to the appropriate official for the Federal agency or DHHL a written claim for disposition of human remains or cultural items.

(i) A claim for disposition of human remains or cultural items must be received by the Federal agency or DHHL before a disposition statement for the human remains or cultural items is sent to a claimant under paragraph (c)(5) of this section or the transfer or reinterment of the human remains or cultural items under paragraph (d)(4) of this section. A claim for disposition received by the Federal agency or DHHL before the publication of the notice of intended disposition is dated the same date the notice was published.

(ii) Claims from two or more lineal descendants, Indian Tribes, or Native Hawaiian organizations who agree to joint disposition of the human remains or cultural items are considered a single claim and not competing claims.

(iii) A claim for disposition must satisfy one of the following criteria:

(A) The claimant is identified in the notice of intended disposition with priority for disposition; or

(B) The claimant is not identified in the notice of intended disposition, but the claim for disposition shows that the claimant is a lineal descendant, Indian Tribe, or Native Hawaiian organization with priority for disposition under paragraph (a) of this section.

(iv) One year after publishing a notice of intended disposition under paragraph (c)(2) of this section, if no lineal descendant, Indian Tribe, or Native Hawaiian organization has submitted a claim for disposition, the Federal agency or DHHL must report the human remains or cultural items as unclaimed under paragraph (d) of this section.

(4) *Step 4—Respond to a claim for disposition.* No earlier than 30 days after publication of a notice of intended disposition but no later than 90 days after receiving a claim for disposition, the Federal agency or DHHL must send a written response to the claimant with a copy to any other party identified in the notice of intended disposition with priority for disposition.

(i) In the written response, the Federal agency or DHHL must state one of the following:

(A) The claim meets the criteria under paragraph (c)(3) of this section. The Federal agency or DHHL must send a disposition statement to the claimant under paragraph (c)(5) of this section, unless the Federal agency or DHHL receives additional, competing claims for disposition of human remains or cultural items.

(B) The claim does not meet the criteria under paragraph (c)(3) of this section. The Federal agency or DHHL must provide a detailed explanation why the claim does not meet the criteria and an opportunity for the claimant to provide additional information to meet the criteria.

(C) The Federal agency or DHHL has received competing claims for disposition of the human remains or cultural items that meet the criteria and must determine the most appropriate claimant using the procedures and deadlines under paragraph (c)(4)(ii) of this section.

(ii) At any time before sending a disposition statement for human remains or cultural items under paragraph (c)(5) of this section, the Federal agency or DHHL may receive additional, competing claims for disposition of the human remains or cultural items that meet the criteria under paragraph (c)(3) of this section. The Federal agency or DHHL must determine the most appropriate claimant using the priority for disposition under paragraph (a) of this section and the following procedures and deadlines:

(A) No later than 14 days after receiving a competing claim, the Federal agency or DHHL must send a written letter to each claimant identifying all claimants and the date each claim was received. In response, the claimants may provide additional information to show by a preponderance of the evidence that the claimant has a stronger relationship to the human remains or cultural items.

(B) No later than 180 days after informing the claimants of competing claims, the Federal agency or DHHL must send a written determination to each claimant identifying the most appropriate claimant(s).

(C) No earlier than 30 days but no later than 90 days after sending a determination of the most appropriate claimant(s), the Federal agency or DHHL must send a disposition statement to the most appropriate claimant(s) under paragraph (c)(5) of this section.

(5) *Step 5—Disposition of the human remains or cultural items.* No later than 90 days after responding to a claim for disposition that meets the criteria, the Federal agency or DHHL must send a written disposition statement to the claimant(s) and a copy to the Manager, National NAGPRA Program. A disposition statement must recognize the claimant(s) has ownership or control of the human remains or cultural items. In the case of joint claims for disposition, a disposition statement must identify and be sent to all claimants.

(i) After sending a disposition statement, the Federal agency or DHHL must:

(A) Consult with the claimant(s) on custody and physical transfer;

(B) Document any physical transfer; and

(C) Protect sensitive information, as identified by the claimant(s), from disclosure to the general public to the extent consistent with applicable law.

(ii) After a disposition statement is sent, nothing in the Act or this part:

(A) Limits the authority of the Federal agency or DHHL to enter into any agreement with the lineal descendant, Indian Tribe, or Native Hawaiian organization concerning the human remains or cultural items;

(B) Limits any procedural or substantive right which may otherwise be secured to the lineal descendant, Indian Tribe, or Native Hawaiian organization; or

(C) Prevents the governing body of an Indian Tribe or Native Hawaiian organization from expressly relinquishing its ownership or control of human remains, funerary objects, or sacred objects.

(d) *Unclaimed human remains or cultural items removed from Federal or Tribal lands.* When a Federal agency or DHHL has custody of unclaimed human remains or cultural items, the Federal agency or DHHL must report the human remains or cultural items.

(1) *Step 1—Submit a list of unclaimed human remains or cultural items.* No

later than January 13, 2025, the Federal agency or DHHL must submit to the Manager, National NAGPRA Program, a list of any unclaimed human remains or cultural items in its custody. The Federal agency or DHHL must submit updates to its list of unclaimed human remains or cultural items by December 31 each year.

(i) Human remains or cultural items are unclaimed when:

(A) One year after publishing a notice of intended disposition under paragraph (c)(2) of this section, no lineal descendant, Indian Tribe, or Native Hawaiian organization submits a written claim for disposition; or

(B) One year after discovery or excavation of the human remains or cultural items, the Federal agency or DHHL did not identify any lineal descendant, Indian Tribe, or Native Hawaiian organization with priority for disposition under paragraph (a) of this section.

(ii) A list of unclaimed human remains or cultural items must include:

(A) A description of the human remains or cultural items, including the date and geographical location by county and State of removal;

(B) The names of all consulting parties;

(C) If unclaimed under paragraph (d)(1)(i)(A) of this section, the name of each Indian Tribe or Native Hawaiian organization with priority for disposition under paragraph (a) of this section; and

(D) If unclaimed under paragraph (d)(1)(i)(B) of this section, the information considered under § 10.3(a) of this part and the criteria identified under § 10.3(b) of this part to explain why no Indian Tribe or Native Hawaiian organization with cultural affiliation could be identified.

(2) *Step 2—Agree to transfer or decide to reinter human remains or cultural items.* At the discretion of the Federal agency or DHHL, a Federal agency or DHHL may:

(i) Agree in writing to transfer unclaimed human remains or cultural items to an Indian Tribe or Native Hawaiian organization;

(ii) Decide in writing to reinter unclaimed human remains or cultural items according to applicable laws and policies; or

(iii) At any time before transferring or reinterring human remains or cultural items under paragraph (d)(4) of this section, the Federal agency or DHHL may receive a claim for disposition of the human remains or cultural items and must evaluate whether the claim meets the criteria under paragraph (c)(3) of this section. Any agreement to transfer or decision to reinter the human remains or cultural items under this paragraph is stayed until the claim for disposition is resolved under paragraph (c) of this section.

(A) If the claim meets the criteria under paragraph (c)(3) of this section and a notice of intended disposition was published under paragraph (c)(2) of this section, the Federal agency or DHHL must respond in writing under paragraph (c)(4) and proceed with disposition under (c)(5) of this section.

(B) If the claim meets the criteria under paragraph (c)(3) of this section but no notice of intended disposition was published, the Federal agency or DHHL must submit a notice of intended disposition under paragraph (c)(2), respond in writing under paragraph (c)(4), and proceed with disposition under (c)(5) of this section.

(C) If the claim does not meet the criteria under paragraph (c)(3) of this section, the Federal agency or DHHL must respond in writing under paragraph (c)(4) and may proceed with transfer or reinterment under paragraph (d)(3) of this section.

(3) *Step 3—Submit a notice of proposed transfer or reinterment.* No later than 30 days after agreeing to transfer or deciding to reinter the human remains or cultural items, the Federal agency or DHHL must submit a notice of proposed transfer or reinterment.

(i) A notice of proposed transfer or reinterment must be sent to any consulting parties and to the Manager, National NAGPRA Program, for publication in the **Federal Register**.

(ii) A notice of proposed transfer or reinterment must conform to the mandatory format of the **Federal Register** and include:

(A) An abstract of the information in the list of unclaimed human remains or cultural items under paragraph (d)(1)(ii) of this section;

(B) The Indian Tribe or Native Hawaiian organization requesting transfer of the human remains or cultural items or a statement that the Federal agency or DHHL agrees to reinter the human remains or cultural items;

(C) The name, phone number, email address, and mailing address of the appropriate official for the Federal agency or DHHL who is responsible for receiving claims for disposition; and

(D) The date (to be calculated by the **Federal Register** 30 days from the date of publication) after which the Federal agency or DHHL may proceed with the transfer or reinterment of the human remains or cultural items.

(iii) No later than 21 days after receiving a notice of proposed transfer or reinterment, the Manager, National NAGPRA Program, must:

(A) Approve for publication in the **Federal Register** any submission that conforms to the requirements under paragraph (d)(3)(ii) of this section; or

(B) Return to the Federal agency or DHHL any submission that does not conform to the requirements under paragraph (d)(3)(ii) of this section. No later than 14 days after the submission is returned, the Federal agency or DHHL must resubmit the notice of proposed transfer or reinterment.

(4) *Step 4—Transfer or reinter the human remains or cultural items.* No earlier than 30 days and no later than 90 days after publication of a notice of proposed transfer or reinterment, the Federal agency or DHHL must transfer or reinter the human remains or cultural items and send a written statement to the Manager, National NAGPRA Program, that the transfer or reinterment is complete.

(i) After transferring or reinterring, the Federal agency or DHHL must:

(A) Document the transfer or reinterment of the human remains or cultural items, and

(B) Protect sensitive information about the human remains or cultural items from disclosure to the general public to the extent consistent with applicable law.

(ii) After transfer or reinterment occurs, nothing in the Act or this part:

(A) Limits the authority of the Federal agency or DHHL to enter into any agreement with the requestor concerning the human remains or cultural items;

(B) Limits any procedural or substantive right which may otherwise be secured to the lineal descendant, Indian Tribe, or Native Hawaiian organization; or

(C) Prevents the governing body of an Indian Tribe or Native Hawaiian organization from expressly relinquishing its ownership or control of human remains, funerary objects, or sacred objects.

Subpart C—Repatriation of Human Remains or Cultural Items by Museums or Federal Agencies

§ 10.8 General.

Each museum and Federal agency that has possession or control of a holding or collection that may contain human remains, funerary objects, sacred objects, or objects of cultural patrimony must comply with the requirements of this subpart, regardless of the physical location of the holding or collection.

Each museum and Federal agency must identify one or more authorized representatives who are responsible for carrying out the requirements of this subpart.

(a) *Museum holding or collection.* A museum must comply with this subpart for any holding or collection under its possession or control that may contain human remains or cultural items, including a new holding or collection or a previously lost or previously unknown holding or collection.

(1) A museum must determine whether it has sufficient interest in a holding or collection to constitute possession or control on a case-by-case basis given the relevant information about the holding or collection.

(i) A museum may have custody of a holding or collection but not possession or control. In general, custody of a holding or collection through a loan, lease, license, bailment, or other similar arrangement is not sufficient interest to constitute possession or control, which resides with the loaning, leasing, licensing, bailing, or otherwise transferring museum or Federal agency.

(ii) If a museum has custody of a holding or collection, the museum may be required to report the holding or collection under paragraphs (c) or (d) of this section.

(2) Any museum that sends a repatriation statement for human remains or cultural items or that transfers or reinters human remains or associated funerary objects in good faith under this subpart shall not be liable for claims by an aggrieved party or for claims of breach of fiduciary duty, public trust, or violations of State law that are inconsistent with the provisions of the Act or this part.

(b) *Federal agency holding or collection.* A Federal agency must comply with this subpart for any holding or collection in its possession or control that may contain human remains or cultural items, including a previously lost or previously unknown holding or collection.

(1) A Federal agency must determine, given the relevant information, if a holding or collection:

(i) Was in its possession or control on or before November 16, 1990; or

(ii) Came into its possession or control after November 16, 1990, and was removed from:

(A) An unknown location; or

(B) Lands that are neither Federal nor Tribal lands as defined in this part.

(2) A Federal agency may have custody of a holding or collection that was removed from Federal or Tribal lands after November 16, 1990, and must comply with § 10.7(c) of this part.

(c) *Museums with custody of a Federal agency holding or collection.* No later than January 13, 2025, each museum that has custody of a Federal agency holding or collection that may contain Native American human remains or cultural items must submit a statement describing that holding or collection to the authorized representatives of the Federal agency most likely to have possession or control and to the Manager, National NAGPRA Program.

(1) No later than 180 days following receipt of a museum's statement, the Federal agency must respond to the museum and the Manager, National NAGPRA Program, with a written acknowledgement of one of the following:

(i) The Federal agency has possession or control of the holding or collection;

(ii) The Federal agency does not have possession or control of the holding or collection; or

(iii) The Federal agency and the museum agree that they have joint possession or control of the holding or collection.

(2) Failure to issue such a determination by the deadline constitutes acknowledgement that the Federal agency has possession or control. The Federal agency is responsible for the requirements of this subpart for any holdings or collections under its possession or control, regardless of the physical location of the holdings or collection.

(d) *Museums with custody of other holdings or collections.* No later than January 13, 2025, each museum that has custody of a holding or collection that may contain Native American human remains or cultural items and for which it cannot identify any person, institution, State or local government agency, or Federal agency with possession or control of the holding or collection, must submit a statement describing that holding or collection to the Manager, National NAGPRA Program.

(e) *Contesting actions on repatriation.* An affected party under § 10.12(c)(1)(ii) who wishes to contest actions made by museums or Federal agencies under this subpart is encouraged to do so through informal negotiations to achieve a fair resolution of the matter. Informal negotiations may include requesting the assistance of the Manager, National NAGPRA Program, or the Review Committee under § 10.12.

§ 10.9 Repatriation of unassociated funerary objects, sacred objects, or objects of cultural patrimony.

Each museum and Federal agency that has possession or control of a holding or collection that may contain an unassociated funerary object, sacred object, or object of cultural patrimony must follow the steps in this section. The purpose of this section is to provide general information about a holding or collection to lineal descendants, Indian Tribes, and Native Hawaiian organizations to facilitate repatriation.

(a) *Step 1—Compile a summary of a holding or collection.* Based on the information available, a museum or Federal agency must compile a summary describing any holding or collection that may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony. Depending on the scope of the holding or collection, a museum or Federal agency may organize its summary into sections based on geographical area, accession or catalog name or number, or other defining attributes. A museum or Federal agency must ensure the summary is comprehensive and covers any holding or collection relevant to this section.

(1) A summary must include:

(i) The estimated number and a general description of the holding or collection, including any potential cultural items;

(ii) The geographical location (provenience) by county or State where the potential cultural items;

(iii) The acquisition history (provenance) of the potential cultural items;

(iv) Other information relevant for identifying:

(A) A lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation, and

(B) Any object as an unassociated funerary object, sacred object, or object of cultural patrimony; and

(v) The presence of any potentially hazardous substances used to treat any of the unassociated funerary objects, sacred objects, or objects of cultural patrimony, if known.

(2) After January 12, 2024, a museum or Federal agency must submit a summary to the Manager, National NAGPRA Program, by the deadline in Table 1 of this paragraph (a)(2).

TABLE 1 TO § 10.9(a)(2)—DEADLINES FOR COMPILING A SUMMARY

If a museum or Federal agency . . .	. . . a summary must be submitted . . .
acquires possession or control of unassociated funerary objects, sacred objects, or objects of cultural patrimony.	6 months after acquiring possession or control of the unassociated funerary objects, sacred objects, or objects of cultural patrimony.
locates previously lost or unknown unassociated funerary objects, sacred objects, or objects of cultural patrimony.	6 months after locating the unassociated funerary objects, sacred objects, or objects of cultural patrimony.
receives Federal funds for the first time after January 12, 2024, and has possession or control of unassociated funerary objects, sacred objects, or objects of cultural patrimony.	3 years after receiving Federal funds for the first time after January 12, 2024.

(3) After January 12, 2024, when a holding or collection previously included in a summary is transferred to a museum or Federal agency, the museum or Federal agency acquiring possession or control of the holding or collection may rely on the previously compiled summary.

(i) No later than 30 days after acquiring the holding or collection, the museum or Federal agency must send the previously compiled summary to the Manager, National NAGPRA Program.

(ii) No later than the deadline in Table 1 to paragraph (a)(2) of this section, the museum or Federal agency must compile a summary under paragraph (a)(1) of this section based on the previously compiled summary and additional information available. The museum or Federal agency must submit the summary to the Manager, National NAGPRA Program, and must initiate consultation under paragraph (b) of this section.

(4) Prior to January 12, 2024, a museum or Federal agency must have submitted a summary to the Manager, National NAGPRA Program:

(i) By November 16, 1993, for unassociated funerary objects, sacred objects, or objects of cultural patrimony subject to the Act;

(ii) By October 20, 2007, for unassociated funerary objects, sacred objects, or objects of cultural patrimony acquired or located after November 16, 1993;

(iii) By April 20, 2010, for unassociated funerary objects, sacred objects, or objects of cultural patrimony in the possession or control of a museum that received Federal funds for the first time after November 16, 1993;

(iv) After October 20, 2007, six months after acquiring or locating unassociated funerary objects, sacred objects, or objects of cultural patrimony; or

(v) After April 20, 2010, three years after receiving Federal funds for the first time.

(b) *Step 2—Initiate consultation.* No later than 30 days after compiling a summary, a museum or Federal agency must identify consulting parties based on information available and invite the parties to consult.

(1) Consulting parties are any lineal descendant and any Indian Tribe or Native Hawaiian organization with potential cultural affiliation.

(2) An invitation to consult must be in writing and must include:

(i) The summary described in paragraph (a)(1) of this section;

(ii) The names of all consulting parties; and

(iii) A proposed method for consultation.

(3) When a museum or Federal agency identifies a new consulting party under paragraph (b)(1) of this section, the museum or Federal agency must invite the party to consult. An invitation to consult under paragraph (b)(2) of this section must be sent:

(i) No later than 30 days after identifying a new consulting party based on new information; or

(ii) No later than six months after the addition of a Tribal entity to the list of federally recognized Indian Tribes published in the **Federal Register** pursuant to the Act of November 2, 1994 (25 U.S.C. 5131).

(c) *Step 3—Consult on cultural items.* A museum or Federal agency must respond to any consulting party, regardless of whether the party has received an invitation to consult. Consultation on an unassociated funerary object, sacred object, or object of cultural patrimony may continue until the museum or Federal agency sends a repatriation statement for that object to a requestor under paragraph (g) of this section.

(1) In response to a consulting party, a museum or Federal agency must ask for the following information, if not already provided:

(i) Preferences on the proposed timeline and method for consultation; and

(ii) The name, phone number, email address, or mailing address for any authorized representative, traditional religious leader, and known lineal descendant who may participate in consultation.

(2) Consultation must address identification of:

(i) Lineal descendants;

(ii) Indian Tribes or Native Hawaiian organizations with cultural affiliation;

(iii) The types of objects that might be unassociated funerary objects, sacred objects, or objects of cultural patrimony; and

(iv) The duty of care under § 10.1(d) for unassociated funerary objects, sacred objects, or objects of cultural patrimony.

(3) The museum or Federal agency must prepare a record of consultation that describes the concurrence, disagreement, or nonresponse of the consulting parties to the identifications in paragraph (c)(2) of this section.

(4) At any time before a museum or Federal agency sends a repatriation statement for an unassociated funerary object, sacred object, or object of cultural patrimony to a requestor under paragraph (g) of this section, the museum or Federal agency may receive a request from a consulting party for access to records, catalogues, relevant studies, or other pertinent data related to the holding or collection. A museum or Federal agency must provide access to the additional information in a reasonable manner and for the limited purpose of determining cultural affiliation, including the geographical location or acquisition history, of the unassociated funerary object, sacred object, or object of cultural patrimony.

(d) *Step 4—Receive and consider a request for repatriation.* After a summary is compiled, any lineal descendant, Indian Tribe, or Native Hawaiian organization may submit to the museum or Federal agency a written request for repatriation of an unassociated funerary object, sacred object, or object of cultural patrimony.

(1) A request for repatriation of an unassociated funerary object, sacred object, or object of cultural patrimony must be received by the museum or Federal agency before the museum or Federal agency sends a repatriation statement for that unassociated funerary object, sacred object, or object of cultural patrimony to a requestor under paragraph (g) of this section. A request for repatriation received by the museum or Federal agency before the deadline

for compiling a summary in table 1 to paragraph (a)(2) of this section is dated the same date as the deadline for compiling the summary.

(2) Requests from two or more lineal descendants, Indian Tribes, or Native Hawaiian organizations who agree to joint repatriation of the unassociated funerary object, sacred object, or object of cultural patrimony are considered a single request and not competing requests.

(3) A request for repatriation must satisfy the following criteria:

(i) Each unassociated funerary object, sacred object, or object of cultural patrimony being requested meets the definition of an unassociated funerary object, a sacred object, or an object of cultural patrimony;

(ii) The request is from a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation; and

(iii) The request includes information to support a finding that the museum or Federal agency does not have right of possession to the unassociated funerary object, sacred object, or object of cultural patrimony.

(e) *Step 5—Respond to a request for repatriation.* No later than 90 days after receiving a request for repatriation, a museum or Federal agency must send a written response to the requestor with a copy to any other consulting party. Using the information available, including relevant records, catalogs, existing studies, and the results of consultation, a museum or Federal agency must determine if the request for repatriation satisfies the criteria under paragraph (d) of this section. In the written response, the museum or Federal agency must state one of the following:

(1) The request meets the criteria under paragraph (d) of this section. The museum or Federal agency must submit a notice of intended repatriation under paragraph (f) of this section.

(2) The request does not meet the criteria under paragraph (d) of this section. The museum or Federal agency must provide a detailed explanation why the request does not meet the criteria and an opportunity for the requestor to provide additional information to meet the criteria.

(3) The request meets the criteria under paragraph (d)(3)(i) and (ii) of this section, but the museum or Federal agency asserts a right of possession to the unassociated funerary object, sacred object, or object of cultural patrimony and refuses repatriation of the requested object to the requestor. The museum or Federal agency must provide information to prove that the museum or Federal agency has a right of possession to the unassociated funerary object, sacred object, or object of cultural patrimony.

(4) The museum or Federal agency has received competing requests for repatriation of the unassociated funerary object, sacred object, or object of cultural patrimony that meet the criteria and must determine the most appropriate requestor using the procedures and deadlines under paragraph (h) of this section.

(f) *Step 6—Submit a notice of intended repatriation.* No later than 30 days after responding to a request for repatriation that meets the criteria, a museum or Federal agency must submit a notice of intended repatriation. The museum or Federal agency may include in a single notice any unassociated funerary objects, sacred objects, or objects of cultural patrimony with the same requestor.

(1) A notice of intended repatriation must be sent to all requestors, any consulting parties, and to the Manager, National NAGPRA Program, for publication in the **Federal Register**.

(2) A notice of intended repatriation must conform to the mandatory format of the **Federal Register** and include:

(i) An abstract of the information compiled under paragraph (a) of this section;

(ii) The total number and brief description of the unassociated funerary objects, sacred objects, or objects of cultural patrimony (counted separately or by lot);

(iii) The lineal descendant (whose name may be withheld), Indian Tribe, or Native Hawaiian organization requesting repatriation of the unassociated funerary objects, sacred objects, or objects of cultural patrimony;

(iv) The name, phone number, email address, and mailing address for the authorized representative of the museum or Federal agency who is responsible for receiving requests for repatriation; and

(v) The date (to be calculated by the **Federal Register** 30 days from the date of publication) after which the museum or Federal agency may send a repatriation statement to the requestor.

(3) No later than 21 days after receiving a notice of intended repatriation, the Manager, National NAGPRA Program, must:

(i) Approve for publication in the **Federal Register** any submission that conforms to the requirements under paragraph (f)(2) of this section; or

(ii) Return to the museum or Federal agency any submission that does not conform to the requirements under paragraph (f)(2) of this section. No later than 14 days after the submission is returned, the museum or Federal agency must resubmit the notice of intended repatriation.

(5) At any time before sending a repatriation statement for an unassociated funerary object, sacred object, or object of cultural patrimony under paragraph (g) of this section, the museum or Federal agency may receive additional, competing requests for repatriation of that object that meet the criteria under paragraph (d) of this section. The museum or Federal agency must determine the most appropriate requestor using the procedures and deadlines under paragraph (h) of this section.

(g) *Step 7—Repatriation of the unassociated funerary object, sacred object, or object of cultural patrimony.* No earlier than 30 days and no later than 90 days after publication of a notice of intended repatriation, a museum or Federal agency must send a written repatriation statement to the requestor and a copy to the Manager, National NAGPRA Program. In a repatriation statement, a museum or Federal agency must relinquish possession or control of the unassociated funerary object, sacred object, or object of cultural patrimony to the lineal descendant, Indian Tribe, or Native Hawaiian organization. In the case of joint requests for repatriation, a repatriation statement must identify and be sent to all requestors.

(1) After sending a repatriation statement, the museum or Federal agency must:

(i) Consult with the requestor on custody and physical transfer;

(ii) Document any physical transfer; and

(iii) Protect sensitive information, as identified by the requestor, from disclosure to the general public to the extent consistent with applicable law.

(2) After a repatriation statement is sent, nothing in the Act or this part limits the authority of the museum or Federal agency to enter into any agreement with the requestor concerning the unassociated funerary object, sacred object, or object of cultural patrimony.

(h) *Evaluating competing requests for repatriation.* At any time before sending a repatriation statement for an unassociated funerary object, sacred object, or object of cultural patrimony under paragraph (g) of this section, a museum or Federal agency may receive additional, competing requests for repatriation of that object that meet the criteria under paragraph (d) of this section. The museum or Federal agency

must determine the most appropriate requestor using this paragraph.

(1) For an unassociated funerary object or sacred object, in the following priority order, the most appropriate requestor is:

(i) The lineal descendant, if any; or

(ii) The Indian Tribe or Native Hawaiian organization with the closest cultural affiliation according to the priority order at § 10.3(e) of this part.

(2) For an object of cultural patrimony, the most appropriate requestor is the Indian Tribe or Native Hawaiian organization with the closest cultural affiliation according to the priority order at § 10.3(e) of this part.

(3) No later than 14 days after receiving a competing request, a museum or Federal agency must send a written letter to each requestor identifying all requestors and the date each request was received. In response, the requestors may provide additional information to show by a preponderance of the evidence that the requestor has a stronger relationship of shared group identity to the cultural items.

(4) No later than 180 days after informing the requestors of competing requests, a museum or Federal agency must send a written determination to each requestor and the Manager, National NAGPRA Program. The determination must be one of the following:

(i) The most appropriate requestor has been determined and the competing requests were received before the publication of a notice of intended repatriation. The museum or Federal agency must:

(A) Identify the most appropriate requestor and explain how the determination was made;

(B) Submit a notice of intended repatriation in accordance with paragraph (f) of this section no later than 30 days after sending the determination; and

(C) No earlier than 30 days and no later than 90 days after publication of the notice of intended repatriation, the museum or Federal agency must send a repatriation statement to the most appropriate requestor under paragraph (g) of this section;

(ii) The most appropriate requestor has been determined and a notice of intended repatriation was previously published. The museum or Federal agency must:

(A) Identify the most appropriate requestor and explain how the determination was made; and

(B) No earlier than 30 days and no later than 90 days after sending a determination of the most appropriate requestor, the museum or Federal agency must send a repatriation statement to the most appropriate requestor under paragraph (g) of this section; or

(iii) The most appropriate requestor cannot be determined, and repatriation is stayed under paragraph (i)(2) of this section. The museum or Federal agency must briefly describe the information considered and explain how the determination was made.

(i) *Stay of repatriation.* Repatriation under paragraph (g) of this section is stayed if:

(1) A court of competent jurisdiction has enjoined the repatriation. When there is a final resolution of the legal case or controversy in favor of a requestor, the museum or Federal agency must:

(i) No later than 14 days after a resolution, send a written statement of the resolution to each requestor and the Manager, National NAGPRA Program;

(ii) No earlier than 30 days and no later than 90 days after sending the written statement, the museum or Federal agency must send a repatriation statement to the requestor under paragraph (g) of this section, unless a court of competent jurisdiction directs otherwise.

(2) The museum or Federal agency has received competing requests for repatriation and, after complying with paragraph (h) of this section, cannot determine the most appropriate requestor. When a most appropriate requestor is determined by an agreement between the parties, binding arbitration, or means of resolution other than through a court of competent jurisdiction, the museum or Federal agency must:

(i) No later than 14 days after a resolution, send a written determination to each requestor and the Manager, National NAGPRA Program;

(ii) No earlier than 30 days and no later than 90 days after sending the determination, the museum or Federal agency must send a repatriation statement to the requestor under paragraph (g) of this section.

(3) Before the publication of a notice of intended repatriation under paragraph (f) of this section, the museum or Federal agency has both requested and received the Assistant Secretary's written concurrence that the unassociated funerary object, sacred object, or object of cultural patrimony is indispensable for completion of a specific scientific study, the outcome of which is of major benefit to the people of the United States.

(i) To request the Assistant Secretary's concurrence, the museum or Federal agency must send to the Manager, National NAGPRA Program, a written request of no more than 10 double-spaced pages. The written request must:

(A) Be on the letterhead of the requesting museum or Federal agency and be signed by an authorized representative;

(B) Describe the specific scientific study, the date on which the study commenced, and how the study is of major benefit to the people of the United States;

(C) Explain why retention of the unassociated funerary object, sacred object, or object of cultural patrimony is indispensable for completion of the study;

(D) Describe the steps required to complete the study, including any destructive analysis, and provide a completion schedule and completion date;

(E) Provide the position titles of the persons responsible for each step in the schedule;

(F) Affirm that the study has in place the requisite funding; and

(G) Provide written documentation showing free, prior, and informed consent from lineal descendants, Indian Tribes, or Native Hawaiian organizations to the study.

(ii) In response to the request, the Assistant Secretary must:

(A) Consult with lineal descendants, Indian Tribes, or Native Hawaiian organizations that consented to the study;

(B) Send a written determination of concurrence or denial to the museum or Federal agency with a copy to the consulting parties; and

(C) If the Assistant Secretary concurs, specify in the written determination the date by which the scientific study must be completed.

(iii) No later than 30 days after the completion date in the Assistant Secretary's determination, the museum or Federal agency must submit a notice of intended repatriation in accordance with paragraph (f) of this section.

(iv) No earlier than 30 days and no later than 90 days after publication of the notice of intended repatriation, the museum or Federal agency must send a repatriation statement to the requestor under paragraph (g) of this section.

§ 10.10 Repatriation of human remains or associated funerary objects.

Each museum and Federal agency that has possession or control of a holding or collection that may contain human remains or associated funerary objects must follow the steps in this section. The purpose of this section is to provide notice of determinations, following consultation, about human remains or

associated funerary objects to lineal descendants, Indian Tribes, and Native Hawaiian organizations to facilitate repatriation.

(a) *Step 1—Compile an itemized list of any human remains and associated funerary objects.* Based on information available, a museum or Federal agency must compile a simple itemized list of any human remains and associated funerary objects in a holding or collection. Depending on the scope of the holding or collection, a museum or Federal agency may organize its itemized list into sections based on geographical area, accession or catalog name or number, or other defining attributes. A museum or Federal agency must ensure the itemized list is comprehensive and covers all holdings or collections relevant to this section. The simple itemized list must include:

(1) The number of individuals identified in a reasonable manner based on the information available. No additional study or analysis is required to identify the number of individuals. If human remains are in a holding or collection, the number of individuals is at least one;

(2) The number of associated funerary objects and types of objects (counted separately or by lot);

(3) The geographical location (provenience) by county or State where the human remains or associated funerary objects were removed;

(4) The acquisition history (provenance) of the human remains or associated funerary objects;

(5) Other information available for identifying a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation; and

(6) The presence of any potentially hazardous substances used to treat any of the human remains or associated funerary objects, if known.

(b) *Step 2—Initiate consultation.* As soon as possible after compiling an itemized list, a museum or Federal agency must identify consulting parties based on information available and invite the parties to consult.

(1) Consulting parties are any lineal descendant and any Indian Tribe or Native Hawaiian organization with potential cultural affiliation.

(2) An invitation to consult must be in writing and must include:

(i) The itemized list described in paragraph (a) of this section;

(ii) The names of all consulting parties; and

(iii) A proposed timeline and method for consultation.

(3) When a museum or Federal agency identifies a new consulting party under paragraph (b)(1) of this section, the museum or Federal agency must invite the party to consult. An invitation to consult under paragraph (b)(2) of this section must be sent:

(i) No later than 30 days after identifying a new consulting party based on new information; or

(ii) No later than two years after the addition of a Tribal entity to the list of federally recognized Indian Tribes published in the **Federal Register** pursuant to the Act of November 2, 1994 (25 U.S.C. 5131).

(c) *Step 3—Consult on human remains or associated funerary objects.* A museum or Federal agency must respond to any consulting party, regardless of whether the party has received an invitation to consult. Consultation on human remains or associated funerary objects may continue until the museum or Federal agency sends a repatriation statement for those human remains or associated funerary objects to a requestor under paragraph (h) of this section.

(1) In the response to a consulting party, a museum or Federal agency must ask for the following information, if not already provided:

(i) Preferences on the proposed timeline and method for consultation; and

(ii) The name, phone number, email address, or mailing address for any authorized representative, traditional religious leader, and known lineal descendant who may participate in consultation.

(2) Consultation must address identification of:

(i) Lineal descendants;

(ii) Indian Tribes or Native Hawaiian organizations with cultural affiliation;

(iii) The types of objects that might be associated funerary objects, including any objects that were made exclusively for burial purposes or to contain human remains; and

(iv) The duty of care under § 10.1(d) for human remains or associated funerary objects.

(3) The museum or Federal agency must prepare a record of consultation that describes the concurrence, disagreement, or nonresponse of the consulting parties to the identifications in paragraph (c)(2) of this section.

(4) At any time before the museum or Federal agency sends a repatriation statement for human remains or associated funerary objects to a requestor under paragraph (h) of this section, a museum or Federal agency may receive a request from a consulting party for access to records, catalogues, relevant studies, or other pertinent data related to those human remains or associated funerary objects. A museum or Federal agency must provide access to the additional information in a reasonable manner and for the limited purpose of determining cultural affiliation, including the geographical location or acquisition history, of the human remains or associated funerary objects.

(d) *Step 4—Complete an inventory of human remains or associated funerary objects.* Based on information available and the results of consultation, a museum or Federal agency must submit to all consulting parties and the Manager, National NAGPRA Program, an inventory of any human remains and associated funerary objects in the holding or collection.

(1) An inventory must include:

(i) The names of all consulting parties and dates of consultation;

(ii) The information, updated as appropriate, from the itemized list compiled under paragraph (a) of this section;

(iii) For each entry in the itemized list, a determination identifying one of the following:

(A) A known lineal descendant (whose name may be withheld);

(B) The Indian Tribe or Native Hawaiian organization with cultural affiliation that is clearly identified by the information available about the human remains or associated funerary objects;

(C) The Indian Tribe or Native Hawaiian organization with cultural affiliation that is reasonably identified by the geographical location or acquisition history of the human remains or associated funerary objects; or

(D) No lineal descendant or any Indian Tribe or Native Hawaiian organization with cultural affiliation can be clearly or reasonably identified. The inventory must briefly describe the information considered under § 10.3(a) of this part and the criteria identified under § 10.3(b) of this part to explain how the determination was made.

(2) After January 12, 2024, a museum or Federal agency must submit an inventory to all consulting parties and the Manager, National NAGPRA Program, by the deadline in table 1 of the paragraph (d)(2).

TABLE 1 TO § 10.10(d)(2)—DEADLINES FOR COMPLETING AN INVENTORY

If a museum or Federal agency . . .	an inventory must be submitted . . .
acquires possession or control of human remains or associated funerary objects.	2 years after acquiring possession or control of human remains or associated funerary objects.
locates previously lost or unknown human remains or associated funerary objects.	2 years after locating the human remains or associated funerary objects.
receives Federal funds for the first time after January 12, 2024, and has possession or control of human remains or associated funerary objects.	5 years after receiving Federal funds for the first time after January 12, 2024.

(3) No later than January 10, 2029, for any human remains or associated funerary objects listed in an inventory but not published in a notice of inventory completion prior to January 12, 2024, a museum or Federal agency must:

(i) Initiate consultation as described under paragraph (b) of this section;

(ii) Consult with consulting parties as described under paragraph (c) of this section;

(iii) Update its inventory under paragraph (d)(1) of this section and ensure the inventory is comprehensive and covers all holdings or collections relevant to this section; and

(iv) Submit an updated inventory to all consulting parties and the Manager, National NAGPRA Program.

(4) After January 12, 2024, when a holding or collection previously included in an inventory is transferred to a museum or Federal Agency, subject to the limitations in 18 U.S.C. 1170(a), the museum or Federal agency acquiring possession or control of the holding or collection may rely on the previously completed or updated inventory.

(i) No later than 30 days after acquiring the holding or collection, the museum or Federal agency must send the previously completed or updated inventory to initiate consultation under paragraph (b) of this section and notify the Manager, National NAGPRA Program.

(ii) No later than the deadline in Table 1 to paragraph (d)(2) of this section, the museum or Federal agency must complete an inventory under paragraphs (d)(1) and (d)(2) of this section based on the previously completed or updated inventory, additional information available, and the results of consultation.

(5) Any museum may request an extension to complete or update its inventory if it has made a good faith effort but is unable to do so by the appropriate deadline. A request for an extension must be submitted to the Manager, National NAGPRA Program, before the appropriate deadline. The Manager, National NAGPRA Program must publish in the **Federal Register** a list of any museum who request an extension and the Assistant Secretary's determination on the request. A request for an extension must include:

(i) Information showing the initiation of consultation;

(ii) The names of all consulting parties and consent to the extension request from a majority of consulting parties, evidenced by a signed agreement or official correspondence to the museum;

(iii) The estimated number of human remains and associated funerary objects in the holding or collection; and

(iv) A written plan for completing or updating the inventory, which includes, at minimum:

(A) The specific steps required to complete or update the inventory;

(B) A schedule for completing each step and estimated inventory completion or update date;

(C) Position titles of the persons responsible for each step in the schedule; and

(D) A proposal to obtain any requisite funding needed to complete or update the inventory.

(6) Prior to January 12, 2024, a museum or Federal agency must have submitted an inventory to all consulting parties and the Manager, National NAGPRA Program:

(i) By November 16, 1995, for human remains or associated funerary objects subject to the Act;

(ii) By April 20, 2009, for human remains or associated funerary objects acquired or located after November 16, 1995;

(iii) By April 20, 2012, for human remains or associated funerary objects in the possession or control of a museum that received Federal funds for the first time after November 16, 1995;

(iv) After April 20, 2009, two years after acquiring or locating the human remains or associated funerary objects; or

(v) After April 20, 2012, five years after receiving Federal funds for the first time after April 20, 2012.

(e) *Step 5—Submit a notice of inventory completion.* No later than six months after completing or updating an inventory under paragraph (d) of this section, a museum or Federal agency must submit a notice of inventory completion for all human remains or associated funerary objects in the inventory. The museum or Federal agency may include in a single notice any human remains or associated funerary objects having the same determination under paragraph (d)(1)(iii) of this section.

(1) A notice of inventory completion must be sent to any consulting parties and to the Manager, National NAGPRA Program, for publication in the **Federal Register**.

(2) A notice of inventory completion must conform to the mandatory format of the **Federal Register** and include the following for all human remains or associated funerary objects in the notice:

(i) An abstract of the information compiled under paragraph (d)(1)(ii) of this section;

(ii) The determination under paragraph (d)(1)(iii) of this section;

(iii) The total number of individuals and associated funerary objects (counted separately or by lot);

(iv) The name, phone number, email address, and mailing address for the authorized representative of the museum or Federal agency who is responsible for receiving requests for repatriation; and

(v) The date (to be calculated by the **Federal Register** 30 days from the date of publication) after which the museum or Federal agency may send a repatriation statement to a requestor.

(3) No later than 21 days after receiving a notice of inventory completion, the Manager, National NAGPRA Program, must:

(i) Approve for publication in the **Federal Register** any submission that conforms to the requirements under paragraph (e)(2) of this section; or

(ii) Return to the museum or Federal agency any submission that does not conform to the requirements under paragraph (e)(2) of this section. No later than 14 days after the submission is returned, the museum or Federal agency must resubmit the notice of inventory completion.

(f) *Step 6—Receive and consider a request for repatriation.* After publication of a notice of inventory completion in the **Federal Register**, any lineal descendant, Indian Tribe, or Native Hawaiian organization may submit to the museum or Federal agency a written request for repatriation of human remains or associated funerary objects.

(1) A request for repatriation of human remains or associated funerary objects must be received by the museum or Federal agency before the museum or Federal agency sends a repatriation statement for those human remains or associated funerary objects under paragraph (h) of this section. A request for repatriation received by the museum or Federal agency before the publication of the notice of inventory completion is dated the same date the notice was published.

(2) Requests from two or more lineal descendants, Indian Tribes, or Native Hawaiian organizations who agree to joint repatriation of the human remains or associated funerary objects are considered a single request and not competing requests.

(3) A request for repatriation must satisfy one of the following criteria:

(i) The requestor is identified in the notice of inventory completion, or

(ii) The requestor is not identified in the notice of inventory completion, and the request shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

(g) *Step 7—Respond to a request for repatriation.* No earlier than 30 days after publication of a notice of inventory completion but no later than 90 days after receiving a request for repatriation, a museum or Federal agency must send a written response to the requestor with a copy to any other party identified in the notice of inventory completion. Using the information available, including relevant records, catalogs, existing studies, and the results of consultation, a museum or Federal agency must determine if the request satisfies the criteria under paragraph (f) of this section.

(1) In the written response, the museum or Federal agency must state one of the following:

(i) The request meets the criteria under paragraph (f) of this section. The museum or Federal agency must send a repatriation statement to the requestor under paragraph (h) of this section, unless the museum or Federal agency receives additional, competing requests for repatriation.

(ii) The request does not meet the criteria under paragraph (f) of this section. The museum or Federal agency must provide a detailed explanation why the request does not meet the criteria, and an opportunity for the requestor to provide additional information to meet the criteria.

(iii) The museum or Federal agency has received competing requests for repatriation that meet the criteria and must determine the most appropriate requestor using the procedures and deadlines under paragraph (i) of this section.

(2) At any time before sending a repatriation statement for human remains or associated funerary objects under paragraph (h) of this section, the museum or Federal agency may receive additional, competing requests for repatriation of those human remains or associated funerary objects that meet the criteria under paragraph (f) of this section. The museum or Federal agency must determine the most appropriate requestor using the procedures and deadlines under paragraph (i) of this section.

(h) *Step 8—Repatriation of the human remains or associated funerary objects.* No later than 90 days after responding to a request for repatriation that meets the criteria, a museum or Federal agency must send a written repatriation statement to the requestor and a copy to the Manager, National NAGPRA Program. In a repatriation statement, a museum or Federal agency must relinquish possession or control of the human remains or associated funerary objects to a lineal descendant, Indian Tribe, or Native Hawaiian organization. In the case of joint requests for repatriation, a repatriation statement must identify and be sent to all requestors.

(1) After sending a repatriation statement, the museum or Federal agency must:

(i) Consult with the requestor on custody and physical transfer,

(ii) Document any physical transfer, and

(iii) Protect sensitive information, as identified by the requestor, from disclosure to the general public to the extent consistent with applicable law.

(2) After a repatriation statement is sent, nothing in the Act or this part limits the authority of the museum or Federal agency to enter into any agreement with the requestor concerning the human remains or associated funerary objects.

(i) *Evaluating competing requests for repatriation.* At any time before sending a repatriation statement for human remains or associated funerary objects under paragraph (h) of this section, a museum or Federal agency may receive additional, competing requests for repatriation of those human remains or associated funerary objects that meets the criteria under paragraph (f) of this section. The museum or Federal agency must determine the most appropriate requestor using this paragraph.

(1) In the following priority order, the most appropriate requestor is:

(i) The known lineal descendant, if any; or

(ii) The Indian Tribe or Native Hawaiian organization with the closest cultural affiliation according to the priority order at § 10.3(e) of this part.

(2) No later than 14 days after receiving a competing request, a museum or Federal agency must send a written letter to each requestor identifying all requestors and the date each request for repatriation was received. In response, requestors may provide additional information to show by a preponderance of the evidence that the requestor has a stronger relationship of shared group identity to the human remains or associated funerary objects.

(3) No later than 180 days after informing the requestors of competing requests, a museum or Federal agency must send a written determination to each requestor and the Manager, National NAGPRA Program. The determination must be one of the following:

(i) The most appropriate requestor has been determined. The museum or Federal agency must:

(A) Identify the most appropriate requestor and explain how the determination was made;

(B) No earlier than 30 days and no later than 90 days after sending a determination of the most appropriate requestor, the museum or Federal agency must send a repatriation statement to the most appropriate requestor under paragraph (h) of this section.

(ii) The most appropriate requestor cannot be determined, and repatriation is stayed under paragraph (j)(2) of this section. The museum or Federal agency must briefly describe the information considered and explain how the determination was made.

(j) *Stay of repatriation.* Repatriation under paragraph (h) of this section is stayed if:

(1) A court of competent jurisdiction has enjoined the repatriation. When there is a final resolution of the legal case or controversy in favor of a requestor, the museum or Federal agency must:

(i) No later than 14 days after a resolution, send a written statement of

the resolution to each requestor and the Manager, National NAGPRA Program;

(ii) No earlier than 30 days and no later than 90 days after sending the written statement, the museum or Federal agency must send a repatriation statement to the requestor under paragraph (h) of this section, unless a court of competent jurisdiction directs otherwise.

(2) The museum or Federal agency has received competing requests for repatriation and, after complying with paragraph (i) of this section, cannot determine the most appropriate requestor. When a most appropriate requestor is determined by an agreement between the parties, binding arbitration, or means of resolution other than through a court of competent jurisdiction, the museum or Federal agency must:

(i) No later than 14 days after a resolution, send a written determination to each requestor and the Manager, National NAGPRA Program;

(ii) No earlier than 30 days and no later than 90 days after sending the determination, the museum or Federal agency must send a repatriation statement to the requestor under paragraph (h) of this section.

(3) Before the publication of a notice of inventory completion under paragraph (e) of this section, the museum or Federal agency has both requested and received the Assistant Secretary's written concurrence that the human remains or associated funerary objects are indispensable for completion of a specific scientific study, the outcome of which is of major benefit to the people of the United States.

(i) To request the Assistant Secretary's concurrence, the museum or Federal agency must send to the Manager, National NAGPRA Program, a written request of no more than 10 double-spaced pages. The written request must:

(A) Be on the letterhead of the requesting museum or Federal agency and be signed by an authorized representative;

(B) Describe the specific scientific study, the date on which the study commenced, and how the study is of major benefit to the people of the United States;

(C) Explain why retention of the human remains or associated funerary objects is indispensable for completion of the study;

(D) Describe the steps required to complete the study, including any destructive analysis, and provide a completion schedule and completion date;

(E) Provide the position titles of the persons responsible for each step in the schedule;

(F) Affirm that the study has in place the requisite funding; and

(G) Provide written documentation showing free, prior, and informed consent from lineal descendants, Indian Tribes, or Native Hawaiian organizations to the study.

(ii) In response to the request, the Assistant Secretary must:

(A) Consult with lineal descendants, Indian Tribes, or Native Hawaiian organizations that consented to the study;

(B) Send a written determination of concurrence or denial to the museum or Federal agency with a copy to the consulting parties; and

(C) If the Assistant Secretary concurs, specify in the written determination the date by which the scientific study must be completed.

(iii) No later than 30 days after the completion date in the Assistant Secretary's concurrence, the museum or Federal agency must submit a notice of inventory completion in accordance with paragraph (e) of this section.

(iv) No earlier than 30 days after publication of the notice of inventory completion and no later than 90 days after responding to a request for repatriation, the museum or Federal agency must send a repatriation statement to the requestor under paragraph (h) of this section.

(k) *Transfer or reinter human remains or associated funerary objects.* For human remains or associated funerary objects with no lineal descendant or no Indian Tribe or Native Hawaiian organization with cultural affiliation, a museum or Federal agency, at its discretion, may agree to transfer or decide to reinter the human remains or associated funerary objects. The museum or Federal agency must ensure it has initiated consultation under paragraph (b) of this section before taking any of the following steps.

(1) *Step 1—Agree to transfer or decide to reinter.* A museum or Federal agency may:

(i) Agree in writing to transfer the human remains or associated funerary objects to an Indian Tribe or Native Hawaiian organization;

(ii) Decide in writing to reinter the human remains or associated funerary objects according to applicable laws and policies; or

(iii) Receive a request for repatriation of the human remains or associated funerary objects at any time before transfer or reinterment and must evaluate whether the request meets the criteria under paragraph (f) of this section.

(A) If the request for repatriation meets the criteria under paragraph (f) of this section, the museum or Federal agency must respond in writing under paragraph (g) of this section and proceed with repatriation under paragraph (h) of this section.

(B) If the request does not meet the criteria under paragraph (f) of this section, the museum or Federal agency must respond in writing under paragraph (g) of this section and may proceed with transfer or reinterment after publication of a notice.

(2) *Step 2—Submit a notice of proposed transfer or reinterment.* No later than 30 days after agreeing to transfer or deciding to reinter the human remains or associated funerary objects, the museum or Federal agency must submit a notice of proposed transfer or reinterment.

(i) A notice of proposed transfer or reinterment must be sent to all consulting parties and to the Manager, National NAGPRA Program, for publication in the **Federal Register**.

(ii) A notice of proposed transfer or reinterment must conform to the mandatory format of the **Federal Register** and include:

(A) An abstract of the information compiled under paragraph (d)(1)(ii) of this section;

(B) The total number of individuals and associated funerary objects (counted separately or by lot);

(C) The determination under paragraph (d)(1)(iii)(D) of this section that no lineal descendant or any Indian Tribe or Native Hawaiian organization with cultural affiliation can be clearly or reasonably identified. The notice must briefly describe the information considered and explain how the determination was made.

(D) The names of all consulting parties identified under paragraph (b) of this section;

(E) The Indian Tribe or Native Hawaiian organization requesting the human remains or associated funerary objects or a statement that the museum or Federal agency agrees to reinter the human remains or associated funerary objects;

(F) The name, phone number, email address, and mailing address for the authorized representative of the museum or Federal agency who is responsible for receiving requests for repatriation; and

(G) The date (to be calculated by the **Federal Register** 30 days from the date of publication) after which the museum or Federal agency may proceed with the

transfer or reinterment of the human remains or associated funerary objects.

(iii) No later than 21 days after receiving a notice of proposed transfer or reinterment, the Manager, National NAGPRA Program, must:

(A) Approve for publication in the **Federal Register** any submission that conforms to the requirements under paragraph (k)(2)(ii) of this section; or

(B) Return to the museum or Federal agency any submission that does not conform to the requirements under paragraph (k)(2)(ii) of this section. No later than 14 days after the submission is returned, the museum or Federal agency must resubmit the notice of proposed transfer or reinterment.

(3) *Step 3—Transfer or reinter the human remains or associated funerary objects.* No earlier than 30 days and no later than 90 days after publication of a notice of proposed transfer or reinterment, the museum or Federal agency must transfer or reinter the human remains or associated funerary objects and send a written statement to the Manager, National NAGPRA Program, that the transfer or reinterment is complete.

(i) After transferring or reinterring, the museum or Federal agency must:

(A) Document the transfer or reinterment of the human remains or associated funerary objects, and

(B) Protect sensitive information from disclosure to the general public to the extent consistent with applicable law.

(ii) After transfer or reinterment occurs, nothing in the Act or this part limits the authority of the museum or Federal agency to enter into any agreement with the requestor concerning the human remains or associated funerary objects.

§ 10.11 Civil penalties.

Any museum that fails to comply with the requirements of the Act or this subpart may be assessed a civil penalty by the Assistant Secretary. This section does not apply to Federal agencies, but a Federal agency's failure to comply with the requirements of the Act or this part may be subject to other remedies under Federal law. Each instance of failure to comply constitutes a separate violation. The Assistant Secretary must serve the museum with a written notice of failure to comply under paragraph (d) of this section or a notice of assessment under paragraph (g) of this section by personal delivery with proof of delivery date, certified mail with return receipt, or private delivery service with proof of delivery date.

(a) *File an allegation.* Any person may file an allegation of failure to comply by sending a written allegation to the Manager, National NAGPRA Program. Each allegation:

(1) Must include the name and contact information (either a mailing address, telephone number, or email address) of the person alleging the failure to comply;

(2) Must identify the specific provision or provisions of the Act or this subpart that the museum is alleged to have violated;

(3) May enumerate the separate violations alleged, including facts to support the number of separate violations. The number of separate violations is determined by establishing relevant factors such as:

(i) The number of lineal descendants, Indian Tribes, or Native Hawaiian organizations determined to be aggrieved by the failure to comply; or

(ii) The number of individuals or the number of funerary objects, sacred objects, or objects of cultural patrimony involved in the failure to comply;

(4) May include information showing that the museum has possession or control of human remains or cultural items involved in the alleged failure to comply; and

(5) May include information showing that the museum receives Federal funds.

(b) *Respond to an allegation.* No later than 90 days after receiving an allegation, the Assistant Secretary must determine if the allegation meets the requirements of paragraph (a) of this section and respond to the person alleging the failure to comply.

(1) The Assistant Secretary may request any additional relevant information from the person making the allegation, the museum, or other parties. The Assistant Secretary may conduct any investigation that is necessary to determine whether an alleged failure to comply is substantiated. The Assistant Secretary may also investigate appropriate factors for justifying an increase or reduction to any penalty amount that may be calculated.

(2) If the allegation meets the requirements of paragraph (a) of this section, the Assistant Secretary, after reviewing all relevant information, must determine one of the following for each alleged failure to comply:

(i) The alleged failure to comply is substantiated, the number of separate violations is identified, and a civil penalty is an appropriate remedy. The Assistant Secretary must calculate the proposed penalty amount under paragraph (c) of this section and notify the museum under paragraph (d) of this section;

(ii) The alleged failure to comply is substantiated, the number of separate violations is identified, but a civil penalty is not an appropriate remedy. The Assistant Secretary must notify the museum under paragraph (d) of this section; or

(iii) The alleged failure to comply is unsubstantiated. The Assistant Secretary must send a written determination to the person making the allegation and to the museum.

(c) *Calculate the penalty amount.* If the Assistant Secretary determines under paragraph (b)(2)(i) of this section that a civil penalty is an appropriate remedy for a substantiated failure to comply, the Assistant Secretary must calculate the amount of the penalty in accordance with this paragraph. The penalty for each separate violation must be calculated as follows:

(1) The base penalty amount is $7,475, subject to annual adjustments based on inflation under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74).

(2) The base penalty amount may be increased after considering:

(i) The ceremonial or cultural value of the human remains or cultural items involved, as identified by any aggrieved lineal descendant, Indian Tribe, or Native Hawaiian organization;

(ii) The archaeological, historical, or commercial value of the human remains or cultural items involved;

(iii) The economic and non-economic damages suffered by any aggrieved lineal descendant, Indian Tribe, or Native Hawaiian organization, including expenditures by the aggrieved party to compel the museum to comply with the Act or this subpart;

(iv) The number of prior violations by the museum that have occurred; or

(v) Any other appropriate factor justifying an increase.

(3) The base penalty amount may be reduced if:

(i) The museum comes into compliance;

(ii) The museum agrees to mitigate the violation in the form of an actual or an in-kind payment to an aggrieved lineal descendant, Indian Tribe, or Native Hawaiian organization;

(iii) The penalty constitutes excessive punishment under the circumstances;

(iv) The museum is unable to pay the full penalty and the museum has not previously been found to have failed to comply with the Act or this subpart. The museum has the burden of proving it is unable to pay by providing verifiable, complete, and accurate financial information to the Assistant Secretary. The Assistant Secretary may request that the museum provide such financial information that is adequate and relevant to evaluate the museum's

financial condition, including the value of the museum's cash and liquid assets; ability to borrow; net worth; liabilities; income tax returns; past, present, and future income; prior and anticipated profits; expected cash flow; and the museum's ability to pay in installments over time. If the museum does not submit the requested financial information, the museum is presumed to have the ability to pay the civil penalty; or

(v) Any other appropriate factor justifies a reduction.

(d) *Notify a museum of a failure to comply.* If the Assistant Secretary determines under paragraph (b)(2)(i) or (b)(2)(ii) of this section that an alleged failure to comply is substantiated, the Assistant Secretary must serve the museum with a written notice of failure to comply and send a copy of the notice to each person alleging the failure to comply and any lineal descendant, Indian Tribe, or Native Hawaiian organization named in the notice of failure to comply. The notice of failure to comply must:

(1) Provide a concise statement of the facts believed to show a failure to comply;

(2) Specifically reference the provisions of the Act and this subpart with which the museum has failed to comply;

(3) Include the proposed penalty amount calculated under paragraph (c) of this section;

(4) Include, where appropriate, any initial proposal to reduce or increase the penalty amount or an explanation of the determination that a penalty is not an appropriate remedy;

(5) Identify the options for responding to the notice of failure to comply under paragraph (e) of this section; and

(6) Inform the museum that the Assistant Secretary may assess a daily penalty amount under paragraph (m)(1) of this section if the failure to comply continues after the date the final administrative decision of the Assistant Secretary takes effect.

(e) *Respond to a notice of failure to comply.* No later than 45 days after receiving a notice of failure to comply, a museum may file a written response to the notice of failure to comply or take no action and await service of a notice of assessment under paragraph (g) of this section. A response which is not timely filed must not be considered. Any written response must be signed by an authorized representative of the museum and must be sent to the Assistant Secretary. In the written response, a museum may:

(1) Seek an informal discussion of the failure to comply;

(2) Request either or both of the following forms of relief, with a full explanation of the legal or factual basis for the requested relief:

(i) That the Assistant Secretary reconsider the determination of a failure to comply, or

(ii) That the Assistant Secretary reduce the proposed penalty amount; or

(3) Accept the determination of a failure to comply and agree in writing, which constitutes an agreement between the Assistant Secretary and the museum, that the museum must:

(i) Pay the proposed penalty amount, if any;

(ii) Complete the mitigation required to reduce the penalty, if offered in the notice; and

(iii) Waive any right to receive notice of assessment under paragraph (g) of this section and to request a hearing under paragraph (i) of this section.

(f) *Assess the civil penalty.* After serving a notice of failure to comply, the Assistant Secretary may assess a civil penalty and must consider all available, relevant information related to the failure to comply, including information timely provided by the museum during any informal discussion or request for relief, furnished by another party, or produced upon the Assistant Secretary's request.

(1) The assessment of a civil penalty is made after the latter of:

(i) The 45-day period for a response has expired and the museum has taken no action;

(ii) Conclusion of informal discussion, if any;

(iii) Review and consideration of a petition for relief, if any; or

(iv) Failure to meet the terms of an agreement established under paragraph (e)(3) of this section.

(2) If a petition for relief or informal discussion warrants a conclusion that no failure to comply has occurred, the Assistant Secretary must send written notification to the museum revoking the notice of failure to comply. No penalty is assessed.

(g) *Notify the museum of an assessment.* If the Assistant Secretary determines to assess a civil penalty, the Assistant Secretary must serve the museum with a notice of assessment. Unless the museum seeks further administrative remedies under this section, the notice of assessment is the final administrative decision of the Assistant Secretary. The notice of assessment must:

(1) Specifically reference the provisions of the Act or this subpart with which the museum has not complied;

(2) Include the final amount of any penalty calculated under paragraph (c) of this section and the basis for determining the penalty amount;

(3) Include, where appropriate, any increase or reduction to the penalty amount or an explanation of the determination that a penalty is not an appropriate remedy;

(4) Include the daily penalty amount that the Assistant Secretary may assess under paragraph (m)(1) of this section if the failure to comply continues after the date the final administrative decision of the Assistant Secretary takes effect. The daily penalty amount for each continuing violation shall not exceed $1,496 per day, subject to annual adjustments based on inflation under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74);

(5) Identify the options for responding to the notice of assessment under paragraph (h) of this section; and

(6) Notify the museum that it has the right to seek judicial review of the final administrative decision of the Assistant Secretary only if it has exhausted all administrative remedies under this section, as set forth in paragraph (l) of this section.

(h) *Respond to an assessment.* No later than 45 days after receiving a notice of assessment, a museum must do one of the following:

(1) Accept the assessment and pay the penalty amount by means of a certified check made payable to the U.S. Treasurer, Washington, DC, sent to the Assistant Secretary. By paying the penalty amount, the museum waives the right to request a hearing under paragraph (i) of this section.

(2) File a written request for a hearing under paragraph (i) of this section to contest the failure to comply, the penalty assessment, or both. If the museum does not file a written request for a hearing in 45 days, the museum waives the right to request a hearing under paragraph (i) of this section.

(i) *Request a hearing.* The museum may file a written request for a hearing with the Departmental Cases Hearings Division (DCHD), Office of Hearings and Appeals (OHA), U.S. Department of the Interior, at the mailing address specified in the OHA Standing Orders on Contact Information, or by electronic means under the terms specified in the OHA Standing Orders on Electronic Transmission. A copy of the request must be served on the Solicitor of the Department of the Interior at the address specified in the OHA Standing Orders on Contact Information. The Standing Orders are available on the Department of the Interior OHA's website at *https://www.doi.gov/oha.* The request for hearing and any document filed

thereafter with the DCHD under paragraphs (i) or (j) of this section are subject to the rules that govern the method and effective date of filing and service under the subparts applicable to DCHD in 43 CFR part 4. The request for a hearing must:

(1) Include a copy of the notice of failure to comply and the notice of assessment;

(2) State the relief sought by the museum; and

(3) Include the basis for challenging the facts used to determine the failure to comply or the penalty assessment.

(j) *Hearings.* Upon receiving a request for a hearing, DCHD must assign an administrative law judge to the case and promptly give notice of the assignment to the parties. Thereafter, each filing must be addressed to the administrative law judge and a copy served on each opposing party or its counsel.

(1) To the extent they are not inconsistent with this section, the rules in the subparts applicable to DCHD in 43 CFR part 4 apply to the hearing process.

(2) Subject to the provisions of 43 CFR 1.3, a museum may appear by authorized representative or by counsel and may participate fully in the proceedings. If the museum does not appear and the administrative law judge determines that this absence is without good cause, the administrative law judge may, at his or her discretion, determine that the museum has waived the right to a hearing and consents to the making of a decision on the record.

(3) The Department of the Interior counsel is designated by the Office of the Solicitor of the Department of the Interior. No later than 20 days after receipt of its copy of the written request for hearing, Departmental counsel must file with the DCHD an entry of appearance on behalf of the Assistant Secretary and the following:

(i) Any written communications between the Assistant Secretary and the museum during any informal discussions under paragraph (e)(1) of this section;

(ii) Any petition for relief submitted under paragraph (e)(2); and

(iii) Any other information considered by the Assistant Secretary in reaching the decision being challenged.

(4) After Departmental counsel files an entry of appearance with DCHD, the museum must serve each document filed with the administrative law judge on Departmental counsel.

(5) In a hearing on the penalty assessment, the amount of the penalty assessment must be determined in accordance with paragraph (c)(2) of this section and may not be limited to the amount originally assessed or by any previous reduction, increase, or offer of mitigation.

(6) The administrative law judge has all powers necessary to conduct a fair, orderly, expeditious, and impartial hearing process, and to render a decision, under 5 U.S.C. 554–557 and 25 U.S.C. 3007.

(7) The administrative law judge must render a written decision. The decision must set forth the findings of fact and conclusions of law, and the reasons and basis for them.

(8) The administrative law judge's decision takes effect as the final administrative decision of the Assistant Secretary 31 days from the date of the decision unless the museum files a notice of appeal as described in paragraph (k) of this section.

(k) *Appealing the administrative law judge's decision.* Any party who is adversely affected by the decision of the administrative law judge may appeal the decision by filing a written notice of appeal no later than 30 days after the date of the decision. The notice of appeal must be filed with the Interior Board of Indian Appeals (IBIA), Office of Hearings and Appeals (OHA), U.S. Department of the Interior, at the mailing address specified in the OHA Standing Orders on Contact Information, or by electronic means under the terms specified in the OHA Standing Orders on Electronic Transmission. The Standing Orders are available on the Department of the Interior OHA's website at *https://www.doi.gov/oha.* The notice of appeal must be accompanied by proof of service on the administrative law judge and the opposing party. The notice of appeal and any document filed thereafter with the IBIA are subject to the rules that govern the method and effective date of filing under 43 CFR 4.310.

(1) To the extent they are not inconsistent with this section, the provisions of 43 CFR part 4, subpart D, apply to the appeal process. The appeal board's decision must be in writing and takes effect as the final penalty assessment and the final administrative decision of the Assistant Secretary on the date that the appeal board's decision is rendered, unless otherwise specified in the appeal board's decision.

(2) OHA decisions in proceedings instituted under this section are posted on OHA's website.

(l) *Exhaustion of administrative remedies.* A museum has the right to seek judicial review, under 5 U.S.C. 704, of the final administrative decision of the Assistant Secretary only if it has exhausted all administrative remedies under this section. No decision, which at the time of its rendition is subject to appeal under this section, shall be considered final so as to constitute agency action subject to judicial review. The decision being appealed shall not be effective during the pendency of the appeal.

(m) *Failure to pay penalty or continuing failure to comply.* (1) If the failure to comply continues after the date the final administrative decision of the Assistant Secretary takes effect, as described in paragraphs (g), (j)(6), or (k)(1) of this section, or after a date identified in an agreement under paragraph (e)(3) of this section, the Assistant Secretary may assess an additional daily penalty amount for each continuing violation not to exceed $1,496 per day, subject to annual adjustments based on inflation under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74). In determining the daily penalty amount, the Assistant Secretary must consider the factors in paragraph (c)(2) of this section. This penalty starts to accrue on the day after the effective date of the final administrative decision of the Assistant Secretary or on the date identified in an agreement under paragraph (e)(3) of this section.

(2) If the museum fails to pay the penalty, the Attorney General of the United States may institute a civil action to collect the penalty in an appropriate U.S. District Court. In such action, the validity and amount of the penalty are not subject to review by the court.

(n) *Additional remedies.* The assessment of a penalty under this section is not deemed a waiver by the Department of the Interior of the right to pursue other available legal or administrative remedies.

Subpart D—Review Committee

§ 10.12 Review Committee.

The Review Committee advises the Secretary of the Interior and Congress on matters relating to sections 3003, 3004, and 3005 of the Act and other matters as specified in section 3006 of the Act. The Review Committee is subject to the Federal Advisory Committee Act (FACA, 5 U.S.C. App.).

(a) *Recommendations.* Any recommendation, finding, report, or other action of the Review Committee is advisory only and not binding on any person. Any records and findings made by the Review Committee may be admissible as evidence in actions brought by persons alleging a violation of the Act. Findings and

recommendations made by the Review Committee must be published in the **Federal Register** no later than 90 days after making the finding or recommendation.

(b) *Nominations.* The Review Committee consists of seven members appointed by the Secretary of the Interior.

(1) Three members are appointed from nominations submitted by Indian Tribes, Native Hawaiian organizations, and traditional religious leaders. At least two of these members must be traditional Indian religious leaders. A traditional Indian religious leader is a person who an Indian Tribe identifies as serving it in the practice of traditional Native American religion.

(2) Three members are appointed from nominations submitted by national museum organizations or national scientific organizations. An organization that is created by, is a part of, and is governed in any way by a parent national museum or scientific organization must submit a nomination through the parent organization. National museum organizations and national scientific organizations are organizations that:

(i) Focus on the interests of museums and science disciplines throughout the United States, as opposed to a lesser geographical scope;

(ii) Offer membership throughout the United States, although such membership need not be exclusive to the United States; and

(iii) Are organized under the laws of the United States Government.

(3) One member is appointed from a list of more than one person developed and consented to by all other appointed members specified in paragraphs (b)(1) and (b)(2) of this section.

(c) *Findings of fact or disputes on repatriation.* The Review Committee may assist any affected party through consideration of findings of fact or disputes related to the inventory, summary, or repatriation provisions of the Act. One or more of the affected parties may request the assistance of the Review Committee or the Secretary of the Interior may direct the Review Committee to consider a finding of fact or dispute. Requests for assistance must be made before repatriation of the human remains or cultural items has occurred.

(1) An affected party is either a:

(i) Museum or Federal agency that has possession or control of the human remains or cultural items; or

(ii) Lineal descendant, or an Indian Tribe or Native Hawaiian organization with potential cultural affiliation to the human remains or cultural items.

(2) The Review Committee may make an advisory finding of fact on questions related to:

(i) The identity of an object as human remains or cultural items;

(ii) The cultural affiliation of human remains or cultural items; or

(iii) The repatriation of human remains or cultural items.

(3) The Review Committee may make an advisory recommendation on disputes between affected parties. To facilitate the resolution of disputes, the Review Committee may:

(i) Consider disputes between an affected party identified in paragraph (c)(1)(i) of this section and an affected party identified in paragraph (c)(1)(ii) of this section;

(ii) Not consider disputes among lineal descendants, Indian Tribes, and Native Hawaiian organizations;

(iii) Not consider disputes among museums and Federal agencies;

(iv) Request information or presentations from any affected party; and

(v) Make advisory recommendations directly to the affected parties or to the Secretary of the Interior.

Matthew J. Strickler,

Deputy Assistant Secretary Exercising the Delegated Authority of the Assistant Secretary for Fish and Wildlife and Parks.

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